

WSR 11-23-155
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)
[Filed November 22, 2011, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-07-085.

Title of Rule and Other Identifying Information: These amendments to chapter 388-845 WAC, Home and community based waivers, will clarify current definitions in rule to promote consistent expectations for reporting and tracking of employment and day services. The program "person to person" will no longer exist as it currently resides in WAC. Clients that previously received "person to person" services may now qualify for "individual technical assistance" services which are not currently defined in our WAC. These changes were effective July 1, 2011.

Hearing Location(s): Office Building 2, Lookout Room, 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 January 10, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 11, 2012.

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 January 10, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 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: The proposed amendments are in response to Budget Bill Section 103(7) which mandated that the joint legislative audit and review committee (JLARC) examine the operations of employment and day services as provided by DSHS, DDD, and administered by the counties. JLARC provided to the legislature a description of how funds are used and the rates paid to vendors, and best practices the agency should use for the development of a consistent outcome-based contract for services provided under contracts with the counties. These amendments are proposed to implement the recommendations by JLARC which were provided to the legislature on or before September 1, 2010.

By not making these changes, there is a risk that the department can no longer collect federal funds on individual technical assistance services as the WAC will not specify that these services are covered under the home and community based waiver services and therefore not a federally reimbursable expense.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.030.

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: Meredith Kelly, 4450 10th Avenue S.E., Olympia, WA 98504, (360) 725-3524; Implementation: Kris Pederson, 4450 10th Avenue S.E., Olympia, WA 98504, (360) 725-3445; and Enforcement: Don Clintsman, 4450 10th Avenue S.E., Olympia, WA 98504, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact was prepared as the amended rules proposed clarify language in the WAC and generally make the rules easier to understand by the consumer. Furthermore, there are no costs imposed on small businesses by these proposed rules. Based on RCW 19.85.025, the proposed rule making is exempt from preparing a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees or rates pursuant to legislative standards; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit.

November 9, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0001 Definitions. "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CARE" means the comprehensive assessment and reporting evaluation.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"DDD assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

"Department" means the department of social and health services.

"EPSDT" means early and periodic screening, diagnosis, and treatment, medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one as defined in WAC 388-534-0100.

"Employment/day program services" means community access, person-to-person, individualized technical assistance, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relatives live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means present or intended place of residence.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual support plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

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

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

"Providers" means an individual or agency who meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, Children's Intensive In-Home Behavioral Support, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means a state-paid cash assistance program for certain clients of the division of developmental disabilities.

"State funded services" means services that are funded entirely with state dollars.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

(1) You have been determined eligible for DDD services per RCW 71A.10.020(3).

(2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(3) You meet disability criteria established in the Social Security Act.

(4) You meet financial eligibility requirements as defined in WAC 388-515-1510.

(5) You choose to receive services in the community rather than in an ICF/MR facility.

(6) You have a need for waiver services as identified in your ((~~plan of care or~~) individual support plan.

(7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

(8) Additionally, for the Children's Intensive In-Home Behavioral Support (CIIBS) waiver-funded services:

(a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(c) You live with your family; and

(d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0041 What is DDD's responsibility to provide my services under the DDD HCBS waivers administered by DDD? If you are enrolled in an HCBS waiver administered by DDD(~~(-DDD must meet your assessed needs for health and welfare.)~~)

(1) DDD must ~~((address))~~ identify your assessed health and welfare needs in your individual support plan, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit ~~((your))~~, based on a lack of funding, the number of waiver services ((based on a lack of funding)) for which you are eligible.

AMENDATORY SECTION (Amending WSR 09-10-021, filed 4/28/09, effective 5/29/09)

WAC 388-845-0060 Can my waiver enrollment be terminated? DDD may terminate your waiver enrollment if DDD determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual ~~((plan of care or))~~ individual support plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDD determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program.

(e) You choose to disenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) You refuse to participate with DDD in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your ~~((plan of care or))~~ individual support plan as necessary to meet your health and welfare needs.

(i) You are residing in a hospital, jail, prison, nursing facility, ICF/MR, or other institution and remain in residence at least one full calendar month, and are still in residence:

(i) At the end of the twelfth month following the effective date of your current ~~((plan of care or))~~ individual support plan, as described in WAC 388-845-3060; or

(ii) The end of the waiver fiscal year, whichever date occurs first.

(j) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080; or

(k) Your needs exceed what can be provided under WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and DDD enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDD may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent offense, as defined in RCW 9.94A.030.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) ~~((Plan of care or))~~ Individual support plan;

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDD approved certified individuals and agencies.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your ~~((plan of care or))~~ individual support plan.

(2) Mental health stabilization services may be added to your ~~((plan of care or))~~ individual support plan after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services or employment/day program services.

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your health and welfare needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver? Your participation in one of the DDD HCBS waivers (~~does not~~) may affect your continued receipt of state supplemental payment from DDD. To continue to receive SSP, you must meet DDD/SSP programmatic eligibility requirements as identified in WAC 388-827-0115.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services	May not exceed \$1454 per year on any combination of these services

BASIC WAIVER	SERVICES	YEARLY LIMIT
	Speech, hearing and language services Staff/family consultation and training Transportation	
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person <u>Individualized technical assistance</u> Prevocational services Supported employment	May not exceed \$6804 per year
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by the DDD assessment
	Personal care	Limits are determined by the CARE tool used as part of the DDD assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services ((Skilled nursing)) Specialized psychiatric services	Limits are determined by a mental health professional or DDD
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations	May not exceed \$6192 per year on any combination of these services

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person <u>Individualized technical assistance</u> Prevocational services Supported employment Adult foster care (adult family home) Adult residential care (boarding home)	May not exceed \$9944 per year This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need Determined per department rate structure
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services (Skilled nursing) Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0215 CORE waiver services.

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community guide Community transition Environmental accessibility adaptations Occupational therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the (plan of care or) individual support plan, not to exceed the average cost of an ICF/MR for any combination of services
	Residential habilitation	
	Community access Person-to-person <u>Individualized technical assistance</u> Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services (Skilled nursing) Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0220 Community protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy	Determined by the ((plan of care or)) individual support plan, not to exceed the average cost of an ICF/MR for any combination of services
	Sexual deviancy evaluation	
	Skilled nursing	
	Specialized medical equipment and supplies	
	Specialized psychiatric services	
	Speech, hearing and language services	
	Staff/family consultation and training	
	Transportation	
	Residential habilitation	
	Person-to-person <u>Individualized technical assistance</u> Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services ((Skilled nursing)) Specialized psychiatric services	Limits determined by a mental health professional or DDD

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0506 Who is a qualified provider of behavior management and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?

(1) Under the CIIBS waiver, providers of behavior manage-

ment and consultation must be contracted with DDD to provide CIIBS intensive services as one of the following ~~((four))~~ two provider types:

(a) Master's or PhD level behavior specialist, licensed or certified/registered to provide behavioral assessment, intervention, and training;

(b) Behavior technician, licensed or certified/registered to provide behavioral intervention and training, following the lead of the behavior specialist;

~~(c) Certified music therapist, and/or~~

~~(d) Certified recreation therapist).~~

(2) Providers of behavior management and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0600 What are community access services? Community access services are provided in the community to enhance or maintain your community integration, physical or mental skills.

(1) ~~((If you are age sixty-two or older, these))~~ Services ((are available to)) assist you to participate in activities, events and organizations in the community in ways similar to others of ~~((retirement))~~ similar age.

(2) These services are available in the Basic, Basic Plus, and CORE waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0610 Are there limits to community access services I can receive? The following limits apply to your receipt of community access services:

(1) You must be age sixty-two or older or you have accessed nine consecutive months of employment services.

(2) You cannot be authorized to receive community access services if you receive prevocational services or supported employment services.

(3) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0750 What are community transition services? (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for you to establish your basic living arrangement) associated with moving from:

(a) An institutional setting to a community setting in which you are living in your own home or apartment, responsible for your own living expenses and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510; or

(b) A provider operated setting, such as a group home, staffed residential, adult family home or companion home in

the community to a community setting in which you are living in your own home or apartment, responsible for your own living expenses, and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510.

(2) Community transition services include:

(a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;

(b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;

(c) Moving expenses required to occupy your own home or apartment;

(d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and

(e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

(3) Community transition services are available in the CORE and community protection waivers.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

(1) Prior approval by the DDD regional administrator or designee is required based on a reassessment of your (~~plan of care or~~) individual support plan to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current (~~plan of care or~~) individual support plan;

(3) Emergency assistance services are limited to the aggregate services and employment/day program services in the Basic and Basic Plus waivers;

(4) Emergency assistance may be used for interim services until:

(a) The emergency situation has been resolved; or

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adaptations are available in all of the DDD HCBS waivers and provide the physical adaptations to the home required by the individual's (~~plan of care or~~) individual support plan needed to:

(a) Ensure the health, welfare and safety of the individual; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) For the CIIBS waiver only, adaptations include repairs to the home necessary due to property destruction caused by the participant's behavior.

NEW SECTION

WAC 388-845-1030 What are individual technical assistance services? Individualized technical assistance service is assessment and consultation to the employment provider and/or client to identify and address existing barriers to employment. This is in addition to supports received through supported employment services or pre-vocational services for individuals who have not yet achieved their employment goal.

NEW SECTION

WAC 388-845-1035 Who are qualified providers of individualized technical assistance services? Providers of individualized technical assistance service must be a county or an individual or agency contracted with a county or DDD.

NEW SECTION

WAC 388-845-1040 Are there limits to the individualized technical assistance services I can receive? (1) Individualized technical assistance service cannot exceed six months in an individual's plan year.

(2) These services are available on the Basic, Basic Plus, Core and Community Protection Waives.

(3) Individual must be receiving supported employment or pre-vocational services.

(4) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1210 Are there limits to the person-to-person service I can receive? (1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school or age twenty-two or older to receive person-to-person services.

(2) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(3) These services will be provided in an integrated environment.

(4) Your service hours are determined by the level of assistance you need to reach your employment outcomes and might not equal the number of hours you spend on the job or in job related activities.

(5) Person to person services will only be available through June 30, 2012.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for medicaid personal care in ~~((chapter[s]))~~ chapter 388-106 ((and 388-71)) WAC governing medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE).

(2) The maximum hours of personal care you may receive are determined by the CARE tool used as part of the DDD assessment.

(a) Provider rates are limited to the department established hourly rates for in-home medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with ADSA.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1600 What is respite care? Respite care is short-term intermittent relief for persons who normally ~~((providing care for waiver individuals))~~ provides care for and live with you. This service is available in the Basic, Basic Plus, CIIBS, and Core waivers.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1605 Who is eligible to receive respite care? You are eligible to receive respite care if you are in the Basic, Basic Plus, CIIBS or Core waiver and:

(1) You live in a private home and no one living with you is paid to provide ~~((personal care services to you))~~ ADSA services; or

(2) You are age eighteen or older and ~~((live with a paid personal care provider who))~~ the only paid provider living with you is your natural, step or adoptive parent; or

(3) You are under the age of eighteen and live with your natural, step or adoptive parent and your paid ~~((personal care))~~ ADSA provider also lives with you; or

(4) You live with a caregiver who is paid by DDD to provide supports as:

(a) A contracted companion home provider; or

(b) A licensed children's foster home provider.

NEW SECTION

WAC 388-845-1607 Can someone who lives with me be my respite provider? Someone who lives with you may be your respite provider as long as they are not the person who normally provides care for you.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

(1) Individuals meeting the provider qualifications under chapter 388-825 WAC;

(2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;

(3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;

(4) Licensed and contracted adult family home;

(5) Licensed and contracted adult residential care facility;

(6) Licensed and contracted adult residential treatment facility under chapter 246-337 WAC;

(7) Licensed childcare center under chapter 170-295 WAC;

(8) Licensed child daycare center under chapter 170-295 WAC;

(9) Adult daycare ~~((centers))~~ services provider under chapter 388-71 WAC contracted with DDD;

(10) Certified provider under chapter 388-101 WAC when respite is provided within the DDD contract for certified residential services; or

(11) Other DDD contracted providers such as community center, senior center, parks and recreation, summer programs~~((adult day care))~~.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

(1) The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) ~~((Prior approval by the DDD regional administrator or designee is required:~~

~~((a) To exceed fourteen days of respite care per month; or~~

~~((b) To pay for more than eight hours in a twenty-four~~

~~hour period of time for respite care in any setting other than~~

~~your home or place of residence. This limitation does not prohibit~~

~~your respite care provider from taking you into the community, per WAC 388-845-1610(2).~~

~~((3))) Respite cannot replace:~~

(a) Daycare while your parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

~~((4)))~~ (3) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

~~((5))~~ (4) Your caregiver may not provide DDD services for you or other persons during your respite care hours.

~~((6))~~ (5) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.

~~((7))~~ (6) DDD may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

~~((8))~~ (7) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive? The following limitations apply to your receipt of skilled nursing services:

(1) Skilled nursing services with the exception of nurse delegation and nursing evaluations require prior approval by the DDD regional administrator or designee.

(2) DDD and the treating professional determine the need for and amount of service.

(3) DDD reserves the right to require a second opinion by a department-selected provider.

(4) The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a mental health stabilization service.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?

(1) The following limitations apply to your receipt of specialized nutrition services:

(a) ~~((Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid including EPSDT per WAC 388-534-0100, and any private health insurance plan;~~

~~(b) Services must be evidence based))~~ Specialized nutrition may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the service is not covered by medicaid or private insurance;

(b) Services must be safe, effective, and individualized;

(c) Services must be ordered by a physician licensed to practice in the state of Washington;

(d) Specialized diets must be periodically monitored by a certified dietitian;

(e) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

(f) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

(g) DDD reserves the right to require a second opinion by a department selected provider; and

(h) Prior approval by regional administrator or designee is required.

(2) The following limitations apply to your receipt of specialized clothing:

(a) ~~((Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT per WAC 388-534-0100, and any private health insurance plan;))~~ Specialized clothing may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the service is not covered by medicaid or private insurance.

~~(b) ((Specialized clothing must be recommended by an appropriate health professional, such as an OT, behavior therapist, or podiatrist;))~~ The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

~~(c) ((DDD reserves the right to require a second opinion by a department selected provider; and))~~ The department may require a second opinion from a department selected provider that meets the same criteria as subsection (b) of this section.

(d) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2000 What is staff/family consultation and training?

(1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all DDD HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's ~~((plan of care or))~~ individual support plan, including:

(a) Health and medication monitoring;

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) Positive behavior support;

(e) Augmentative communication systems;

(f) Diet and nutritional guidance;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental consultation; and

(j) For the CIIBS waiver only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation; ~~((or))~~
- (17) Providers listed in WAC 388-845-0506 and contracted with DDD to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only); or
- (19) Psychiatrist.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies? The following limitations apply to your receipt of therapeutic equipment and supplies under the CIIBS waiver:

- (1) Therapeutic equipment and supplies may be authorized as a waiver service ~~((only after you have accessed what is available to you under medicaid including EPSDT per WAC 388-534-0100, and any private health insurance plan. The department will require evidence that you have accessed your full benefits through medicaid, EPSDT, and private insurance before authorizing this waiver service))~~ by obtaining an initial denial of funding or information showing that the service is not covered by medicaid or private insurance.
- (2) The department does not pay for experimental equipment and supplies.
- (3) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.
- (4) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (3) of this section.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver ~~((plan of care or))~~ individual support plan. This service is available in all DDD HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

- (1) Transportation provides you access to waiver services, specified by your ~~((plan of care or))~~ individual support plan.
- (2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the DDD assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

- (1) You receive an initial and annual assessment of your needs using a department-approved form.
 - (a) You meet the eligibility requirements for ICF/MR level of care.
 - (b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.
 - (c) If you are in the Basic, Basic Plus, CIIBS, or Core waiver, the DDD assessment will determine the amount of respite care available to you.
- (2) From the assessment, DDD develops your waiver ~~((plan of care or))~~ individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3055 What is a waiver individual support plan (ISP)? (1) The individual support plan (ISP) ~~((replaces the plan of care and))~~ is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs. ~~((Your plan of care remains in effect until a new ISP is developed.))~~

- (2) Your ISP must include:
 - (a) Your identified health and welfare needs;
 - (b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and
 - (c) How often you will receive each waiver service; how long you will need it; and who will provide it.
- (3) For an initial ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(4) For a reassessment or review of your ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(5) You may choose any qualified provider for the service, who meets all of the following:

- (a) Is able to meet your needs within the scope of their contract, licensure and certification;
- (b) Is reasonably available;
- (c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and
- (d) Agrees to provide the service at department rates.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3056 What if I need assistance to understand my ~~((plan of care or))~~ individual support plan? If you are unable to understand your ~~((plan of care or))~~ individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, DDD will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your ~~((plan of care or))~~ individual support plan.

(2) Continue your current waiver services.

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDD will continue to try to provide necessary supplemental accommodations in order to help you understand your ~~((plan of care or))~~ individual support plan.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3060 When is my ~~((plan of care or))~~ individual support plan effective? ~~((1) For an initial plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.~~

~~((2) For a reassessment or review of a plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.))~~ Your individual support plan is effective the last day of the month in which DDD signs it after receiving your signature or verbal consent.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3061 Can a change in my ~~((plan of care or))~~ individual support plan be effective before I sign it? If you verbally request a change in service to occur immediately, DDD can sign the ~~((plan of care or))~~ individual support plan and approve it prior to receiving your signature.

(1) Your ~~((plan of care or))~~ individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the ~~((plan of care or))~~ individual support plan.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3062 Who is required to sign or give verbal consent to the ~~((plan of care or))~~ individual support plan? (1) If you do not have a legal representative, you must sign or give verbal consent to the ~~((plan of care or))~~ individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the ~~((plan of care or))~~ individual support plan.

(3) If you need assistance to understand your ~~((plan of care or))~~ individual support plan, DDD will follow the steps outlined in WAC 388-845-3056 (1) and (3).

NEW SECTION

WAC 388-845-3063 Can my individual support plan be effective before the end of the month? You may request to DDD to have your individual support plan effective prior to the end of the month. The effective date will be the date DDD signs it after receiving your signature or verbal consent.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3065 How long is my plan effective? ~~((1) Your plan of care is effective until it is replaced by your individual support plan.~~

~~((2))~~ Your individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)? If DDD is unable to obtain the necessary signature or verbal consent for an initial, reassessment or review of your individual support plan (ISP), DDD will take one or more of the following actions:

(1) If this individual support plan is an initial plan, DDD will be unable to provide waiver services. DDD will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3).

(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:

(a) DDD will continue providing services as identified in your most current ~~((plan of care or))~~ ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, DDD will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above.

(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, DDD will continue your existing services and take the steps described in WAC 388-845-3056.

(4) You will be provided written notification and appeal rights to this action to implement the new ISP.

(5) Your appeal rights are in WAC 388-845-4000 and 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3075 What if my needs change? You may request a review of your (~~plan of care or~~) individual support plan at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDD must reassess your (~~plan of care or~~) individual support plan with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual (~~plan of care or~~) individual support plan.

WSR 11-24-012

WITHDRAWAL OF PROPOSED RULES

GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed November 29, 2011, 8:19 a.m.]

WAC 230-15-050, proposed by the gambling commission in WSR 11-11-081 appearing in issue 11-11 of the State Register, which was distributed on June 1, 2011, is withdrawn by the code reviser's office under RCW 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

WSR 11-24-047

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 2, 2011, 4:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-20-103.

Title of Rule and Other Identifying Information: WAC 388-106-1200 through 388-106-1230, respite care services.

Hearing Location(s): Office Building 2, Lookout Room, 4th Floor, 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 January 10, 2012, at 10:00 a.m.

Date of Intended Adoption: January 11, 2012.

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 5:00 p.m., January 10, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 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: The department is revising WAC 388-106-1200 through 388-106-1230, respite care services, to add language regarding the new tailored caregiver assessment and referral (TCARE) process and clarifying who is eligible to receive respite care services. Also, it is important to clarify that access to respite services is limited to caregivers providing care to adults not already receiving another state or medicaid funded long-term care services.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

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: Hilari Hauptman, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2556.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

December 2, 2011

Katherine I. Vasquez

Rules Coordinator

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

WAC 388-106-1200 What definitions apply to respite care services? The following definitions apply to respite care services:

"Caregivers" means an adult (eighteen and over) spouse, relative, or friend who has primary responsibility for the (~~daily~~) care or supervision of an adult with a functional disability without receiving direct, public or private payment for the caregiver services (~~provided~~) they provide.

"Continuous care or supervision" means daily assistance or oversight of an adult with a functional disability.

"Family caregiver support program or FCSP" means a statewide program offered by area agencies on aging to provide support for unpaid caregivers who provide care to an adult with a functional disability.

"(~~Functionally~~) Functional disability" means a physical, mental or cognitive condition requiring (~~substantial assistance~~) continuous care or supervision in completing

activities of daily living (~~and community living skills~~) or instrumental activities for daily living.

"(~~Participant~~) Care receiver" means an adult (age eighteen and over) with a functional disability who needs (~~substantial~~) daily continuous care or supervision.

"Service provider" means an (~~individual~~) agency, or organization under contract to the area agency on aging (AAA) or its subcontractor.

"Supervision" means providing oversight of an individual to assure his/her safety and well-being.

"TCARE®, tailored caregiver assessment and referral system" means the process (screening, assessment and care planning) to establish eligibility for respite care and other caregiver support services for unpaid family caregivers.

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

WAC 388-106-1210 Who is eligible to receive respite care services? (1) To be eligible to receive respite care services, the caregivers must:

(a) Have primary responsibility for the (~~daily continuous~~) care or supervision of an adult with a functional disability who is not receiving a state or medicaid funded, long-term care service (e.g., COPES, personal care services, DD waiver); and

(b) Provide a minimum of an average of (~~twelve~~) forty hours per (~~day for~~) week of care, and/or supervision, or live with an adult who needs continuous care or supervision; and

(c) Not (~~be compensated~~) receive financial payment for the care; and

(d) Be assessed (~~as being at risk of placing the participant in a long-term care facility if home and community support services, including respite care, are not available~~) in the TCARE®, tailored caregiver assessment and referral system and determined to meet the eligibility threshold levels determined by state level policy and have TCARE® recommend the strategy to introduce alternate sources for care to provide respite.

(2) An eligible participant is an adult who:

(a) Has a functional disability;

(b) (~~Needs daily substantial continuous care or supervision~~) Has a caregiver who is assessed in the TCARE® system and meets the criteria in WAC 388-106-1210(1); and

(c) (~~Is assessed as requiring placement in a long-term care facility if home and community support services, including respite care, are not available~~) Is not receiving a state or medicaid funded, long-term care service (e.g., COPES, personal care services, DD waiver).

(~~(3) The area agency on aging (AAA) determines how many hours of continuous care or supervision a day an unpaid caregiver must provide to a participant to become eligible for respite care services, as long as it is a minimum of twelve hours per day, as outlined in subsection (1)(b) of this section.~~)

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

WAC 388-106-1215 Who may provide respite care services? Respite care providers include, but are not limited to the following:

(1) Nursing homes (chapter 388-97 WAC).

(2) Adult day (~~services~~) service providers, (~~which~~) whose services includes adult day care, dementia day services and adult day health.

(3) Home care and/or home health(~~care~~) agencies licensed through the department of health for in-home services.

(4) Hospitals.

(5) Licensed residential care facilities such as boarding homes, adult family homes, and assisted living facilities.

(6) Providers such as volunteer (~~chore workers~~) services, and senior companions(~~and individual providers~~).

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

WAC 388-106-1220 How are respite care providers reimbursed for their services? The department reimburses:

(1) Respite care providers for the number of hours or days of services authorized and (~~used~~) provided. (~~The~~) If the provider already has a medicaid rate (~~that is~~) established for (~~the services~~) providing a similar service, that rate is (~~negotiated between the respite care program of the local area agency on aging and the respite care service provider~~) to be reimbursed by the local area agency on aging. If there is no established rate for the service, one can be negotiated between the local area agency on aging and the respite care service provider.

(2) Medicaid-certified (~~nursing homes and DDD-certified group homes~~) licensed residential facilities providing respite services at the medicaid rate approved for that facility. Medicaid contracted (~~nursing homes~~) providers must not charge more than the medicaid rate for any services covered from the date of eligibility, unless authorized by the department (see RCW 18.51.070). Participants must pay for services not included in the medicaid rate.

(3) Private nursing homes at their published daily rate.

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

WAC 388-106-1225 Are participants required to pay for the cost of their services? (1) There is no charge to the (~~participant~~) care receiver whose income is at or below forty percent of the state median income, based on family size.

(2) If the (~~participant's~~) care receiver's gross income is above forty percent of the state median income, he or she is required to pay for part or all of the cost of the respite care services. The department will determine what amount the participant must contribute based on the state median income and family size.

(3) If the (~~participant's~~) care receiver's gross income is one hundred percent or more of the state median income, the participant must pay the full cost of the respite care services.

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

WAC 388-106-1230 ~~((Are there waiting lists for respite services))~~ **What determines emergent and non-emergent respite care services?** (1) The department and the area agency on aging (AAA) must first consider requests for emergency respite care. An example of an emergency is when the caregiver becomes ill or injured to the extent that the caregiver's ability to care for the ~~((participant))~~ care receiver is impaired. AAA policies will determine how best to serve caregivers in crisis depending on available local FCSP funding. A caregiver must be screened in TCARE® within thirty days following the crisis if ongoing services exceeding five hundred dollars are requested.

(2) In nonemergency situations, respite care is allocated based upon ~~((available respite funds at the local level))~~ the results of the TCARE® assessment and available local FCSP funds. ((Respite care must be provided on a first come, first served basis.)) If sufficient funds are not available when ~~((respite care is requested, services are made available using waiting lists and department approved priority categories, developed by the AAA, including caregiver vulnerability and health condition, availability of other support systems, and whether other family members need care))~~ an eligible caregiver requests services. AAA may establish wait lists to prioritize clients receiving services as funding becomes available.

WSR 11-24-048
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed December 2, 2011, 5:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-17-131; and proposal is exempt under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 388-96-910 Safety net assessment, for a safety net assessment imposed on nonexempt nursing facilities in Washington state.

Hearing Location(s): Office Building 2, Lookout Room, 4th Floor, 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 January 10, 2012, at 10:00 a.m.

Date of Intended Adoption: January 11, 2012.

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 5:00 p.m., January 10, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 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: Chapter 7, Laws of 2011 1st sp. sess. imposes a safety net assessment on non-exempt nursing facilities in Washington state. The department is adding WAC 388-96-910 to provide additional direction for implementation of this new regulation.

Statutory Authority for Adoption: RCW 74.39.030(3).

Statute Being Implemented: RCW 74.39.030(3).

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: Ed Southon, 4500 10th Avenue S.E., Lacey, (360) 725-2469;

Implementation and Enforcement: Ken Callaghan, 4500 10th Avenue S.E., Lacey, (360) 725-2499.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Pursuant to RCW 19.85.025(3) [a small business economic impact statement] is not required because this rule imposes fees according to legislative standards and content is dictated by session law.

A cost-benefit analysis is not required under RCW 34.05.328. Proposal is exempt under RCW 34.05.310(4).

December 1, 2011

Katherine I. Vasquez

Rules Coordinator

NEW SECTION

WAC 388-96-910 Safety net assessment. (1) Chapter 7, Laws of 2011 1st sp. sess. (the Act) imposes a safety net assessment (SNA) on nonexempt nursing facilities in Washington. Each year, under section 16 of the Act, the department of social and health services (the department) may adjust the amount(s) of the SNA to be paid for the next state fiscal year (SFY), beginning July 1. If necessary, the department may further adjust the amount(s) of the SNA at other times during the SFY. Although subject to change as necessary and as permitted under the Act, the expectation is that each year the SNA will be imposed at two different levels: a higher level for most nonexempt facilities, and a significantly lower level for facilities that have either a high medicaid census on the prior year's cost report or a high number of licensed beds. For SFY 2012, those thresholds were thirty-two thousand medicaid resident days, and two hundred and three licensed beds. Those thresholds may change, as necessary and permitted under the Act. Beginning July 1, 2012 the department will submit any adjustments to the SNA amount(s), along with the data supporting the adjustments, to the Washington health care association and the aging services of Washington for review and comment at least sixty calendar days prior to implementation of the adjusted assessment amounts. These submissions may be made electronically. If necessary to comply with the sixty-day notice requirement and still make the adjustment effective as of July 1, or another effective date, these notices may be made on a provisional, or potential, basis or bases.

(2) The status of each nursing facility under the Act will be determined based on the facility's characteristics as of July 1 of each SFY, but using the information on resident days

from the prior calendar year's cost report. For example, a facility's status for the SNA for SFY 2014 (beginning July 1, 2013) would be based on the resident day information from the 2012 cost report. The status of facilities will not be altered thereafter during the SFY. Facilities that become licensed throughout the SFY will be subject to the SNA as of the date of their licensing. The office of rates management (ORM) of the aging and disability services administration (ADSA) of the department will inform each nursing facility of its status under the Act. A facility wishing to contest its status under the Act as determined by ORM may seek review of the determination under WAC 388-96-904.

(3) An add-on to each nonexempt facility's medicaid daily rate will be paid to reimburse the facility for the SNA it owes in relation to residents whose care is funded by medicaid.

(4) The SNA is assessed and payable on a monthly basis. The SNA must be reported on a form supplied by ORM. The SNA owed for each month, and the reporting form for that month, must be mailed to the department and postmarked no later than the twentieth day of the following month. Payments of the SNA are subject to an interest penalty of one percent per month for any payment which is delinquent for any portion of a month. This interest penalty is in addition to any civil fine or other enforcement action that the department may seek as authorized by section 20 of the Act. In addition to the remedies specifically listed in section 20 of the Act, the department may also offset such delinquent SNA payments and related penalties and/or fines against the facility's medical assistance reimbursement payments.

(5) The department has applied for, and received a waiver related to the SNA from the federal centers for medicare and medicaid services (CMS). After issuance, such a waiver is subject to ongoing review for continued compliance. In the ongoing review process, it may be necessary for the department to modify the levels of the SNA, the standard(s) for designating facilities that pay the SNA at each level, and/or the categories of fully exempt facilities described in Sec. 17 of the Act. In that case, each facility may: be obligated to pay the SNA or pay a different amount of the SNA; be reimbursed for SNA amounts previously paid; or be obligated to repay any SNA add-on it has received, all retroactive to the effective date of the modification contained in the waiver as approved by CMS.

WSR 11-24-060
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed December 5, 2011, 5:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-07-092.

Title of Rule and Other Identifying Information: Chapter 182-551 WAC, Subchapter I—Hospice services.

Hearing Location(s): Health Care Authority, Cherry Street Plaza Building, Apple Conference Room (106A), 626

8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on January 10, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 11, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on January 10, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by January 3, 2012, TTY/TDD (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules are necessary to:

(1) Establish that a family electing to receive hospice care for an individual under twenty-one years of age is no longer required to waive treatment for the terminal illness; and

(2) Require that a hospice physician or nurse practitioner must have a face-to-face encounter with every hospice patient to determine the continued eligibility of that patient prior to the one hundred eighty day recertification, and prior to each subsequent recertification and also attest that the visit took place.

Reasons Supporting Proposal: These required changes are in accordance with the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148).

Statutory Authority for Adoption: RCW 41.05.021, Section 2302 of the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148), and Section 1814 (a)(7) of the Social Security Act.

Statute Being Implemented: RCW 41.05.021.

Rule is necessary because of federal law, Section 2302 of the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148), and Section 1814 (a)(7) of the Social Security Act.

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, Health Care Authority, P.O. Box 45504, Olympia, WA, (360) 725-1306; Implementation and Enforcement: Ellen Silverman, Health Care Authority, P.O. Box 45506, Olympia, WA, (360) 725-1570.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily. However, the agency did draft a preliminary cost-benefit analysis and a copy of it may be obtained by contacting Ellen Silverman, RN, PhD, Nurse Clinical Consultant/Clinical Utilization Management Supervisor, Health Care Authority, Division of Healthcare Services, P.O. Box 45506, Olympia, WA 98504-

5506, phone (360) 725-1570, fax (360) 586-9727, e-mail Ellen.silverman@hca.wa.gov.

December 2, 2011
Kevin M. Sullivan
Rules Coordinator

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

WAC 182-551-1000 Hospice program—General. (1)

The (~~(department's)~~) medicaid agency's hospice program is a twenty-four hour a day program that allows a terminally ill client to choose physical, pastoral/spiritual, and psychosocial comfort care (~~(rather than cure)~~) and a focus on quality of life. A hospice interdisciplinary team communicates with the client's nonhospice care providers to ensure the client's needs are met through the hospice plan of care. Hospitalization is used only for acute symptom management.

(2) A client, a physician, or an authorized representative under RCW 7.70.065 may initiate hospice care. The client's physician must certify the client as terminally ill and appropriate for hospice care.

(3) Hospice care is provided in a client's temporary or permanent place of residence.

(4) Hospice care ends when:

(a) The client or an authorized representative under RCW 7.70.065 revokes the hospice care;

(b) The hospice agency discharges the client;

(c) The client's physician determines hospice care is no longer appropriate; or

(d) The client dies.

(5) Hospice care includes the provision of emotional and spiritual comfort and bereavement support to the client's family member(s).

(6) (~~(Department approved)~~) Medicaid agency-approved hospice agencies must meet the general requirements in chapter (~~(388-502)~~) 182-502 WAC, Administration of medical programs—Providers.

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

WAC 182-551-1010 Hospice program—Definitions.

The following definitions and abbreviations and those found in WAC (~~(388-500-0005)~~) 182-500-0005, Medical definitions, apply to this subchapter.

"Authorized representative" (~~(means)~~) - An individual who has been authorized to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated. See RCW 7.70.065.

"Biologicals" (~~(means)~~) - Medicinal preparations including serum, vaccine autotoxins, and biotechnological drugs made from living organisms and their products.

"Brief period" (~~(means)~~) - Six days or less within a thirty consecutive-day period.

"Community services office (CSO)" (~~(means)~~) - An office of the department of social and health services (DSHS) that administers social and health services at the community level.

"Concurrent care" - Palliative and curative services for clients twenty years of age and younger who are enrolled in hospice and who are also able to receive other medicaid covered services not included in the hospice benefit. See WAC 182-551-1860.

"Discharge" (~~(means an)~~) - A hospice agency ends hospice care for a client.

"Election period" (~~(means)~~) - The time, ninety or sixty days, that the client is certified as eligible for and chooses to receive hospice care.

"Family" (~~(means)~~) - An individual or individuals who are important to, and designated in writing by, the client and need not be relatives, or who are legally authorized to represent the client.

"Home and community services (HCS) office" (~~(means an)~~) - A department of social and health services (DSHS) aging and disability services administration (ADSA) office that manages the state's comprehensive long-term care system which provides in-home, residential, and nursing home services to clients with functional disabilities.

"Home health aide" (~~(means)~~) - An individual registered or certified as a nursing assistant under chapter 18.88A RCW who, under the direction and supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist, assists in the delivery of nursing or therapy related activities, or both, to patients of a hospice agency, or hospice care center.

"Home health aide services" (~~(means)~~) - Services provided by home health aides employed by an in-home services agency licensed to provide home health, hospice, or hospice care center services under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care may include ambulation and exercise, medication assistance level 1 and level 2, reporting changes in client's conditions and needs, completing appropriate records, and personal care or homemaker services, and other nonmedical tasks, as defined in this section.

"Hospice agency" (~~(means)~~) - A person or entity administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and volunteer. (Note: For the purposes of this subchapter, requirements for hospice agencies also apply to hospice care centers.)

"Hospice care center" (~~(means)~~) - A homelike non-institutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280 and applicable rules.

"Hospice services" (~~(means)~~) - Symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and individual's family in a place of temporary or permanent residence.

"Interdisciplinary team" (~~(means)~~) - The group of individuals involved in client care providing hospice services or hospice care center services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor, and volunteer.

"Palliative" ((~~means~~)) - Medical treatment designed to reduce pain or increase comfort, rather than cure.

"Plan of care" ((~~means~~)) - A written document based on assessment of client needs that identifies services to meet these needs.

"Related condition(s)" ((~~means~~)) - Any health condition((s))(s) that manifests secondary to or exacerbates symptoms associated with the progression of the condition and/or disease, the treatment being received, or the process of dying. (Examples of related conditions: Medication management of nausea and vomiting secondary to pain medication; skin breakdown prevention/treatment due to peripheral edema.)

"Residence" ((~~means~~)) - A client's home or place of living.

"Revoke" or "revocation" ((~~means~~)) - The choice to stop receiving hospice care.

"Terminally ill" ((~~means~~)) - The client has a life expectancy of six months or less, assuming the client's disease process runs its natural course.

"Twenty-four-hour day" ((~~means~~)) - A day beginning and ending at midnight.

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

WAC 182-551-1200 Client eligibility for hospice care. (1) A client who elects to receive hospice care must be eligible for one of the following medical assistance programs, subject to the restrictions and limitations in this chapter and other WAC:

- (a) Categorically needy ((~~program (CNP)) (CN)~~);
- (b) ((~~Limited casualty program — Medically needy program (LCP-MNP)~~);
- (c) Children's health (V);
- (d) State children's health insurance program (SCHIP);
- (e) CNP — Alien emergency medical;
- (f) LCP-MNP — Alien emergency medical; or
- (g) General assistance expedited disability ((~~GAX~~)) Children's health care as described in WAC 388-505-0210;
- (c) Medically needy (MN);
- (d) Medical care services as described in WAC 182-508-0005 (within Washington state or designated border cities);

or

(e) Alien emergency medical (AEM) as described in WAC 388-438-0110, when the medical services are necessary to treat a qualifying emergency medical condition.

(2) A hospice agency is responsible to verify a client's eligibility with the client or the client's department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO).

(3) A client enrolled in one of the ((~~department's~~)) medicaid agency's managed care ((~~plans~~)) organizations (MCO) must receive all hospice services, including facility room and board, directly through that ((~~plan~~)) MCO. The ((~~client's managed care plan~~)) MCO is responsible for arranging and providing all hospice services for ((~~an~~)) an MCO client ((~~enrolled in a managed care plan~~)).

(4) A client who is also eligible for medicare hospice under part A is not eligible for hospice care through the ((~~department's~~)) medicaid agency's hospice program. The

((~~department~~)) medicaid agency does pay hospice nursing facility room and board for these clients if the client is admitted to a nursing facility or hospice care center (HCC) and is not receiving general inpatient care or inpatient respite care. See also WAC ((~~388-551-1530~~)) 182-551-1530.

(5) A client who meets the requirements in this section is eligible to receive hospice care through the ((~~department's~~)) medicaid agency's hospice program when all of the following is met:

(a) The client's physician certifies the client has a life expectancy of six months or less.

(b) The client elects to receive hospice care and agrees to the conditions of the "election statement" as described in WAC ((~~388-551-1310~~)) 182-551-1310.

(c) The hospice agency serving the client:

(i) Notifies the ((~~department's~~)) medicaid agency's hospice program within five working days of the admission of all clients, including:

(A) Medicaid-only clients;

(B) Medicaid-medicare dual eligible clients;

(C) Medicaid clients with third party insurance; and

(D) Medicaid-medicare dual eligible clients with third party insurance.

(ii) Meets the hospice agency requirements in WAC ((~~388-551-1300~~)) 182-551-1300 and ((~~388-551-1305~~)) 182-551-1305.

(d) The hospice agency provides additional information for a diagnosis when the ((~~department~~)) medicaid agency requests and determines, on a case-by-case basis, the information that is needed for further review.

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

WAC 182-551-1210 Covered services, including core services and supplies reimbursed through the hospice daily rate. (1) The ((~~department~~)) medicaid agency reimburses a hospice agency for providing covered services, including core services and supplies described in this section, through the ((~~department's~~)) medicaid agency's hospice daily rate, subject to the conditions and limitations described in this section and other WAC. See WAC 182-551-1860 for pediatric concurrent care.

(2) To qualify for reimbursement, covered services, including core services and supplies in the hospice daily rate, must be:

(a) Related to the client's hospice diagnosis;

(b) Identified by the client's hospice interdisciplinary team;

(c) Written in the client's plan of care (POC); and

(d) Made available to the client by the hospice agency on a twenty-four hour basis.

(3) The hospice daily rate includes the following core services that must be either provided by hospice agency staff, or contracted through a hospice agency, if necessary, to supplement hospice staff in order to meet the needs of a client during a period of peak patient loads or under extraordinary circumstances:

(a) Physician services related to the administration of POC.

- (b) Nursing care provided by:
- (i) A registered nurse (RN); or
 - (ii) A licensed practical nurse (LPN) under the supervision of an RN.
- (c) Medical social services provided by a social worker under the direction of a physician.
- (d) Counseling services provided to a client and the client's family members or caregivers.
- (4) Covered services and supplies may be provided by a service organization or an individual provider when contracted through a hospice agency. To be reimbursed the hospice daily rate, a hospice agency must:
- (a) Assure all contracted staff meets the regulatory qualification requirements;
 - (b) Have a written agreement with the service organization or individual providing the services and supplies; and
 - (c) Maintain professional, financial, and administrative responsibility.
- (5) The following covered services and supplies are included in the appropriate hospice daily rate as described in WAC ~~((388-551-1510(6)))~~ 182-551-1510(6), subject to the conditions and limitations described in this section and other WAC:
- (a) Skilled nursing care;
 - (b) Drugs, biologicals, and over-the-counter medications used for the relief of pain and symptom control of a client's terminal illness and related conditions;
 - (c) Communication with nonhospice providers about care not related to the client's terminal illness to ensure the client's plan of care needs are met and not compromised;
 - (d) ~~((Medical equipment and supplies that are medically necessary for the palliation and management of a client's terminal illness and related conditions;))~~ Durable medical equipment and related supplies, prosthetics, orthotics, medical supplies, related services, or related repairs and labor charges in accordance with WAC 182-543-9100 (6)(c). These services and equipment are paid by the hospice agency for the palliation and management of a client's terminal illness and related conditions and are included in the daily hospice rate;
 - (e) Home health aide, homemaker, and/or personal care services that are ordered by a client's physician and documented in the POC. (Home health aide services are provided through the hospice agency to meet a client's extensive needs due to the client's terminal illness. These services must be provided by a qualified home health aide and are an extension of skilled nursing or therapy services. See 42 CFR 484.36);
 - (f) Physical therapy, occupational therapy, and speech-language therapy to manage symptoms or enable a client to safely perform ADLs (activities of daily living) and basic functional skills;
 - (g) Medical transportation services, including ambulance (see WAC 182-546-5550 (1)(d));
 - (h) A brief period of inpatient care, for general or respite care provided in a medicare-certified hospice care center, hospital, or nursing facility; and
 - (i) Other services or supplies that are documented as necessary for the palliation and management of a client's terminal illness and related conditions;

(6) A hospice agency is responsible to determine if a nursing facility has requested authorization for medical supplies or medical equipment, including wheelchairs, for a client who becomes eligible for the hospice program. The ~~((department))~~ medicaid agency does not pay separately for medical equipment or supplies that were previously authorized by the ~~((department))~~ medicaid agency and delivered on or after the date the ~~((department))~~ medicaid agency enrolls the client in the hospice program.

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

WAC 182-551-1300 Requirements for a ~~((department-approved))~~ medicaid-approved hospice agency. (1) To become a ~~((department-approved))~~ medicaid-approved hospice agency, the ~~((department))~~ medicaid agency requires a hospice agency to provide documentation that it is medicare, Title XVIII certified by the department of health (DOH) as a hospice agency.

(2) A ~~((department-approved))~~ medicaid-approved hospice agency must at all times meet the requirements in chapter ~~((388-551))~~ 182-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII medicare program.

(3) To ensure quality of care for medical assistance ~~((clients))~~ clients, the ~~((department's))~~ agency's clinical staff may conduct hospice agency site visits.

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

WAC 182-551-1305 Requirements for becoming a ~~((department-approved))~~ medicaid-approved hospice care center (HCC). (1) To apply to become a ~~((department-approved))~~ medicaid-approved hospice care center, the ~~((department))~~ medicaid agency requires a hospice agency to:

(a) Be enrolled with the ~~((department))~~ medicaid agency as ~~((a department))~~ an approved hospice agency (see WAC ~~((388-551-1300))~~ 182-551-1300);

(b) Submit a letter of request to:

Hospice Program Manager
~~((Division of Medical Management
 Department of Social and Health Services))~~
 P.O. Box 45506
 Olympia, WA 98504-5506; and

(c) Include documentation that confirms the approved hospice agency is medicare certified by department of health (DOH) as a hospice care center and provides one or more of the following levels of hospice care (levels of care are described in WAC ~~((388-551-1500))~~ 182-551-1500):

- (i) Routine home care;
- (ii) Inpatient respite care; and
- (iii) General inpatient care.

(2) A ~~((department-approved))~~ medicaid-approved hospice care center must at all times meet the requirements in chapter ~~((388-551))~~ 182-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII medicare program.

(3) A hospice agency qualifies as a ~~((department-approved))~~ medicaid-approved hospice care center when:

- (a) All the requirements in this section are met; and
- (b) The ~~((department))~~ medicaid agency provides the hospice agency with written notification.

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

WAC 182-551-1310 Hospice election periods, election statements, and the hospice certification process. (1) Hospice coverage is available for two ninety-day election periods followed by an unlimited number of sixty-day election periods. A client or a client's authorized representative must sign an election statement to initiate or reinstate an election period for hospice care.

(2) The election statement must be filed in the client's hospice medical record within two calendar days following the day the hospice care begins and requires all of the following:

- (a) Name and address of the hospice agency that will provide the care;
- (b) Documentation that the client is fully informed and understands hospice care and waiver of other medicaid and/or medicare services;
- (c) Effective date of the election; and
- (d) Signature of the client or the client's authorized representative.

(3) The following describes the hospice certification process:

(a) When a client elects to receive hospice care, the ~~((department))~~ medicaid agency requires a hospice agency to:

- (i) Obtain a signed written certification from a physician of the client's terminal illness; or
- (ii) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by:

(A) The medical director of the hospice agency or a physician staff member of the interdisciplinary team; and

(B) The client's attending physician (if the client has one).

(iii) Place the signed written certification of the client's terminal illness in the client's medical file:

(A) Within sixty days following the day the hospice care begins; and

(B) Before billing the ~~((department))~~ medicaid agency for the hospice services.

(b) For subsequent election periods, the ~~((department))~~ medicaid agency requires ~~((the hospice agency to))~~:

(i) ~~((Obtain a signed written certification statement of the client's terminal illness; or~~

~~((ii) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by the medical director of the hospice agency or a physician staff member of the hospice agency; and~~

~~((iii) Place the written certification of the client's terminal illness in the client's medical file:~~

~~((A) Within two calendar days following the beginning of a subsequent election period; and~~

~~((B) Before billing the department for the hospice services.))~~ A hospice physician or hospice nurse practitioner to:

(A) Have a face-to-face encounter with every hospice client within thirty days prior to the one hundred eightieth-day recertification and prior to each subsequent recertification to determine continued eligibility of the client for hospice care. The medicaid agency does not pay for face-to-face encounters to recertify a hospice client; and

(B) Attest that the face-to-face encounter took place.

(ii) The hospice agency to:

(A) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by the medical director of the hospice agency or a physician staff member of the hospice agency;

(B) Place the written certification of the client's terminal illness in the client's medical file;

(I) Within two calendar days following the beginning of a subsequent election period; and

(II) Before billing the medicaid agency for the hospice services; and

(C) Fax a completed medicaid hospice notification form (HCA 13-746) to the medicaid agency certifying the face-to-face encounter with the client, including date and name of the hospice physician or hospice nurse practitioner. To ensure payment for hospice services, the medicaid agency must receive the notification form no later than seven days following the one hundred eightieth-day recertification and each subsequent recertification.

(4) When a client's hospice coverage ends within an election period (e.g., the client revokes hospice care), the remainder of that election period is forfeited. The client may reinstate the hospice benefit at any time by providing an election statement and meeting the certification process requirements.

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

WAC 182-551-1330 Hospice—Client care and responsibilities of hospice agencies. (1) A hospice agency must facilitate a client's continuity of care with nonhospice providers to ensure that medically necessary care, both related and not related to the terminal illness, is met. This includes:

(a) Determining if the ~~((department))~~ medicaid agency has approved a request for prescribed medical equipment, such as a wheelchair. If the prescribed item is not delivered to the client before the client becomes covered by a hospice agency, the ~~((department))~~ medicaid agency will rescind the approval. See WAC ~~((388-543-1500))~~ 182-543-9100(7).

(b) Communicating with other ~~((department))~~ medicaid programs and documenting the services a client is receiving in order to prevent duplication of payment and to ensure continuity of care. Other ~~((department))~~ medicaid programs include, but are not limited to, programs administered by the department of social and health services aging and disability services administration (ADSA).

(c) Documenting each contact with nonhospice providers.

(2) When a client resides in a nursing facility, the hospice agency must:

(a) Coordinate the client's care with all providers, including pharmacies and medical vendors; and

(b) Provide the same level of hospice care the hospice agency provides to a client residing in their home.

(3) Once a client chooses hospice care, hospice agency staff must notify and inform the client of the following:

(a) By choosing hospice care from a hospice agency, the client gives up the right to:

(i) Covered medicaid hospice service and supplies received at the same time from another hospice agency; and

(ii) Any covered medicaid services and supplies received from any other provider that are necessary for the palliation and management of the terminal illness and related medical conditions.

(b) Services and supplies are not paid through the hospice daily rate if they are:

(i) Proven to be clinically unrelated to the palliation and management of the client's terminal illness and related medical conditions (see WAC ~~((388-551-1210(3)))~~ 182-551-1210(3));

(ii) Not covered by the hospice daily rate;

(iii) Provided under a Title XIX medicaid program when the services are similar or duplicate the hospice care services; or

(iv) Not necessary for the palliation and management of the client's terminal illness and related medical conditions.

(4) A hospice agency must have written agreements with all contracted providers.

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

WAC 182-551-1340 When a client leaves hospice without notice. When a client chooses to leave hospice care or refuses hospice care without giving the hospice agency a revocation statement, as required by WAC ~~((388-551-1360))~~ 182-551-1360, the hospice agency must do all of the following:

(1) Within five working days of becoming aware of the client's decision, inform and notify in writing the ~~((department's))~~ medicaid hospice program manager (see WAC ~~((388-551-1400))~~ 182-551-1400 for further requirements);

(2) Complete a medicaid hospice ~~((5-day))~~ notification form ~~((DSHS))~~ HCA 13-746 and forward a copy to the appropriate department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO) to notify that the client is discharging from the program;

(3) Notify the client, or the client's authorized representative, that the client's discharge has been reported to the ~~((department))~~ medicaid agency; and

(4) Document the effective date and details of the discharge in the client's hospice record.

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

WAC 182-551-1350 Discharges from hospice care.

(1) A hospice agency may discharge a client from hospice care when the client:

(a) Is no longer certified for hospice care;

(b) Is no longer appropriate for hospice care; or

(c) The hospice agency's medical director determines the client is seeking treatment for the terminal illness outside the plan of care (POC).

(2) At the time of a client's discharge, a hospice agency must:

(a) Within five working days, complete a medicaid hospice ~~((5-day))~~ notification form ~~((DSHS))~~ HCA 13-746 and forward the form to the ~~((department's))~~ medicaid hospice program manager (see WAC ~~((388-551-1400))~~ 182-551-1400 for additional requirements), and a copy to the appropriate DSHS home and community services office (HCS) or community services office (CSO);

(b) Keep the discharge statement in the client's hospice record;

(c) Provide the client with a copy of the discharge statement; and

(d) Inform the client that the discharge statement must be:

(i) Presented with the client's current services card when obtaining medicaid covered ~~((healthcare))~~ health care services or supplies, or both; and

(ii) Used until the ~~((department))~~ medicaid agency removes the hospice restriction from the client's information available online at <https://www.waproviderone.org>.

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

WAC 182-551-1360 Ending hospice care (revocations). (1) A client or a client's authorized representative may choose to stop hospice care at any time by signing a revocation statement.

(2) The revocation statement documents the client's choice to stop medicaid hospice care. The revocation statement must include all of the following:

(a) Client's signature (or the client's authorized representative's signature if the client is unable to sign);

(b) Date the revocation was signed; and

(c) Actual date that the client chose to stop receiving hospice care.

(3) The hospice agency must keep any explanation supporting any difference in the signature and revocation dates in the client's hospice records.

(4) When a client revokes hospice care, the hospice agency must:

(a) Inform and notify in writing the medicaid agency's hospice program manager, within five working days of becoming aware of the client's decision~~((, inform and notify in writing the department's hospice program manager))~~ (see WAC ~~((388-551-1400))~~ 182-551-1400 for additional requirements);

(b) Notify the appropriate department of social and health services (DSHS) home and community services (HCS)

office or community services office (CSO) of the revocation by completing and forwarding a copy of the medicaid hospice ((~~5-day~~)) notification form ((~~DSHS~~)) HCA 13-746) to the appropriate DSHS home and community services (HCS) office or community services office (CSO);

(c) Keep the revocation statement in the client's hospice record;

(d) Provide the client with a copy of the revocation statement; and

(e) Inform the client that the revocation statement must be:

(i) Presented with the client's current ((~~medical identification (medical ID)~~)) services card when obtaining medicaid covered ((~~healthcare~~)) health care services or supplies, or both; and

(ii) Used until the ((~~department~~)) medicaid agency issues a new ((~~medical ID~~)) services card that identifies that the client is no longer a hospice client.

(5) After a client revokes hospice care, the remaining days within the current election period are forfeited. The client may immediately enter the next consecutive election period. The client does not have to wait for the forfeited days to pass before entering the next consecutive election period.

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

WAC 182-551-1370 When a hospice client dies.

When a client dies, the hospice agency must:

(1) Within five working days, inform and notify in writing the ((~~department's~~)) medicaid agency's hospice program manager; and

(2) Notify the appropriate department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO) of the client's date of death by completing and forwarding a copy of the medicaid hospice ((~~5-day~~)) notification form ((~~DSHS~~)) HCA 13-746) to the appropriate DSHS HCS office or CSO.

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

WAC 182-551-1400 Notification requirements for hospice agencies. (1) To be reimbursed for providing hospice services, the hospice agency must complete a medicaid hospice ((~~5-day~~)) notification form ((~~DSHS~~)) HCA 13-746) and forward the form to the ((~~department's~~)) medicaid agency's hospice program manager within five working days from when a medical assistance client begins the first day of hospice care, or has a change in hospice status. The hospice agency must notify the ((~~department's~~)) medicaid hospice program of:

(a) The name and address of the hospice agency;

(b) The date of the client's first day of hospice care;

(c) A change in the client's primary physician;

(d) A client's revocation of the hospice benefit (home or institutional);

(e) The date a client leaves hospice without notice;

(f) A client's discharge from hospice care;

(g) A client who admits to a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care);

(h) A client who discharges from a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care.);

(i) A client who is eligible for or becomes eligible for medicare or third party liability (TPL) insurance;

(j) A client who dies; or

(k) A client who transfers to another hospice agency. Both the former agency and current agency must provide the ((~~department~~)) medicaid agency with:

(i) The client's name, the name of the former hospice agency servicing the client, and the effective date of the client's discharge; and

(ii) The name of the current hospice agency serving the client, the hospice agency's provider number, and the effective date of the client's admission.

(2) The ((~~department~~)) medicaid agency does not require a hospice agency to notify the hospice program manager when a hospice client is admitted to a hospital for palliative care.

(3) When a hospice agency does not notify the ((~~department's~~)) medicaid agency's hospice program within five working days of the date of the client's first day of hospice care as required in subsection (1)(c) of this section, the ((~~department~~)) medicaid agency authorizes the hospice daily rate reimbursement effective the fifth working day prior to the date of notification.

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

WAC 182-551-1500 Hospice daily rate—Four levels of hospice care. All services, supplies and equipment related to the client's terminal illness and related conditions are included in the hospice daily rate. The ((~~department~~)) medicaid agency pays for only one of the following four levels of hospice care per day (see WAC 388-551-1510 for payment methods):

(1) **Routine home care.** Routine home care includes daily care administered to the client at the client's residence. The services are not restricted in length or frequency of visits, are dependent on the client's needs, and are provided to achieve palliation or management of acute symptoms.

(2) **Continuous home care.** Continuous home care includes acute skilled care provided to an unstable client during a brief period of medical crisis in order to maintain the client in the client's residence and is limited to:

(a) A minimum of eight hours of acute care provided during a twenty-four-hour day;

(b) Nursing care that must be provided by a registered or licensed practical nurse for more than half the period of care;

(c) Homemaker, home health aide, and attendant services that may be provided as supplements to the nursing care; and

(d) In home care only (not care in a nursing facility or a hospice care center).

(3) **Inpatient respite care.** Inpatient respite care includes room and board services provided to a client in a

~~((department approved))~~ medicaid-approved hospice care center, nursing facility, or hospital. Respite care is intended to provide relief to the client's primary caregiver and is limited to:

(a) No more than six consecutive days; and

(b) A client not currently residing in a hospice care center, nursing facility, or hospital.

(4) **General inpatient hospice care.** General inpatient hospice care includes services administered to a client for pain control or management of acute symptoms. In addition:

(a) The services must conform to the client's written plan of care (POC).

(b) This benefit is limited to brief periods of care in ~~((department approved))~~ medicaid agency-approved:

(i) Hospitals;

(ii) Nursing facilities; or

(iii) Hospice care centers.

~~((b))~~ (c) There must be documentation in the client's medical record to support the need for general inpatient level of hospice care.

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

WAC 182-551-1510 Rates methodology and payment method for hospice agencies. This section describes rates methodology and payment methods for hospice care provided to hospice clients.

(1) The ~~((department))~~ medicaid agency uses the same rates methodology as Medicare uses for the four levels of hospice care identified in WAC 388-551-1500.

(2) Each of the four levels of hospice care has the following three rate components:

(a) Wage component;

(b) Wage index; and

(c) Unweighted amount.

(3) To allow hospice payment rates to be adjusted for regional differences in wages, the department bases payment rates on the metropolitan statistical area (MSA) county location. MSAs are identified in the department's current published billing instructions.

(4) Payment rates for:

(a) Routine and continuous home care services are based on the county location of the client's residence.

(b) Inpatient respite and general inpatient care services are based on the MSA county location of the providing hospice agency.

(5) The ~~((department))~~ medicaid agency pays hospice agencies for services (not room and board) at a daily rate calculated as follows:

(a) Payments for services delivered in a client's residence (routine and continuous home care) are based on the county location of the client's residence; or

(b) Payments for respite and general inpatient care are based on the county location of the providing hospice agency.

(6) The ~~((department))~~ medicaid agency:

(a) Pays for routine hospice care, continuous home care, respite care, or general inpatient care for the day of death;

(b) Does not pay room and board for the day of death; and

(c) Does not pay hospice agencies for the client's last day of hospice care when the last day is for the client's discharge, revocation, or transfer.

(7) Hospice agencies must bill the ~~((department))~~ medicaid agency for their services using hospice-specific revenue codes.

(8) For hospice clients in a nursing facility:

(a) The ~~((department))~~ medicaid agency pays nursing facility room and board payments at a daily rate directly to the hospice agency at ninety-five percent of the nursing facility's current Medicaid daily rate in effect on the date the services were provided; and

(b) The hospice agency pays the nursing facility at a daily rate no greater than the nursing facility's current Medicaid daily rate.

(9) The ~~((department))~~ medicaid agency:

(a) Pays a hospice care center a daily rate for room and board based on the average room and board rate for all nursing facilities in effect on the date the services were provided.

(b) Does not pay hospice agencies or hospice care centers a nursing facility room and board payment for:

(i) A client's last day of hospice care (e.g., client's discharge, revocation, or transfer); or

(ii) The day of death.

(10) The daily rate for authorized out-of-state hospice services is the same as for in-state non-MSA hospice services.

(11) The client's notice of action (award) letter states the amount of participation the client is responsible to pay each month towards the total cost of hospice care. The hospice agency receives a copy of the award letter and:

(a) Is responsible to collect the correct amount of the client's participation if the client has any; and

(b) Must show the client's monthly participation on the hospice claim. (Hospice providers may refer to the ~~((department's))~~ medicaid agency's current published billing instructions for how to bill a hospice claim.) If a client has a participation amount that is not reflected on the claim and the ~~((department))~~ medicaid agency reimburses the amount to the hospice agency, the amount is subject to recoupment by the ~~((department))~~ medicaid agency.

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

WAC 182-551-1520 Payment method for nonhospice providers. (1) The ~~((department))~~ medicaid agency pays for hospitals that provide inpatient care to clients in the hospice program for medical conditions not related to their terminal illness according to chapter ~~((388-550))~~ 182-550 WAC, Hospital services.

(2) The ~~((department))~~ medicaid agency pays providers who are attending physicians and not employed by the hospice agency, the usual amount through the resource based relative value scale (RBRVS) fee schedule:

(a) For direct physician care services provided to a hospice client;

(b) When the provided services are not related to the terminal illness; and

(c) When the client's providers, including the hospice agency, coordinate the health care provided.

(3) The ~~((department's))~~ department of social and health services (DSHS) aging and disability services administration (ADSA) pays for services provided to a client eligible under the community options program entry system (COPEs) directly to the COPEs provider.

(a) The client's monthly participation amount, if there is one, for services provided under COPEs is paid separately to the COPEs provider; and

(b) Hospice agencies must bill the ~~((department's))~~ medicaid agency's hospice program directly for hospice services, not the COPEs program.

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

WAC 182-551-1530 Payment method for medicaid-medicare dual eligible clients. (1) The ~~((department does not))~~ medicaid agency will not pay for ~~((any))~~ hospice care ~~((provided to))~~ for a client ~~((covered by))~~ who is also eligible for payment of medicare hospice under part A (hospital insurance).

(2) The ~~((department))~~ medicaid agency may pay for hospice care provided to a client:

- (a) Covered by medicaid part B (medical insurance); and
- (b) Not covered by medicare part A.

(3) For hospice care provided to a medicaid-medicare dual eligible client, hospice agencies are responsible to bill:

(a) Medicare before billing the ~~((department))~~ medicaid agency;

(b) The ~~((department))~~ medicaid agency for hospice nursing facility room and board;

(c) The ~~((department))~~ medicaid agency for hospice care center room and board; and

(d) Medicare for general inpatient care or inpatient respite care.

(4) All the limitations and requirements related to hospice care described in this subchapter apply to the payments described in this section.

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

WAC 182-551-1800 Pediatric palliative care (PPC) case management/coordination services—General. Through a hospice agency, the ~~((department's))~~ medicaid agency's pediatric palliative care (PPC) case management/coordination services provide the care coordination and skilled care services to clients who have life-limiting medical conditions. Family members and caregivers of clients eligible for pediatric palliative care services may also receive support through care coordination when the services are related to the client's medical needs.

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

WAC 182-551-1810 Pediatric palliative care (PPC) case management/coordination services—Client eligibil-

ity. To receive pediatric palliative care (PPC) case management/coordination services, a person must:

(1) Be twenty years of age or younger;

(2) Be a current recipient of the:

(a) Categorically needy program (CNP);

(b) Limited casualty program - Medically needy program (LCP-MNP);

(c) CNP~~((—))~~ - Alien emergency medical;

(d) LCP-MNP~~((—))~~ - Alien emergency medical;

(e) Children's health insurance program (SCHIP); and

(3) Have a life-limiting medical condition that requires case management and coordination of medical services due to at least three of the following circumstances:

(a) An immediate medical need during a time of crisis;

(b) Coordination with family member(s) and providers required in more than one setting (i.e., school, home, and multiple medical offices or clinics);

(c) A life-limiting medical condition that impacts cognitive, social, and physical development;

(d) A medical condition with which the family is unable to cope;

(e) A family member(s) and/or caregiver who needs additional knowledge or assistance with the client's medical needs; and

(f) Therapeutic goals focused on quality of life, comfort, and family stability.

(4) See WAC 182-551-1860 for concurrent palliative and curative care for hospice clients twenty years of age and younger.

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

WAC 182-551-1820 Pediatric palliative care (PPC) contact—Services included and limitations to coverage.

(1) The ~~((department's))~~ medicaid agency's pediatric palliative care (PPC) case management/coordination services cover up to six pediatric palliative care contacts per client, per calendar month, subject to the limitations in this section and other applicable WAC.

(2) One pediatric palliative care contact consists of:

(a) One visit with a registered nurse, social worker, or therapist (for the purpose of this section, the ~~((department))~~ medicaid agency defines therapist as a licensed physical therapist, occupational therapist, or speech/language therapist) with the client in the client's residence to address:

(i) Pain and symptom management;

(ii) Psychosocial counseling; or

(iii) Education/training.

(b) Two hours or more per month of case management or coordination services to include any combination of the following:

(i) Psychosocial counseling services (includes grief support provided to the client, client's family member(s), or client's caregiver prior to the client's death);

(ii) Establishing or implementing care conferences;

(iii) Arranging, planning, coordinating, and evaluating community resources to meet the client's needs;

(iv) Visits lasting twenty minutes or less (for example, visits to give injections, drop off supplies, or make appointments for other PPC-related services.); and

(v) Visits not provided in the client's home.

(3) The ~~((department))~~ medicaid agency does not pay for a pediatric palliative care contact described in subsection (2) of this section when a client is receiving services from any of the following:

(a) Home health program;

(b) Hospice program;

(c) Private duty nursing (private duty nursing can subcontract with PPC to provide services)/medical intensive care;

(d) Disease case management program; or

(e) Any other ~~((department))~~ medicaid program that provides similar services.

(4) The ~~((department))~~ medicaid agency does not pay for a pediatric palliative care contact that includes providing counseling services to a client's family member or the client's caregiver for grief or bereavement for dates of service after a client's death.

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

WAC 182-551-1830 How to become a ~~((department-approved))~~ medicaid-approved pediatric palliative care (PPC) case management/coordination services provider. This section applies to ~~((department-enrolled))~~ medicaid-approved providers who currently do not provide pediatric palliative care (PPC) services to medical assistance clients.

(1) To apply to become a ~~((department-approved))~~ medicaid-approved provider of PPC services, a provider must:

(a) Be a ~~((department-approved))~~ medicaid-approved hospice agency (see WAC ~~((388-551-1300))~~ 182-551-1300 and ~~((388-551-1305))~~ 182-551-1305); and

(b) Submit a letter to the ~~((department's))~~ medicaid agency's hospice/PPC program manager requesting to become a ~~((department-approved))~~ medicaid-approved provider of PPC and include a copy of the provider's policies and position descriptions with minimum qualifications specific to pediatric palliative care.

(2) A hospice agency qualifies to provide PPC services when:

(a) All the requirements in this section are met; and

(b) The ~~((department))~~ medicaid agency provides the hospice agency with written notification.

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

WAC 182-551-1840 Pediatric palliative care (PPC) case management/coordination services—Provider requirements. (1) An eligible provider of pediatric palliative care (PPC) case management/coordination services must do all of the following:

(a) Meet the conditions in WAC ~~((388-551-1300))~~ 182-551-1300;

(b) Confirm that a client meets the eligibility criteria in WAC ~~((388-551-1810))~~ 182-551-1810 prior to providing the pediatric palliative care services;

(c) Place in the client's medical record a written order for PPC from the client's physician;

(d) Determine and document in the client's medical record the medical necessity for the initial and ongoing care coordination of pediatric palliative care services;

(e) Document in the client's medical record:

(i) A palliative plan of care (POC) (a written document based on assessment of a client's individual needs that identifies services to meet those needs).

(ii) The medical necessity for those services to be provided in the client's residence; and

(iii) Discharge planning.

(f) Provide medically necessary skilled interventions and psychosocial counseling services by qualified interdisciplinary hospice team members;

(g) Assign and make available a PPC case manager (nurse, social worker or therapist) to implement care coordination with community-based providers to assure clarity, effectiveness, and safety of the client's POC;

(h) Complete and fax the pediatric palliative care (PPC) referral and 5-day notification form ~~((DSHS))~~ HCA 13-752 to the ~~((department's))~~ medicaid agency's PPC program manager within five working days from date of occurrence of the client's:

(i) Date of enrollment in PPC.

(ii) Discharge from the hospice agency or PPC program when the client:

(A) No longer meets PPC criteria;

(B) Is able to receive all care in the community;

(C) Does not require any services for sixty days; or

(D) Discharges from the PPC program and enrolls in the ~~((department's))~~ medicaid hospice program.

(iii) Transfer to another hospice agency for pediatric palliative care services.

(iv) Death.

(i) Maintain the client's file which includes the POC, visit notes, and all of the following:

(i) The client's start of care date and dates of service;

(ii) Discipline and services provided (in-home or place of service);

(iii) Case management activity and documentation of hours of work; and

(iv) Specific documentation of the client's response to the palliative care and the client's and/or client's family's response to the effectiveness of the palliative care (e.g., the client might have required acute care or hospital emergency room visits without the pediatric palliative care services).

(j) Provide when requested by the ~~((department's))~~ medicaid agency's PPC program manager, a copy of the client's POC, visit notes, and any other documents listing the information identified in subsection (1)(i) of this section.

(2) If the ~~((department))~~ medicaid agency determines the POC, visit notes, and/or other required information do not meet the criteria for a client's PPC eligibility or does not justify the billed amount, any payment to the provider is subject to recoupment by the ~~((department))~~ medicaid agency.

NEW SECTION

WAC 182-551-1860 Concurrent care for hospice clients twenty years of age and younger. (1) In accordance with Section 2302 of the Patient Protection and Affordable Care Act of 2010 and Section 1814 (a)(7) of the Social Security Act, hospice palliative services are available to clients twenty years of age and younger without forgoing curative services which the client is entitled to under Title XIX Medicaid and Title XXI Children's Health Insurance Program (CHIP) for treatment of the terminal condition.

(2) Unless otherwise specified within this section, curative treatment, related services, or related medications requested for clients twenty years of age and younger are subject to the medicaid agency's specific program rules governing those services or medications.

(3) Health care professionals must request prior authorization from the agency in accordance with WAC 182-501-0050 for all curative treatment including treatment planning and actual treatment, all related services and related medications for a hospice client twenty years of age and younger. Prior authorization requests for curative treatment or medications are subject to medical necessity review under WAC 182-501-0165.

(4) If the curative treatment, related services, or related medications are not covered by the medicaid agency, the provider must request an exception to rule in accordance with WAC 182-501-0160. Exception to rule requests are subject to medical necessity review under WAC 182-501-0165.

(5) If the medicaid agency denies a request for a covered service, refer to WAC 182-502-0160 when a provider or a client may be responsible to pay for a covered service.

WSR 11-24-061
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 6, 2011, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-067.

Title of Rule and Other Identifying Information: Chapter 296-16A WAC, Washington stay-at-work program, WAC 296-16A-010 What is the stay-at-work program?, 296-16A-020 I am an employer insured with the department—How can I qualify for stay-at-work reimbursements?, 296-16A-030 What can I be reimbursed for?, 296-16A-040 What if my worker has more than one claim or other qualifying employers?, and 296-16A-050 How do I apply for reimbursements?

Hearing Location(s): L&I Headquarters, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on January 10, 2012, at 10:00 a.m.; at the Center Place Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216, on January 12, 2012, at 1:00 p.m.; at the Red Lion at the Quay, 100 Columbia Street, Vancouver, WA 98660, on January 13, 2012, at 10:00 a.m.; and at the Shoreline Conference Center, 18560 1st Avenue N.E., Shoreline, WA 98155, on January 17, 2012, at 10:00 a.m.

Date of Intended Adoption: February 27, 2012.

Submit Written Comments to: Richard Bredeson, P.O. Box 44140, Olympia, WA 98504-4140, e-mail Richard.Bredeson@Lni.wa.gov, fax (360) 902-4988, by 5:00 p.m., January 17, 2012.

Assistance for Persons with Disabilities: Contact office of information and assistance by January 3, 2012, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington legislature established a new stay-at-work program for the department to administer effective June 15, 2011. The law authorizes reimbursements to employers who provide transitional or light duty work to injured workers unable to return to their regular job because of work restrictions related to their injury. The new law allows L&I to reimburse employers for some costs without negatively impacting their experience rating.

These new rules will allow the department to administer the Washington stay-at-work program efficiently and equitably to all employers. It ensures the requirements for participating in the program are clear and understandable, and reimbursements are appropriate.

Reasons Supporting Proposal: Employer participation in reimbursements is voluntary. The program will not negatively impact an employer because the costs of reimbursements are expected to be offset by savings due to reduced benefit costs.

Statutory Authority for Adoption: RCW 51.04.020 and 51.32.090.

Statute Being Implemented: RCW 51.32.090.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Bredeson, Tumwater, Washington, (360) 902-4985; Implementation: Doug Stewart, Tumwater, Washington, (360) 902-4826; and Enforcement: Beth Dupre, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. When enactment of new state law requires and directs new regulations, these regulations are exempt from a small business economic statement.

However, the program isn't expected to have an adverse impact on any business because:

- Participation in the Washington stay-at-work program reimbursements is voluntary, and
- The costs for reimbursing participating employers will be offset by savings due to reduced benefit costs.

A cost-benefit analysis is not required under RCW 34.05.328. Since the content is directed by statute, neither a cost-benefit analysis, nor a rule implementation plan, is required. However, the department expects no adverse impact to employers' rates or to the state fund from the stay-at-work program.

December 6, 2011

Judy Schurke

Director

Chapter 296-16A WAC

STAY-AT-WORK PROGRAM

NEW SECTION

WAC 296-16A-010 What is the stay-at-work program? The stay-at-work program encourages employers insured with the department to bring their injured workers back to work quickly and safely. If eligible, we will reimburse an employer for up to half the basic gross wages the employer paid to the injured worker during light duty or transitional work, and for the cost of instruction, tools, and clothing the worker needed to perform the approved light duty or transitional work. WAC 296-16A-020 through 296-16A-050 are the rules for employers insured with the department who are requesting stay-at-work reimbursements.

NEW SECTION

WAC 296-16A-020 I am an employer insured with the department—How can I qualify for stay-at-work reimbursements? To qualify for stay-at-work reimbursements:

(1) You must be the "employer at the time of injury" or "employer of injury" on a claim. You are the employer at the time of injury if the worker was injured while working for you. For occupational disease claims, you are the employer if your experience rating has been or will be affected by the claim or you were the last employer to employ the worker when the claim was filed (even if the claim will not affect your experience rating).

(2) Your worker must be eligible for temporary total disability or temporary partial disability benefits to be eligible; your worker's attending provider must have restricted your worker from performing his or her usual job.

(3) You must give the attending provider and your worker a description of the light duty or transitional work you would like your worker to do, and the attending provider must, in writing, release your worker to do that job.

(4) You must not ask your worker to perform work other than that approved by the attending provider.

(5) You must incur an actual expense before you request reimbursement. We cannot pay you in advance.

(6) We cannot reimburse you for stay-at-work expenses incurred before June 15, 2011.

NEW SECTION

WAC 296-16A-030 What can I be reimbursed for? If the attending provider restricts your worker from performing his or her usual job, you may ask the attending provider to release your worker to perform a light duty or transitional job for you. If the attending provider does so, you may employ your worker consistent with the attending provider's release. You can then receive reimbursement for some of the costs associated with that employment:

(1) **Wages:** Fifty percent of basic gross wages you paid your worker, for up to sixty-six days actually worked in a twenty-four month period, up to a maximum of ten thousand dollars total wage reimbursement per claim.

(a) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(b) A partial day worked counts as one day. Example: Your worker works a four-hour shift. This counts as one day out of the sixty-six.

(c) If your worker's single shift spans two calendar days that shift counts as one day. Example: Your worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the sixty-six.

(d) The sixty-six days do not have to be consecutive.

(e) If the light duty or transitional work lasts more than sixty-six days, you may choose which sixty-six days to seek reimbursement for.

(f) You may not be reimbursed more than once for the same days worked. For example, if your worker has two active claims you cannot be reimbursed wage subsidies for the same dates on both claims.

(g) We cannot reimburse you for dates you employed your worker that are more than twenty-four months after the earliest day we have already reimbursed on the claim. Example: The first work date for which you were reimbursed was February 1, 2012. Your twenty-four month eligibility period ends January 31, 2014.

(h) You must submit your request for reimbursement within one year of the date the work was performed.

(2) **Training costs** you incurred to enable your worker to perform the light duty or transitional work, up to one thousand dollars per claim:

(a) Training expenses include the purchase of books or materials, or payment to someone outside your organization to provide training (tuition or fees).

(b) We will not reimburse you for the value of "in-house" training provided by your organization.

(c) You must submit your request for reimbursement within one year of the date of purchase.

(3) **Clothing** you provided your worker, necessary to perform the light duty or transitional work, up to four hundred dollars per claim:

(a) If you normally provide such clothing to your workers, we cannot reimburse you.

(b) When the work ends, the clothing belongs to your worker.

(c) You must submit your request for reimbursement within one year of the date of purchase.

(4) **Tools and equipment** you purchased to enable your worker to perform the light duty or transitional work, up to two thousand five hundred dollars per claim:

(a) If you normally provide such tools and equipment to your workers, we cannot reimburse you.

(b) When the work ends, the tools and equipment belong to the employer.

(c) You must submit your request for reimbursement within one year of the date of purchase.

NEW SECTION

WAC 296-16A-040 What if my worker has more than one claim or other qualifying employers? (1) We will reimburse you only once for an incurred expense: If your worker has more than one claim, we will not reimburse you more than once for the same wages paid or training, clothing, or equipment provided.

(2) If we receive valid reimbursement requests from different employers for the same claim, we will pay the requests in the order received by the department up to the per claim limits.

NEW SECTION

WAC 296-16A-050 How do I apply for reimbursements? (1) To request reimbursements, fill out the appropriate stay-at-work reimbursement form we will supply you that is available on our web site. One form is for wage reimbursement and there is a separate form for all other reimbursements. Once you have completed the form or forms, mail or fax them to us at the address or fax number provided on the form.

(2) For all stay-at-work reimbursements, in addition to the completed forms, we also need:

(a) Documentation from the attending provider restricting your worker from his or her usual work for the dates you are requesting reimbursement;

(b) A written description of the light duty or transitional work that enables the attending provider to relate the physical activities of the job to your worker's restrictions;

(c) The attending provider's written approval releasing the worker to do that job.

(3) For wage reimbursement, we need documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

(4) For tools and equipment, clothing, and training, we need itemized receipts showing your expenses.

WSR 11-24-068**PROPOSED RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed December 6, 2011, 1:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-21-085.

Title of Rule and Other Identifying Information: Creating chapter 172-137 WAC, Use of university facilities.

Hearing Location(s): Eastern Washington University (EWU), Main Campus, Tawanka Commons, Room 215, Cheney, Washington 99004, on January 27, 2012, at 2:30 p.m.

Date of Intended Adoption: January 27, 2012.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by January 25, 2012.

Assistance for Persons with Disabilities: Contact Trent Lutey by January 25, 2012, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are needed to establish standard requirements and procedures for the use of EWU facilities by persons or organizations, internal or external. These rules also provide for the use of EWU facilities for the exercise of free speech and other first amendment protected activities.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371; Implementation and Enforcement: Mary Voves, 310 Showalter, Cheney, WA 99004, (509) 359-4210.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-137 WAC is not considered a significant legislative rule by EWU.

December 6, 2011

Trent Lutey

University Policy Administrator

Chapter 172-137 WAC**USE OF UNIVERSITY FACILITIES**NEW SECTION

WAC 172-137-010 Purpose. Eastern Washington University is an educational institution established and maintained by the citizens of Washington state in order to carry out the mission of teaching, research and public service. University facilities exist for the primary purpose of supporting that mission and related educational activities.

The university may also permit the use of facilities for other purposes so long as the use does not interfere with university activities. In such cases, the university may impose reasonable conditions on the time, place and manner in which facilities are used.

This chapter establishes standards and procedures for use of university facilities by individuals and entities other than the university itself, including university employees, students, and registered student organizations, as well as individuals and groups that are not related to or affiliated with the university.

NEW SECTION

WAC 172-137-020 Definitions. (1) "Facility" or "facilities" includes all buildings and grounds owned or controlled by the university and the streets, sidewalks, malls, parking lots, and roadways within the boundaries of property owned or controlled by the university. Specific rules also apply to

parking lots, recreational equipment, and commercial activities (chapters 172-116, 172-118, and 172-139 WAC).

(2) "First amendment activities" include, but are not necessarily limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speechmaking, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of constitutionally protected assemblies to share information, perspectives, or viewpoints.

(3) "Nonuniversity groups" are groups that are neither a university group nor a university affiliate. Nonuniversity groups include employee union organizations, businesses, nonprofit organizations, and individuals who are not currently enrolled students, current university employees, or employees of a university affiliate.

(4) "University affiliates" are external entities that have formal relationships with the university, including: The EWU Foundation, the EWU Alumni Association, and the office of the attorney general. University affiliates also includes the officers, agents, and employees of such an entity.

(5) "University groups" include: The ASEWU, student groups that are officially recognized by the ASEWU, the faculty organization, the academic senate, and any other group that is formally recognized by the university as a group that is directly associated with and a part of the university organization. University group also includes individual members of these groups when acting on behalf of the group, as well as currently enrolled students and current employees.

(6) "Use of facilities" includes the holding of any event or forum, the posting of signs, all forms of advertising, commercial solicitation or the conduct of other commercial activities, the distribution of pamphlets or similar written materials, and the charitable solicitation or the conduct of other charitable activities on or using university facilities.

NEW SECTION

WAC 172-137-030 University priority. First priority for the use of campus facilities shall be given to regularly scheduled university activities. Additionally, use of university facilities may be subject to reasonable time, place, and manner restrictions that take into account, among other considerations, the general facilities policy; the direct and indirect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods, and the general public. In reviewing conflicting requests to use university facilities, primary consideration is given to activities specifically related to the university's mission.

NEW SECTION

WAC 172-137-035 Delegated responsibility. The board of trustees has delegated to the president of the university the authority to regulate the use of university facilities. Under this authority, the president has delegated to the vice-president for business and finance (VP-BF) the authority to review the use of university facilities; to establish within the framework of this policy guidelines and procedures govern-

ing the use; to approve or disapprove requested uses; and to establish policies regarding fees and rental schedules where appropriate.

NEW SECTION

WAC 172-137-040 Conditions of use. (1) Restriction of access. The president of Eastern Washington University may restrict access to university facilities and may establish rules of conduct for persons while on university facilities, as prescribed under WAC 172-122-210.

(2) **No disruption to normal activities.** University facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. No activity may obstruct entrances, exits, staircases, doorways, hallways, or the safe and efficient flow of people and vehicles.

(3) **Sound amplification.** The use of electronic sound amplification is permitted in facilities designated by the VP-BF or designee. Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of university affairs. Sound amplification equipment is not permitted within the university's public forum areas. Use of sound amplification equipment must comply with all local ordinances.

(4) **Overnight use.**

(a) No person may use university facilities to camp, except as provided in subsection (b) of this section. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) Exceptions:

(i) The use and occupancy of university housing in accordance with housing rules;

(ii) The use of facilities by a university employee or agent who remains overnight to fulfill the responsibilities of his or her position;

(iii) The use of facilities by a university student who remains overnight to fulfill the responsibilities of his or her course of study;

(iv) The use of facilities where overnight stays are specifically permitted in identified locations for attendees at special events designated by the university, such as during home football games, commencement, and special weekends.

(5) **Prohibited users.** The university will not make its facilities or services available to organizations which do not assure the university that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. secs. 12132 and 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

The university will not make its facilities or services available to organizations which do not assure the university that they do not discriminate against any person because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran, except where the organizations have been exempted from provisions of applicable state or federal laws or regulations.

(6) **Demands on university resources.** University facilities may not be used where the use would create undue stress on university resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.); except that the use of public forum areas for a first amendment activity may not be halted simply because the event may require additional university security or police costs.

(7) **Prohibited items and authority to inspect.** Within the limits of applicable laws, Eastern Washington University is committed to establishing and maintaining safe conditions for persons attending events in university facilities. Accordingly, some events have restrictions on items that may be brought into the event (i.e., beverage containers, noisemakers). Individuals possessing such items will not be admitted to, or will be removed from, university facilities until the items have been properly removed, discarded, or stored. All persons entering events at university facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(8) **Violations and trespass.** Individuals who violate the university's use of facilities rules and approved users who violate university contract terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave university property or be refused future use of university facilities.

Under WAC 172-122-200, the university president, or designee, may prohibit access to university facilities, give notice against trespass, and/or order any person or group to leave university facilities.

Failure to comply with a request to leave university property could subject the individuals to arrest and criminal prosecution under the provisions of WAC 172-122-200 and other applicable state, county, and city laws.

(9) **Safety and liability.**

(a) Users must comply with all applicable university policies, procedures, rules and regulations; local, state and federal laws; and fire, health and safety regulations, to include any special regulations specified for the event by the university and/or government authorities.

(b) Users assume full responsibility for any loss, damage or claims arising out of the use.

(c) University facilities may not be used in ways that create safety hazards or pose unreasonable safety risks to students, employees, or invitees.

(d) University facilities may not be used in any manner that creates a hazard or results in damage to university facilities.

(e) Users shall complete a risk assessment as required or directed by the event planning office.

(f) University facilities may not be used in furtherance of or in connection with illegal activity.

(g) Users are responsible for the appropriate care of facilities being used. Facilities may be inspected by a representative of the university after the event. Reasonable charges may be assessed against the sponsoring organization

for the costs of extraordinary cleanup or for the repair of damaged property.

(h) When the event involves physical activity, the serving of alcohol, or otherwise will increase the risk of bodily injury above the level inherent in the facilities to be used, proof of appropriate liability insurance coverage with limits of at least one million dollars per occurrence must be provided to the VP-BF/designee before approval for the requested use will be granted.

NEW SECTION

WAC 172-137-050 Authorized and prohibited uses.

(1) **Public forum/free speech areas.** Use of university facilities for first amendment/free speech activities is governed by the rules set forth in WAC 172-137-080.

(2) **Private or commercial activities.**

(a) University facilities may not be used for private or commercial gain, including: Commercial advertising; solicitation and merchandising of any food, goods, wares, service, or merchandise of any nature whatsoever; or any other form of sales or promotional activity; except as allowed under chapter 172-139 WAC or in the following cases:

(i) By special permission granted by the university president, or designee, if an agreement, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in commercial activity; or

(ii) To the extent it represents the regular advertising, promotional, or sponsorship activities carried on, by, or in any university media, *The Easterner*, or at university events;

(b) University facilities may not be used by faculty or staff in connection with compensated outside service, except that faculty or staff may use university facilities that are generally available to the public on the same basis, including payment of the same fees, as may other private citizens.

(c) Commercial advertising and/or solicitation which is deceptive or concerns an illegal product or service is prohibited on university facilities.

(3) **Political activities.** University facilities may be used for political activities when such use complies with chapter 42.52 RCW, Ethics in public service. Permitted activities may include:

(a) University departments, student government organizations, or registered student organizations may sponsor candidate forums as well as issue forums regarding ballot propositions;

(b) Candidates for office and proponents or opponents of ballot propositions may rent university facilities on a short-term basis for campaign purposes to the same extent and on the same basis as may other individuals or groups;

(c) Candidates for office and proponents or opponents of ballot propositions may use public forum areas, to the same extent and on the same basis as may other individuals or groups; and

(d) A registered student organization may invite a candidate or another political speaker to one of the meetings of its membership on university property, if it has complied with the scheduling procedures of WAC 172-137-070.

(e) Restrictions:

(i) When an event under this section involves the rental of a university facility, the full rental cost of the facility must be paid and state funds may not be used to pay rental costs or any other costs associated with the event.

(ii) University facilities may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(iii) All candidates who have filed for office for a given position, regardless of party affiliation, must be given equal access to the use of facilities within a reasonable time.

(iv) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(v) Use of university facilities for political activities, as described in this section, must have prior approval of the vice-president for business and finance or designee.

EXCEPTION: Use of public forum areas for first amendment activities does not require VP-BF/designee approval but must comply with all other applicable requirements of this chapter.

(4) **Charitable organization use.** University facilities may be used to benefit a charitable organization when such use complies with chapter 42.52 RCW, Ethics in public service. Examples of permitted use include, but are not limited to, the following:

(a) Charities that are licensed in the state of Washington may use university facilities that are generally available to the public on the same basis, including payment of the same fees, as may private citizens;

(b) Charities that are licensed in the state of Washington may use facilities without charge by special permission granted by the university president, or designee, or the vice-president for business and finance where the university has determined that the charitable activity or use will serve an educational or public service purpose related to the university's mission; and

(c) Student government organizations, registered student organizations, and university units that have followed university policies and procedures to conduct fund-raising activities and have adhered to all scheduling requirements and other university policies.

NEW SECTION

WAC 172-137-060 Solicitation, visual displays and advertising. (1) **Solicitation, handbills, pamphlets, and similar materials.**

(a) Solicitation, or distribution of handbills, pamphlets, and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where the solicitation or distribution would significantly impinge upon the primary business being conducted.

(b) No person shall place in or on any vehicle parked on the university campus, any solicitation devices.

(c) For the purposes of this chapter, the following definition applies: A "solicitation device" is any printed or written matter, sample, or device which:

(i) Advertises for sale any merchandise, product, service, or commodity; or

(ii) Directs attention, either directly or indirectly, to any business or mercantile or commercial establishment, or other activity, for the purpose of promoting an interest in sales or use; or

(iii) Directs attention to or advertises any meeting, performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit.

(2) **Signs, posters, and visual displays.** To ensure that goals and objectives relating to the appearance of the campus are maintained, the university regulates the content, location, dimensions, and period of display time of posted materials. Posters must be approved by PUB administration, in accordance with university policy, prior to their placement in any campus location. Specific regulations are available to the public in the PUB administration office.

NEW SECTION

WAC 172-137-070 Procedures for other than first amendment/free speech activities. This section prescribes procedures for the use of university facilities, by individuals and entities other than the university itself, for other than first amendment/freedom of expression activities.

(1) **Scheduling and reservation practices.**

(a) The primary purpose of university facilities is to serve the university's instructional, research, and public service activities. However, designated facilities, when not required for scheduled university use, may be available for rental by the public in accordance with current fee schedules and other relevant terms and conditions.

(b) No university facilities may be used by individuals or groups unless the facilities, including buildings, equipment, and land, have been reserved as required under this section.

(c) The VP-BF/designee may deny a request to use university facilities when it is determined that the use would violate any of the limitations set forth in this chapter or where the requestor is unwilling to comply with university requirements for the use of facilities, as authorized by these rules.

(2) **Requests.** Requests for use of university facilities must be directed to the event planning office.

(3) **Approval authority.**

(a) University groups may use university facilities to hold events for faculty, staff, and students without sponsorship by an academic or administrative unit, or approval by the VP-BF/designee, so long as the use complies with this policy and the policies of the specific facilities involved.

(b) University groups may use university facilities to hold events to which the general public is invited when the event is sponsored by an academic or administrative unit and approved by the VP-BF or designee.

(c) All requests for the use of university facilities by university affiliates or nonuniversity groups, whether sponsored or not, must be approved by the VP-BF or designee.

(4) Facility rental/use fees.

(a) The university assesses fees based upon the actual cost, direct and indirect, of using a university facility. Fees for the use of most facilities are set forth on a schedule available on the event planning office web site. The university reserves the right to make changes to fees without prior written notice, except that fee changes do not apply to facility use agreements already approved by the university.

(b) In the event that the fee for the use of a particular facility has not been placed on the schedule, and if the university determines to allow the use of the facility, the university will assess a fee based upon the full cost, direct and indirect, of using the facility.

(c) Student government organizations and registered student organizations may be allowed to use space in many university facilities at no charge or at a reduced rate. The fees charged to student government and registered student organizations for facilities are available through the event planning office.

NEW SECTION

WAC 172-137-080 Facility use rules for first amendment/free speech activities. (1) Purpose. Freedom of expression is a highly valued and indispensable quality of university life. The university commitment to this ideal does not, however, grant to individuals or groups an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the university's buildings, facilities and grounds are dedicated. The purpose of these time, place, and manner regulations is to establish procedures and reasonable controls for the use of the university's public forum areas. It is intended to balance the university's responsibility to fulfill its mission as a state educational institution of Washington with the interests of individuals or groups who are interested in using the campus for purposes of constitutionally protected speech, assembly, or expression.

(2) **Policy.** Subject to all other applicable regulations and requirements of this chapter, individuals and/or groups may use the university's public forum areas for those activities protected by the first amendment.

(3) **Conflict with university events.** The university's public forum areas may not be used on the same date as any previously scheduled university event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than one hundred people will attend the university event or activity.

(4) **Public forum areas.** Public forum areas are those areas of each campus that the university has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place, and manner restrictions.

(a) At the Cheney campus, the designated public forum areas are:

(i) Southeast Mall: Outside the Cheney Normal School Heritage Center (one room schoolhouse), on the west side of the building;

(ii) Northeast PUB: Outside the Pence Union Building, on the northeast side of the building; and

(iii) The public sidewalks adjacent to public roads.

(b) A map, identifying the specific boundaries of the public forum areas, is available in the office of event planning.

(c) At the Riverpoint campus, public forum areas are designated by Washington State University under chapter 504-33 WAC.

(d) At the Bellevue campus, public forum areas are designated and managed by Bellevue College under chapter 132H-142 WAC.

(e) In addition to the public forum areas identified herein, the university president may designate additional areas of the campus as public forums.

(5) Duration of use.

(a) University groups may use public forum areas for not more than eight hours per day and for no more than five days during any three-week period.

(b) University affiliates and nonuniversity groups may use public forum areas for not more than five hours per day and for no more than three days during any three-week period.

(c) These limitations upon the duration of use will be excused, on a day-to-day basis, upon request when there are no competing requests to use the area and when the use will not conflict or interfere with activities scheduled within the immediate vicinity of the public forum area.

(6) **Utility connections.** The university will not provide utility connections, including power, telephone, and data.

(7) **Grant of license.** The university president or designee, or any university vice-president or designee may authorize first amendment activities which are reasonably determined not to disrupt university activities, despite a literal violation of this policy statement. Such determinations will be made without consideration of the content or message of the first amendment activities.

(8) **Termination of license.** The university president or designee, or any university vice-president or designee may, at any time, terminate, cancel or prohibit the use of facilities if the event is disrupting normal university functions. Any of these individuals may refuse to allow a proposed use of facilities if they determine, after reasonable inquiry, that the use or event cannot be conducted without disrupting normal university functions. Such determinations will be made without consideration of the content or message of the first amendment activities.

(9) **Procedures - Notice for use of public forum area.** Individuals or groups who desire to use a public forum area for those activities protected by the first amendment, must provide notice to the university. Notice shall be provided to the event planning office no later than fourteen calendar days in advance of use of the public forum area. However, events may be permitted with less notice so long as the event does not interfere with any other function. The notice to use a public forum area must contain:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the event or use (hereinafter "the sponsoring organization"); and

(b) The name, address, and telephone number of a contact person for the sponsoring organization; and

- (c) The date, time, and requested location of the event; and
 (d) The nature and purpose of the event; and
 (e) The estimated number of people expected to participate in the event.

WSR 11-24-069
PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 6, 2011, 1:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-21-087.

Title of Rule and Other Identifying Information: Repealing WAC 172-122-100 Civil demonstrations.

Hearing Location(s): Eastern Washington University (EWU), Main Campus, Tawanka Commons, Room 215, Cheney, Washington 99004, on January 27, 2012, at 2:30 p.m.

Date of Intended Adoption: January 27, 2012.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by January 25, 2012.

Assistance for Persons with Disabilities: Contact Trent Lutey by January 25, 2012, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is obsolete. University response to civil demonstrations is governed by state law and internal university policies.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371; Implementation and Enforcement: Mary Voves, 310 Showalter, Cheney, WA 99004, (509) 359-4210.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 172-122-100 is not considered a significant legislative rule by EWU.

December 6, 2011

Trent Lutey
 University Policy Administrator

WSR 11-24-070
PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 6, 2011, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-21-088.

Title of Rule and Other Identifying Information: Repealing WAC 172-122-500 Posters.

Hearing Location(s): Eastern Washington University (EWU), Main Campus, Tawanka Commons, Room 215, Cheney, Washington 99004, on January 27, 2012, at 2:30 p.m.

Date of Intended Adoption: January 27, 2012.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by January 25, 2012.

Assistance for Persons with Disabilities: Contact Trent Lutey by January 25, 2012, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is obsolete. Agency regulations relative to posters are contained in other university rules and policies.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371; Implementation and Enforcement: Mary Voves, 310 Showalter, Cheney, WA 99004, (509) 359-4210.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 172-122-500 is not considered a significant legislative rule by EWU.

December 6, 2011

Trent Lutey
 University Policy Administrator

WSR 11-24-071
PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 6, 2011, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-21-089.

Title of Rule and Other Identifying Information: Repealing WAC 172-139-030 Handbills.

Hearing Location(s): Eastern Washington University (EWU), Main Campus, Tawanka Commons, Room 215, Cheney, Washington 99004, on January 27, 2012, at 2:30 p.m.

Date of Intended Adoption: January 27, 2012.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by January 25, 2012.

Assistance for Persons with Disabilities: Contact Trent Lutey by January 25, 2012, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is obsolete. Agency regulations relative to handbills are contained in other university rules and policies.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371; Implementation and Enforcement: Mary Voves, 310 Showalter, Cheney, WA 99004, (509) 359-4210.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 172-139-030 is not considered a significant legislative rule by EWU.

December 6, 2011

Trent Lutey
University Policy Administrator

WSR 11-24-090

PROPOSED RULES

UNIVERSITY OF WASHINGTON

[Filed December 7, 2011, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-20-078.

Title of Rule and Other Identifying Information: WAC 478-160-163 Waivers of tuition and fees.

Hearing Location(s): Room 142, Gerberding Hall, UW Seattle Campus, on January 17, 2012, at 12:00 noon.

Date of Intended Adoption: February 9, 2012.

Submit Written Comments to: Rebecca Goodwin Dearnorff, University of Washington, Rules Coordination Office, Box 351210, Seattle, WA 98195-1210, e-mail rules@uw.edu, fax (206) 685-3825, by January 17, 2012.

Assistance for Persons with Disabilities: Contact disability services office by December 30, 2011, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendment of WAC 478-160-163 will modify the conditions under which the University of Washington offers the tuition waiver authorized by RCW 28B.15.558 for university, state, and specific educational employees.

Reasons Supporting Proposal: RCW 28B.15.558 establishes an optional waiver of tuition and fees for state and educational employees and sets criteria for eligibility. The statute also establishes that the institution can consider employees of the University of Washington before considering other state and educational employees. Amendments to WAC 478-

160-163 implement the waiver such that the University of Washington administration considers cost and programmatic needs in a consistent manner.

Statutory Authority for Adoption: RCW 28B.15.558 and 28B.20.130.

Statute Being Implemented: RCW 28B.15.558 and 28B.20.130.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting: Todd Mildon, Assistant Vice Provost for Institutional Research and Data Management, T-12, UW Tower, 4333 Brooklyn Avenue N.E., Seattle, WA, (206) 616-6811; Implementation: Paul Jenny, Vice Provost for Planning and Budgeting, T-12, UW Tower, 4333 Brooklyn Avenue N.E., Seattle, WA, (206) 543-6277; and Enforcement: Douglas Wadden, Interim Provost and Executive Vice President, 301 Gerberding Hall, UW Seattle Campus, (206) 543-7632.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This chapter is not considered a significant legislative rule by the University of Washington.

December 7, 2011

Rebecca Goodwin Dearnorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 10-22-058, filed 10/28/10, effective 11/28/10)

WAC 478-160-163 Waivers of tuition and fees. (1)

The board of regents is authorized to grant tuition and fee waivers to students pursuant to RCW 28B.15.910 and the laws identified therein. A number of these statutes authorize, but do not require, the board of regents to grant waivers for different categories of students and provides for waivers of different fees. For the waivers that are authorized but not required by state law, the board of regents must affirmatively act to implement the legislature's grant of authority under each individual law. A list of waivers that the board has implemented can be found in the *University of Washington General Catalog*, which is published biennially. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html.

(2) Even when it has decided to implement a permissive waiver listed in RCW 28B.15.910, the university, for specific reasons and a general need for flexibility in the management of its resources, may choose not to award waivers to all students who may be eligible under the terms of the laws. Where the university has chosen to impose specific limitations on a permissive waiver listed in RCW 28B.15.910, those limitations are delineated in subsection (5) of this section. If the university has not imposed specific limitations on a permissive waiver listed in RCW 28B.15.910, the waiver is not mentioned in subsection (5) of this section. The university's description of the factors it may consider to adjust a waiver

program to meet emergent or changing needs is found in subsection (8) of this section. All permissive waivers are subject to subsection (8) of this section.

(3) The board of regents also has the authority under RCW 28B.15.915 to grant waivers of all or a portion of operating fees as defined in RCW 28B.15.031. Waiver programs adopted under RCW 28B.15.915 are described in the *General Catalog*. The most recent list may be found in the online version of the *General Catalog* at www.washington.edu/students/reg/tuition_exempt_reductions.html. Waivers granted under RCW 28B.15.915 are subject to subsection (8) of this section.

(4) Waivers will not be awarded to students participating in self-sustaining courses or programs because they do not pay "tuition," "operating fees," "services and activities fees," or "technology fees" as defined in RCW 28B.15.020, 28B.15.031, 28B.15.041, or 28B.15.051, respectively.

(5) Specific limitations on waivers are as follows:

(a) Waivers authorized by RCW 28B.15.621 (2)(a) for eligible veterans and National Guard members, shall be awarded only to:

(i) Undergraduate students pursuing their first bachelor's degree to a maximum of 225 college-level credits, including credits transferred from other institutions of higher education; and

(ii) Full-time graduate or professional degree students, provided however, that the waiver may be applied only toward a single degree program at the University of Washington, and, provided further, that graduate and professional degree students who received a waiver authorized by RCW 28B.15.621 (2)(a) as undergraduates at the University of Washington shall not be eligible for this waiver.

To qualify an individual as an "eligible veteran or National Guard member," the person seeking the waiver must present proof of domicile in Washington state and a DD form 214 (Report of Separation) indicating their service as an active or reserve member of the United States military or naval forces, or a National Guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters, and if discharged from services, has received an honorable discharge.

(b) Waivers of nonresident tuition authorized by RCW 28B.15.014 for university faculty and classified or professional staff shall be restricted to four consecutive quarters from their date of employment with the University of Washington. The recipient of the waiver must be employed by the first day of the quarter for which the waiver is awarded. Waivers awarded to immigrant refugees, or the spouses or dependent children of such refugees, shall be restricted to persons who reside in Washington state and to four consecutive quarters from their arrival in Washington state.

(c) All waivers authorized by RCW 28B.15.558 shall be subject to such additional limitations as determined by the provost, pursuant to the terms of subsection (8) of this section. In addition, waivers authorized by RCW 28B.15.558 shall be awarded only to the classes of employees described

in (i) of this subsection before considering waivers for the employees described in (ii) and (iii) of this subsection:

(i) University of Washington employees who are employed half-time or more, hold qualifying appointments as of the first day of the quarter for which the waivers are requested, are paid monthly, and, for classified staff new to the university, have completed their probationary periods prior to the first day of the quarter; or

(ii) State of Washington permanent employees who are employed half-time or more, are not University of Washington permanent classified employees, are permanent classified or exempt technical college paraprofessional employees, or are permanent faculty members, counselors, librarians or exempt employees at other state of Washington public higher education institutions; or

(iii) Teachers and other certificated instructional staff employed at public common and vocational schools, holding or seeking a valid endorsement and assignment in a state-identified shortage area.

(6) Waivers mandated by RCW 28B.15.621(4), as amended by section 1, chapter 450, Laws of 2007, for children and spouses or surviving spouses of eligible veterans and National Guard members who became totally disabled, or lost their lives, while engaged in active federal military or naval service, or who are prisoners of war or missing in action, shall be awarded in accordance with, and subject to the limitations set forth in state law.

(7) Waivers mandated by RCW 28B.15.380, as amended by section 4, chapter 261, Laws of 2010, for children and surviving spouses of any law enforcement officer (as defined in chapter 41.26 RCW), firefighter (as defined in chapter 41.24 or 41.26 RCW), or Washington state patrol officer, who lost his or her life or became totally disabled in the line of duty while employed by any public law enforcement agency or full-time volunteer fire department in this state, shall be awarded in accordance with, and subject to the limitations set forth in, state law.

(8) The university may modify its restrictions or requirements pursuant to changes in state or federal law, changes in programmatic requirements, or in response to financial or other considerations, which may include, but are not limited to, the need to adopt fiscally responsible budgets, the management of the overall levels and mix of enrollments, management initiatives to modify enrollment demand for specific programs and management decisions to eliminate or modify academic programs. The university may choose not to exercise the full funding authority granted under RCW 28B.15.910 and may limit the total funding available under RCW 28B.15.915.

WSR 11-24-091

PROPOSED RULES

BOARD OF

PILOTAGE COMMISSIONERS

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

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-20-118.

Title of Rule and Other Identifying Information: WAC 363-116-200 Duties of pilots.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on January 12, 2012, at 9:30 a.m.

Date of Intended Adoption: January 12, 2012.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by January 5, 2012.

Assistance for Persons with Disabilities: Contact Shawna Erickson by January 9, 2012, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule is intended to expand the definition of an "incident" to include situations wherein a pilot or pilot trainee falls while embarking or disembarking a vessel or is physically endangered while performing his/her duties on a vessel, regardless of whether the incident results in physical injury to the pilot or pilot trainee.

The proposed modifications further expand the definition of a "marine safety occurrence" to specify that a pilot or pilot trainee can voluntarily report safety issues encountered or observed on the vessel, the dock or in the area around the vessel.

The proposed rule also provides for a ten day reporting period for any incident that becomes known to a pilot or pilot trainee sometime after the conclusion of his/her piloting assignment.

Reasons Supporting Proposal: It is intended that this rule be broadened to cover state licensed pilot trainees in addition to pilots.

Statutory Authority for Adoption: Chapter 88.16 RCW.

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: The legislative/WAC committee of the board developed the proposed amendments at the direction of the board.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, 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 application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the proposed language shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of

these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

December 7, 2011

Peggy Larson

Executive Director

AMENDATORY SECTION (Amending WSR 08-22-003, filed 10/23/08, effective 11/23/08)

WAC 363-116-200 Duties of pilots. (1) In any case where a vessel in the charge of a state licensed pilot or a state licensed pilot trainee is involved in an incident or near-miss occurrence, ~~((said))~~ the pilot and the pilot trainee on the vessel shall make a report to the board in the following required manner:

(a) ~~((Pilot's))~~ Report of Incident. A state licensed pilot and a state licensed pilot trainee involved in an incident shall notify the board by telephoning or radioing the Marine Exchange of Puget Sound as soon as the situation is stabilized or within one hour of reaching shore. ~~((The pilot))~~ In addition, all incidents shall ((also complete)) be reported to the board ((required Pilot's)) on the Report of Incident form ((and file it with the board)) as soon as possible after the incident, but in no event more than ten days afterwards. If a pilot trainee is involved, both the pilot trainee and the supervising pilot shall file a Report of Incident. In any event where a pilot or pilot trainee is unaware of the occurrence of an incident at the conclusion of his/her piloting assignment, the pilot and pilot trainee shall file a Report of Incident within ten days of being informed of the occurrence of the incident. An incident includes an actual or apparent collision, allision or grounding, as well as a navigational occurrence which results in actual or apparent personal injury or property damage or environmental damage. An incident also includes any occurrence where a pilot or pilot trainee falls or is injured while embarking or disembarking a vessel or otherwise is physically endangered while performing his/her duties on a vessel, regardless of whether the incident results in physical injury to the pilot or pilot trainee.

(b) ~~((Pilot's))~~ Report of Marine Safety Occurrence. A state licensed pilot and state licensed pilot trainee involved in a near-miss occurrence shall complete the board required ~~((Pilot's))~~ Report of Marine Safety Occurrence form and file it with the board as soon as possible after the near-miss occurrence, but in no event more than ten days afterwards. If a pilot trainee is involved, both the pilot trainee and the supervising pilot shall file a Report of Marine Safety Occurrence. A near-miss occurrence is where a pilot and pilot trainee successfully takes action of a nonroutine nature to avoid a collision with another vessel, structure or aid to navigation, to avoid a grounding of the vessel or to avoid causing damages to the environment. Information relating to near-miss occurrences provided by a pilot and pilot trainee on this form shall not be used for imposing any sanctions or penalties against ~~((said))~~ the pilot or pilot trainee involved in the occurrence. A state licensed pilot or pilot trainee may also use this form on a voluntary basis for reporting out of the ordinary occurrences or concerns for navigational safety encountered or observed during the course of piloting a vessel as well as

safety issues encountered or observed on the vessel, the dock, or in the area around the vessel.

(c) Completion of these forms does not replace or relieve a pilot or pilot trainee from any other reporting requirements under federal, state or local law. If circumstances permit, a pilot or pilot trainee will notify the vessel master of his/her intent to file a report of incident or marine safety occurrence with the board. The board shall forward a copy of any form received to the respective shipper or its board representative. The board (~~(of pilotage commissioners)~~) may, with or without a complaint being made against a pilot or pilot trainee, investigate the matter reported upon.

(2) Pilots and pilot trainees will report to the (~~(aids)~~) pilot office and to the aides to navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that (~~(my)~~) may come to their knowledge.

(3) Any pilot or pilot trainee who shall fail, neglect or refuse to make a report to the board (~~(of pilotage commissioners)~~) as required by the pilotage laws of the state, or by these rules and regulations, for a period of ten days after the date when (~~(said)~~) the report is required to be made, shall be subject to having his/her license suspended at the discretion of the board, and if he/she fails to report for a period of thirty days the board may, at its discretion, revoke his/her license.

(4) Pilots or pilot trainees when so notified in writing shall report in person to the board(~~(s)~~) at any meeting specified in such notice.

(5) Any pilot or pilot trainees summoned to testify before the pilotage board shall appear in accordance with such summons and shall make answer, under oath, to any question put to him/her which deals with any matter connected with the pilot service, or of the pilotage waters over which he/she is licensed to act. (~~(The pilot)~~) He/she shall be entitled to have his/her attorney or advisor present during any such appearance and testimony.

(6) Any pilot who shall absent himself/herself from his/her pilotage duties or district for a period of sixty days without permission of the board of pilotage commissioners shall be liable to suspension or to the forfeiture of his/her license.

(7) A pilot or pilot trainee on boarding a ship, if required by the master thereof, shall exhibit his/her license, or photo static copy thereof.

(8) When a pilot licensed under this act is employed on an enrolled ship, the same rules and regulations shall apply as pertain to registered ships.

(9) Any state licensed pilot or pilot trainee assigned to pilot a vessel entering, leaving, or shifting berths under its own power in any of the waters subject to the provisions of chapter 88.16 RCW shall before assuming pilotage obligations for such vessel obtain assurance from the master that the vessel meets all requirements for safe navigation and maneuvering. In addition, the pilot or pilot trainee shall obtain assurance that the ship's officers will maintain navigation procedures by all navigational aids available to insure that the vessel's position is known at all times. If the pilot or pilot trainee in his/her professional judgment considers the vessel to be incapable of safe navigation and maneuvering due to performance limitations, he/she shall refuse to assume the

obligations of pilotage for such vessel until such limitations have been corrected and shall promptly notify the pilot's control station and the chairman of the board of pilotage commissioners of such action.

(10) In providing pilotage services under chapter 88.16 RCW every pilot shall perform those duties in a professional manner and without negligence so as to not endanger life, limb or property, not violate or not fail to comply with state laws or regulations intended to promote marine safety or to protect navigable waters.

(11) A pilot involved in a serious marine incident as that term is defined in 46 CFR 4.03-2 shall, in addition to meeting all requirements imposed by federal law:

(a) To the extent practicable and safe, stabilize the vessel and request relief by the dispatching of another pilot; and

(b) As soon as the relief pilot arrives, transfer the con of the vessel to the new pilot; such that the pilot involved in the incident may meet the requirements of 46 CFR Part 4.06.

WSR 11-24-095

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 7, 2011, 10:47 a.m.]

Supplemental Notice to WSR 11-12-088.

Exempt from preproposal statement of inquiry under 11-03-081.

Title of Rule and Other Identifying Information: WAC 388-106-0125 In-home personal care hours.

Hearing Location(s): Office Building 2, Lookout Room, 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 January 10, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 11, 2012.

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 January 10, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 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: The department is amending WAC 388-106-0125 to revise the assessment process for allocating personal care services for children on a more individualized basis to comply with a supreme court order.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

Rule is necessary because of state court decision, *Samantha A. v. Department of Social and Health Services*.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Geri-Lyn McNeill, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2353.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

December 5, 2011
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-050, filed 5/12/10, effective 6/12/10)

WAC 388-106-0125 ~~((If I am age twenty one or older,))~~ **How does CARE use criteria to place me in a classification group for in-home care?** CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours. Each classification group is assigned a number of base hours as described below based upon the level of funding provided by the legislature for personal care services, and based upon the related level of functional disability of persons in each classification group as compared to persons in other classification groups.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with ~~((416))~~ 393 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ~~((346))~~ 327 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ~~((277))~~ 260 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ~~((234))~~ 215 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ~~((185))~~ 168 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ~~((138))~~ 120 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ~~((194))~~ 176 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ~~((174))~~ 158 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ~~((132))~~ 115 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ~~((87))~~ 73 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((147))~~ 129 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with ~~((82))~~ 69 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with ~~((47))~~ 39 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with ~~((147))~~ 129 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ~~((104))~~ 84 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ~~((82))~~ 69 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ~~((47))~~ 39 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with ~~((74))~~ 59 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ~~((56))~~ 47 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ~~((26))~~ 22 base hours if you have an ADL score of 0-4.

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

WSR 11-24-105
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed December 7, 2011, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-076.

Title of Rule and Other Identifying Information: WAC 363-116-0751 Qualifications for pilot applicants taking examinations on or after July 1, 2008, 363-116-076 Examination for pilot applicants, 363-116-077 Simulator evaluation for pilot applicants, 363-116-078 Training program, 363-116-080 Licensing of pilots, 363-116-083 Written examination protest and appeal procedures, and 363-116-084 Simulator evaluation review and appeal procedures.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on January 12, 2012, at 9:30 a.m.

Date of Intended Adoption: January 12, 2012.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by January 5, 2012.

Assistance for Persons with Disabilities: Contact Shawna Erickson by January 9, 2012, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board will be considering amendments to these rules in anticipation of administering a state pilot exam in 2012 to qualify applicants for entrance into a training program. The board intends to test applicants for both the Puget Sound and Grays Harbor pilotage districts. Modifications, updates, clarification and housekeeping are among the elements reflected in these proposed rules.

It is necessary that these new rules are adopted prior to the announcement of the 2012 pilot exam.

Reasons Supporting Proposal: The purpose of modifying these rules is to update the examination process based on feedback from experts who assisted in the development of previous examinations; past examination participants; and other stakeholders.

Statutory Authority for Adoption: Chapter 88.16 RCW. 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: At the direction of the board, the legislative/WAC committee and the trainee evaluation committee of the board developed the proposed amendments as they relate to the pilot examination and training processes. Further written and oral comments are welcome throughout the rule-making process. The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from any interested party and the public. The board may consider whether or not to adopt any or all of the proposed new rules under emergency provisions.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, 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 application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the proposed language shown below.

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

December 7, 2011

Peggy Larson

Executive Director

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-0751 Qualifications for pilot applicants taking examinations on or after July 1, 2008. (1) Sea service.

(a) In addition to meeting the preexamination requirements of RCW 88.16.090, pilot applicants must, before taking the examination provided in WAC 363-116-076, meet one of the following indicated service requirements as master, while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC):

Table with 4 columns: Vessel Type, Minimum Size, Waters, Minimum Time. Rows include Cargo or tank (5000 GRT or 10,000 GT), Cargo or tank (700 GRT or 1400 GT), Cargo or tank (1600 GRT or 3000 GT), Passenger or ferry (1600 GRT or 3000 GT), and Towing (150 GRT or 300 GT).

(b) In calculating sea service under subsection (1) of this section, a year of service shall equal three hundred sixty days of service on the vessel in the required capacity. Pilot applicants combining the above types of sea service shall have a total of at least two years of the various service times, except that one day of service as master on cargo, tank, or passenger vessels of at least 5000 GRT or 10,000 GT (ITC) shall be credited as two days of service time for the purpose of calculating such combined service times.

(2) In lieu of the requirements of subsection (1) of this section, a pilot applicant may substitute either:

(a) Three years of service as an active member of an organized professional pilot association or as a government employed pilot during which periods the pilot applicant was actively engaged in piloting and docking vessels while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters. For purposes of this section, piloting shall refer to piloting vessels in the capacity of the pilot in charge of navigation with no other responsibilities (either when piloting or not piloting) as a member of the ship's crew; or

(b) Two years of service as a commanding officer or master of U.S. flag government vessels of not less than 3000 displacement tons. The pilot applicant must hold at the time of application a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters;

(c) Two years of service as master of special purpose vessels of not less than 1600 GRT or 3000 GT (ITC) while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC), provided that the sea time making up the sea service was spent in charge of a vessel that can be documented to have been underway and to have required the type of ship-handling, navigation and leadership skills that the board finds necessary to provide the experience needed to become a pilot. Evaluation of service time on such vessels shall be made by the board on a case-by-case basis and shall not be approved unless the board finds the service to be the substantial equivalent of the sea service required in (a) and (b) of this subsection. The determination of the board as to the suitability of service as master of a special purpose vessel will be final.

(3) As used in this section these terms shall have the following meanings:

(a) Cargo or tank vessels shall refer to vessels primarily engaged in the transportation of cargo between points.

(b) Passenger vessels shall refer to vessels primarily engaged in the transportation of passengers between points. This shall include yachts only to the extent and for such times that such vessels are actively engaged in moving passengers between points.

(c) Ferry vessels shall refer to vessels primarily engaged in the transportation of vehicles and passengers between points.

(d) Towing vessels shall refer to vessels primarily engaged in commercial towing of vessels or in ship assist work.

(e) GRT shall refer to gross register tonnage (domestic).

(f) GT (ITC) shall refer to gross tonnage measured in accordance with the requirements of the *1969 International Convention on Tonnage Measurement of Ships*.

(g) Master shall refer to the person of master's rank on the vessel's station bill or muster list or other such document who, in the event of an emergency or the sounding of a general alarm, is required to be on the bridge and in charge. If there is no such designation, the term master shall refer to the person of master's rank and pay who is ultimately in charge of the navigation of the vessel as reflected in the vessel's official log book, or there being no official log book, the bridge log of the vessel.

(4) It will be the responsibility of the pilot applicant to provide adequate documentation to enable the board to set forth and verify sea service in the manner specified in the board's application form.

(5) ~~((The provisions of this section shall apply to examinations provided in WAC 363-116-076 given on or after July 1, 2008-))~~ The board will not provide applicants with a final determination verifying service until it receives an application form. You will not get official notification of whether you qualify to sit for the examination until the board reviews your formal application. In the event you are working on a vessel other than one of the five specified in subsection (1)(a) of this section, e.g., a special purpose vessel, you will be required to provide the board with sufficient documentation to demonstrate to the board the amount of time you were involved in the navigation of a vessel underway.

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-076 Examination for pilot applicants.

(1) Pilot applicants must pass a written examination given and graded by the board or the board's designated contracting entity. The board will develop the written examination and set the minimum passing or "cut" score ((for the written examination)) in conformance with a psychometrically validated process. Notice of the examination shall be published at least four months in advance by one paid advertisement in a major marine industry publication and written notice to any party who has requested notice of such examinations. The board may publish additional notices in such publications or in other media at such times as it deems appropriate. Applications will be accepted by the board immediately following the publication of the notice of the examination. The board may, in an emergency, call for an examination on less than four months notice.

The notice shall indicate which district or districts the examination is for and, if for both districts, the notice shall make it clear that applicants can elect to apply for a license in one or both of the districts. If an exam is given for both the Grays Harbor and Puget Sound pilotage districts, the applicants shall be graded and evaluated as one applicant pool. (This provides for a single examination covering both of the Washington state pilotage districts.)

(2) The examination may be taken by all pilot applicants who the board has determined have met the qualifications of WAC 363-116-0751 and who:

(a) Have had an application on file with the board for at least one month prior to the examination. This requirement may be waived by the chairperson of the board upon the showing of good cause. The application shall specify whether the applicant is applying for the Puget Sound district, the Grays Harbor district or both.

(b) Have tendered with the application a nonrefundable examination administration fee in such amount as may be set by the board from time to time. The board may, at its discretion, refund all or part of the examination administration fee for a pilot applicant who is unable to sit for the written examination.

(3) The written examination shall be in compliance with RCW 88.16.090 and may consist of questions covering, but not limited to, the following subjects:

(a) Rules of the Road then applicable to the pilotage district for which the pilot applicant is applying and accompanying information set forth in United States government publications on the subject;

(b) Meaning and understanding of the aids to navigation;

(c) Seamanship, including piloting and ship handling, docking and undocking problems, use of ship assist tugs and anchors;

(d) Vessel traffic system regulations;

(e) Engine and rudder order commands for United States and foreign merchant vessels and United States naval vessels;

(f) Operation and use of marine radar and automatic radar plotting aids (ARPA);

(g) Ability to calculate currents and tides;

(h) Federal laws affecting mariners and pilots including environmental laws;

(i) Use of vessel navigational equipment;

(j) Duties of a pilot;

(k) Relationship between pilot and master;

(l) Bridge resource management;

(m) United States government public health quarantine regulations;

(n) Marine VHF radio usage and phraseology, including bridge-to-bridge communications regulations;

(o) Federal navigation safety and security regulations;

(p) International distress signals;

(q) Nonlocal chart knowledge, including chart symbols and abbreviations as set forth in the latest U.S. Department of Commerce, NOS (National Ocean Survey) Chart No. 1;

(r) Maneuvering behavior for different vessel types; and

(s) Impact of propulsion and maneuvering machinery on vessel navigation.

(4) The board may require that the cost of the written examination will be at the expense of the pilot applicant.

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-077 Simulator evaluation for pilot applicants. (1) Pilot applicants who pass a written examination (~~(on or after July 1, 2008,)~~) and whose scores are among the top twenty (or such other number as may be set by the board) of those taking the written examination (plus any pilot applicants who tie a qualifying score) shall be eligible to take the simulator evaluation set forth in this section.

(2) The simulator evaluation shall take place at a marine simulator facility designated by the board and (~~(shall)~~) may be recorded. In this evaluation pilot applicants shall be observed by available board members but shall be evaluated only by those available board members who hold, or have held a minimum U.S. Coast Guard license as master of steam or motor vessels of not more than 1600 gross tons. The board shall also appoint a minimum of two additional evaluators who hold, or have held within ten years of the examination date, a state pilot license issued by Washington or another state (~~(or who have held a Washington state pilot license within the last ten years)~~). If the evaluation is for applicants

to both the Grays Harbor and Puget Sound pilotage district, the applicants shall be evaluated as one applicant pool.

(3) All pilot applicants will be evaluated in writing based on some or all of the following factors:

(a) Fundamental piloting and ship handling ability;

(b) Ability to assimilate and prioritize all data necessary to safely maneuver the ship;

(c) Ability to respond appropriately in routine situations;

(d) Ability to respond appropriately in emergency or nonroutine situations;

(e) Ability to communicate well and project the proper bridge presence;

(f) Understanding of bridge resource management; and

(g) Understanding and command of the Rules of the Road then applicable to the pilotage district for which the pilot applicant is applying.

(4) The board (~~(will)~~) shall develop this simulator examination, determine the scoring method (~~(on the simulator evaluation)~~), the minimum passing or "cut" score, and the relative weight of this score to the whole examination in conformance with a psychometrically validated process.

(5) (~~The board will set a minimum passing score.~~

~~(6))~~) The board may require that the cost of the simulator evaluation will be at the expense of the pilot applicant.

AMENDATORY SECTION (Amending WSR 10-04-100, filed 2/3/10, effective 3/6/10)

WAC 363-116-078 Training program. After passing the written examination and simulator evaluation, pilot applicants pursuing a pilot license will be put on a list for the applicable district(s) and must enter and successfully complete a training program specified by the board.

(1) Notification. Pilot applicants on (~~(the)~~) a list as described in subsection (2) of this section, waiting to enter (~~(the)~~) a training program shall provide the board with a current address to be used for notification for entry into (~~(the)~~) a training program. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as a phone number, fax number, and/or an e-mail address. The mailing address will, however, be considered the primary means of notification by the board. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. If a pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing with a notarized copy to the board as having power of attorney specifically to act in the pilot applicant's behalf regarding such notice. If notice sent to the address provided by the pilot applicant is returned after three attempts to deliver, that pilot applicant will be skipped and the next pilot applicant on the list will be contacted for entry into (~~(the)~~) a training program. A person so skipped will remain next on the list. A pilot applicant or his/her designated attorney in fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into (~~(the)~~) a training program.

(2) Entry. At such time that the board chooses to start a pilot applicant or applicants in (~~(the)~~) a training program for

a district, notification shall be given ~~((to the first person on the list))~~ as provided in this section. Pilot applicants shall be ranked on this and be eligible to enter a training program in the order of their total combined scores on the written examination and simulator evaluation or as otherwise may be determined by the board. A pilot applicant who refuses entry into ~~((the))~~ a program will be removed from the waiting list with no further obligation by the board to offer a position in ~~((the))~~ that district's training program to such pilot applicant. If the pilot applicant applied for a license in the other district when applying for the written examination, the applicant shall remain available for that other district's training program in accordance with their position on that list. A pilot applicant who is not able to start ~~((the training program on the date the board sets for that pilot applicant's entry into the))~~ a training program within two months of the board's notice may, with written consent of the board, delay entry into ~~((the))~~ that training program (for up to). When an applicant delays entry into a training program by more than two months(-), the board will ((then)) give notice to the next pilot applicant on the list for that district to enter the training program. The pilot applicant who delays entry, shall remain eligible for the next position in ~~((the))~~ that training program, provided that the next position becomes available within the earlier of:

(a) Four years from the pilot applicant's taking the written examination; or

(b) The date scheduled for the next pilotage examination for the district. Pilot applicants not able to start in ~~((the))~~ a training program within two months of the date the board sets for that pilot applicant's entry into ~~((the))~~ a training program and who do not obtain the board's written consent to delay entry into the training program shall no longer be eligible for ~~((the))~~ that district's training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot applicants must pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot applicants. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot applicant's fitness to pilot. The physical examination must be taken not more than ninety days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ninety days prior to the anniversary date of that license. Training license physical examinations will be at the expense of the pilot applicant. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into ~~((the))~~ a training program as set forth in this section, the pilot applicant shall meet with the trainee evaluation committee for the purpose of devising a training program for that pilot applicant. The training program shall be tailored to the ability and experience of

the individual pilot applicant and shall consist of observation trips, training trips ~~((in which the pilot applicant pilots the vessel under the supervision of licensed pilots, ship assist tug))~~ and evaluation trips, and such other forms of learning and instruction that may be designated. The trainee evaluation committee shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot applicant. If the pilot applicant agrees in writing to the training program, the board shall issue a training license to the pilot applicant, which license shall authorize the pilot applicant to take such actions as are contained in the training program. If the pilot applicant does not agree to the terms of ~~((the))~~ a training program in writing within fifteen business days of it being ~~((received by))~~ mailed to the ((pilot)) applicant by certified mail, return receipt requested, that pilot applicant shall no longer be eligible for entry into ~~((the))~~ that district's training program and the board may give notice to the next available pilot applicant that he/she is eligible for ~~((the training program))~~.

~~(5) Initial evaluation.~~

~~(a) The trainee evaluation committee shall create an initial evaluation at the beginning of each pilot applicant's training program subject to approval by the board. The goal of the initial evaluation is to, as soon as practical after adequate observation trips, have the pilot trainee involved in hands-on piloting and ship handling under the supervision of licensed pilots and subject to the evaluation of training pilots. To this end the trainee evaluation committee shall devise an initial evaluation of a specified length not to exceed eight months if the pilot trainee is on stipend and fifteen months if not on stipend or within such time frame as may be established by the board. The initial evaluation shall:~~

~~(i) Afford the pilot trainee early and concentrated exposure to a commonly navigated waterway, channel or tributary within the pilotage district and the main ship channel routes between such area and the seaward boundary of the pilotage district;~~

~~(ii) Except for pilot trainees taking an examination prior to July 1, 2008, provide the pilot trainee the opportunity to study for and pass any local knowledge examinations provided by the board as to the conditions found in such waterway, channel or tributary;~~

~~(iii) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of licensed pilots; and~~

~~(iv) Specify a number of training trips in which the pilot trainee pilots vessels under the supervision of training pilots and the pilot members of the trainee evaluation committee.~~

~~(b) As a condition of completing the initial evaluation, the pilot trainee shall:~~

~~(i) Pass any required local knowledge examinations given by the board covering the routes described in (a)(i) of this subsection. This examination can be repeated as necessary, provided that it may not be taken more than once in any seven day period and further provided that it must be successfully passed before the expiration date of the initial evaluation; and~~

~~((ii))~~ entry into a training program pursuant to the terms in subsections (1) and (2) of this section.

~~(5) Initial route.~~

(a) The trainee evaluation committee shall assign an initial route between a commonly navigated port or terminal and the seaward boundary of the pilotage district to each trainee at the beginning of each pilot applicant's training program.

(b) In a time period that does not exceed eight months from the beginning of the training program if the trainee is on stipend or fifteen months from the beginning of the training program if not on stipend unless an extension of time is granted by the board the trainee must:

(i) Take and pass all conning quizzes provided by the board applicable to that route. These quizzes can be repeated as necessary, provided that they may not be taken more than once in any seven-day period and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(ii) Take and pass the local knowledge examinations provided by the board for that route. These examinations can be repeated as necessary, provided that they may not be taken more than once in any seven-day period and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(iii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States ((government)) Coast Guard license to pilot ((in at least one route in the pilotage district in which the pilot applicant seeks a license.

~~(e) After completion of the)) on that initial ((evaluation, the trainee evaluation committee shall make a recommendation to the board and the board shall determine, whether the pilot trainee has demonstrated the potential for superior piloting and ship handling and has demonstrated the ability to assimilate and retain the local knowledge necessary to pilot. Unless the board finds that such superior potential exists, it shall terminate the pilot trainee's participation in the training program)) route.~~

(6) Specification of trips. To the extent possible, ~~((the))~~ a training program shall provide a wide variety of assignments, observation ~~((and))~~, training and evaluation trips. ~~((The))~~ A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the trainee evaluation committee or with pilots of specified experience. In the Puget Sound pilotage district, pilot applicants taking an examination before July 1, 2008, shall complete a minimum of one hundred thirty trips. After July 1, 2008, all Puget Sound pilotage district pilot applicants shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot applicants in the Grays Harbor pilotage district. The board will ensure that during ~~((the))~~ a training program the pilot trainee will get significant review by training pilots and the pilot members of the trainee evaluation committee.

(7) Local knowledge. ~~((The))~~ A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. This education program

shall be developed by the trainee evaluation committee and recommended to the board for adoption, in the form of a policy statement, and shall be tailored to the needs of the individual pilot trainee. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the district for which he/she is applying. Prior to the completion of ~~((the))~~ a training program, the board, or its designee, may give such local knowledge examination(s) as it deems appropriate to the pilot trainees who shall be required to pass such examination(s) before completing ~~((the))~~ a training program. The trainee evaluation committee may require a pilot trainee to sit for a local knowledge examination provided the trainee evaluation committee informs the pilot trainee in writing sixty days in advance of the scheduled date of the examination. Failure to sit for the examination on the date scheduled may constitute cause for removal from the training program. The trainee evaluation committee may also establish in writing such interim performance requirements as it deems necessary. These local examinations can be repeated as necessary, except that an examination for the same local area may not be taken more than once in any seven-day period and all required local knowledge examinations must be successfully passed before the expiration date of the training program. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

- (a) Area geography;
- (b) Waterway configurations including channel depths, widths and other characteristics;
- (c) Hydrology and hydraulics of large ships in shallow water and narrow channels;
- (d) Tides and currents;
- (e) Winds and weather;
- (f) Local aids to navigation;
- (g) Bottom composition;
- (h) Local docks, berths and other marine facilities including length, least depths and other characteristics;
- (i) Mooring line procedures;
- (j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
- (k) Vessel traffic system;
- (l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
- (m) Air draft and keel clearances;
- (n) Submerged cable and pipeline areas;
- (o) Overhead cable areas and clearances;
- (p) Bridge transit knowledge - Signals, channel width, regulations, and closed periods;
- (q) Lock characteristics, rules and regulations;
- (r) Commonly used anchorage areas;
- (s) Danger zone and restricted area regulations;
- (t) Regulated navigation areas;
- (u) Naval operation area regulations;
- (v) Local ship assist and escort tug characteristics;
- (w) Tanker escort rules - State and federal;
- (x) Use of anchors and knowledge of ground tackle;
- (y) Applicable federal and state marine and environmental safety law requirements;
- (z) Marine security and safety zone concerns;

(aa) Harbor safety plan and harbor regulations;

(bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and

(cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(8) Length.

(a) In the Puget Sound pilotage district, ~~((for pilot applicants taking an examination before July 1, 2008,))~~ the minimum length of ~~((the training program shall be seven months. For pilot applicants who take an examination on or after July 1, 2008, the minimum length of the))~~ a training program shall be eight months. The maximum length of ~~((the))~~ a training program shall be thirty-six months if the pilot applicant elects to receive a stipend. The ~~((length))~~ number of ~~((the))~~ trips in a training program shall be established by the board based on the recommendation of the trainee evaluation committee.

(b) In the Grays Harbor pilotage district, the length of the training program shall be set by the board based on the recommendation of the trainee evaluation committee.

(9) Rest. It is the pilot trainee's responsibility to provide adequate rest time so that he/she is fully able to pilot on training trips. Pilot trainees shall not take pilot training trips in which they will be piloting the vessel without observing the rest rules for pilots in place by federal or state law or regulation or any other rest requirements contained in a training program. For purposes of calculating rest required before a training trip in which the pilot trainee will be piloting after an observation trip in which the pilot trainee did not pilot the vessel, such observation trip shall be treated as though it had been a normal pilot training assignment. ~~((Nothing herein shall be construed as requiring any particular amount of rest before any observation trip in which the pilot trainee will not be piloting.))~~

(10) Stipend.

(a) At the initial meeting with the trainee evaluation committee the pilot applicant shall indicate whether he/she wishes to receive a stipend during ~~((the))~~ a training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot applicants will agree to forego during ~~((the))~~ a training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of ~~((the))~~ a training program. With the consent of the board and the restructuring of ~~((the))~~ a training program, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during ~~((the))~~ a training program. ~~((The))~~ In the Puget Sound district the stipend paid to pilot trainees shall be six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-185 and 363-116-300 sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

In the Grays Harbor district the stipend paid to pilot trainees shall be determined by the board and shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-185 sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board and pursuant thereto shall be paid to pilot trainees as set forth below:

(i) Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the fifth day of the following month. The stipend will be paid on an all or nothing basis for each month except that prorations shall be allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(A) For the first and last months of ~~((the))~~ a training program (unless the training program starts on the first or ends on the last day of a month); or

(B) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month; or

(C) For a pilot trainee who requests a change from a non-stipend status to a stipend status, or from a stipend status to a nonstipend status as set forth in (a)(vi) of this subsection.

(ii) ~~((A certain))~~ In the Puget Sound district a minimum ((number)) of eighteen trips are required each month for eligibility to receive the stipend. ((This minimum number shall be specified in the training program and shall be)) In the Grays Harbor district the minimum number of trips each month for eligibility to receive the stipend is fifty percent of the total number of ((trips required in the training program divided by the number of months in the training program)) vessel movements occurring in the district during that month. Only trips required by the training program can be used to satisfy ~~((this))~~ these minimums. Trips will be documented at the end of each month.

(iii) It is the pilot trainee's responsibility to make all hard-to-get trips before the end of the training program. If a training program is extended due to a failure to get all of these trips, the board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

(iv) The trainee evaluation committee with approval by the board may allocate, assign or specify training trips among multiple pilot trainees. Generally, the pilot trainee who ~~((finished the qualifying examination and simulator evaluation with the highest score))~~ entered his/her training program earlier has the right of first refusal of training trips provided that the trainee evaluation committee may, with approval by the board, allocate or assign training trips differently as follows:

(A) When it is necessary to accommodate any pilot trainee's initial ~~((evaluation program))~~ route;

(B) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the trainee evaluation committee, that trip will not be considered "available" under (a)(ii) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(v) If a pilot trainee elects to engage in any full- or part-time employment, the terms and conditions of such employment must be submitted to the trainee evaluation committee for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

(vi) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days, provided that before any change takes effect the board and the pilot trainee must agree in writing on the terms of a revised training program.

(b) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a quarterly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board. The committee shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry from the relevant pilotage district (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The committee may include such other persons as may be appointed by the board. The committee shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the trainee evaluation committee cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Training pilots. The board shall designate as training pilots those pilots with a minimum of seven years of piloting in the relevant district who are willing to undergo such training as the board may require and provide. The board may establish a lower experience level for the Grays Harbor pilotage district. Training pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of training pilots available for public inspection at all times. All pilot

members of the trainee evaluation committee shall also be training pilots.

(13) Evaluation. When a pilot trainee pilots a vessel under the supervision of another pilot, the supervising pilot shall, to the extent possible, communicate with and give guidance to the pilot trainee in an effort to make the trip a valuable learning experience. After each such trip, the supervising pilot shall complete a form provided by the board evaluating the pilot trainee's performance. Evaluation forms prepared by licensed pilots who are not training pilots shall be used by the trainee evaluation committee and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to ~~((the))~~ a training program. The use of evaluation forms prepared by licensed pilots who are not training pilots shall be appropriately weighed by the board and TEC when making licensing decisions. All evaluation forms shall be delivered or mailed by the supervising pilot to the board. They shall not be given to the pilot trainee. The supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The trainee evaluation committee shall review these evaluation forms from time to time and the chairperson of the trainee evaluation committee shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the trainee evaluation committee may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the ~~((length))~~ number of ~~((the))~~ trips in a training program.

(14) Termination of and removal from a training program. A pilot trainee's program may be immediately terminated and the ~~((may be))~~ trainee ~~((the))~~ removed from ~~((the))~~ a training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district if receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in ~~((the))~~ a training program;

(f) Inadequate performance on examinations or other actions required by ~~((the))~~ a training program;

(g) Failure to ~~((demonstrate the superior skills required in))~~ complete the initial ~~((evaluation))~~ route requirements specified in subsection (5) of this section within the time periods specified;

(h) Inadequate, substantial, or inconsistent performance in a training program and/or on training trips as determined by the supervising pilots, the TEC and/or the board; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of ~~((the))~~ a training program shall include the requirement that the pilot trainee:

(a) Successfully and timely complete the requirements set forth in the training program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States gov-

ernment license to pilot in all of the waters of the pilotage district in which the pilot applicant seeks a license; and

(c) Successfully complete any local knowledge examination(s) required by the board and specified in the training program.

AMENDATORY SECTION (Amending WSR 05-18-021, filed 8/29/05, effective 10/1/05)

WAC 363-116-080 Licensing of pilots. (1) No person shall be issued a pilot license until he/she has applied for a pilot license and successfully completed:

- (a) The written examination(s);
- (b) The simulator evaluation;
- (c) The pilot training program, as determined by the board;
- (d) A physical examination; and
- (e) Tendered the license fee stipulated in WAC 363-116-070.

(2) A majority of board members in attendance at a meeting where licensing of an applicant is scheduled for consideration, shall pass on the issuance of a pilot license. Pilot licenses shall be signed by the chairperson or his/her designee.

(3) At the time of completion of ~~((the))~~ a training program as provided in WAC 363-116-078 and at the time of consideration for licensing, all applicants must provide a copy of his/her U.S. master license required by RCW 88.16.090 with a first class U.S. pilotage endorsement without tonnage or other restrictions on that U.S. master license to pilot in all of the waters of the pilotage district defined in RCW 88.16.050 in which the applicant desires to be licensed and an endorsement on that U.S. master license as a radar observer (unlimited); and a certificate representing competence in automatic radar plotting aids (ARPA).

(4) No person shall be licensed by the board who has been convicted of an offense involving drugs or the personal consumption of alcohol in the twelve months prior to the date of application. This restriction shall not apply to license renewals.

(5) After completion of ~~((the))~~ a training program the trainee evaluation committee shall review the evaluations and the pilot trainee's performance on other required aspects of the training program and make a recommendation to the board that the pilot trainee is: Suitable for licensing; not suitable for licensing; or, in need of more training and further evaluation. The board shall consider such recommendation and may: Issue the license if there is a need for a pilot in the relevant district; require more training for the pilot trainee if necessary; deny a license if it finds that the pilot trainee should not be licensed; or, delay the issuance of a license, if there is no need for a pilot at that time in the relevant district. If the board delays the issuance of a license, it may prescribe additional training trips for the pilot trainee and continue the pilot trainee in the training program. The criteria to be followed by the board in issuing or denying licenses shall include, but not be limited to: Performance in the training program; piloting and ship handling and general seamanship skills; local knowledge; and, bridge presence and communication skills.

(6) If two or more pilot trainees are deemed qualified by the board for issuance of a license at the same meeting of the board, the pilot trainee with the highest combined score on the initial written examination and simulator evaluation shall be licensed first.

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-083 Written examination protest and appeal procedures. (1) Pilot applicants who take a written examination as provided in this chapter shall provide the board with an address to be used for notification of his/her written examination results. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as telephone numbers and/or e-mail addresses. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. The mailing address will be considered the primary means of notice by the board. If the pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing and notarized to the board as having power of attorney specifically to act on the pilot applicant's behalf regarding such notice. Notice delivered to the address provided by the pilot applicant will be considered received by the pilot applicant for the purpose of "receipt of notification of the written examination results" as provided in subsection (2) of this section.

(2) A pilot applicant who takes either a written examination as provided in WAC 363-116-076 or a written local knowledge examination as provided in WAC 363-116-078 that cannot be retaken may submit a written protest regarding any such examination for review by the board and/or a committee designated by the board and/or by a firm under contract with the board for development and grading of the written examination. The standard of review for reviewing the written examination protests submitted by a pilot applicant is that the written examination score will not be set aside unless the pilot applicant proves the challenged score was the result of fraud, coercion, arbitrariness or manifest unfairness. If it finds that reasonable cause exists to question a written examination grade, the board may allow a pilot applicant protesting his/her written examination results to enter the simulator evaluation. If the pilot applicant chooses to enter the simulator evaluation before the pilot applicant receives notification of the result of the review of his/her *Protest Form* the pilot applicant shall be at all times responsible for the charge to enter the simulator evaluation. No pilot applicant approved by the board for entry into the simulator evaluation shall be disqualified by the successful examination appeal of another pilot applicant. Pilot applicants are not entitled to a review of the results of a written local knowledge examination given pursuant to WAC 363-116-078 if the pilot applicant is eligible to retake the written examination.

(3) The procedure for submitting a protest regarding the written examination or a written local knowledge examination that cannot be retaken is as follows:

(a) The pilot applicant must submit a protest in writing to the person administering such examination on the day that

the pilot applicant takes such examination and before the pilot applicant leaves the examination room;

(b) On the day of such examination the pilot applicant will be provided a *Protest Form* by the person(s) administering such examination at the time that documents for taking such written examination are given to the pilot applicant;

(c) In defense of his/her written examination answers and in support of the pilot applicant's reasons for protesting a question or questions, the pilot applicant must write on the *Protest Form* the reason(s) why he/she protests a question or questions, what the pilot applicant claims is the correct answer to the protested question(s), and if a protested question(s) involves mathematical calculations provide the calculations that the pilot applicant claims are correct;

(d) If there are protests regarding improprieties including but not limited to the administration and proctoring of the examination, these assertions must be documented in writing with sufficient detail naming times, people, places, protested activities and witnesses to permit the board to conduct an investigation;

(e) The pilot applicant will be identified only by number or letter for the purpose of review of the *Protest Form*;

(f) The pilot applicant shall submit his/her *Protest Form* at the same time that he/she submits the answer sheet for such written examination to the examination administrator.

(4) The procedure for review of the *Protest Form* submitted by the pilot applicant is as follows:

(a) The board, and/or a committee designated by it, and/or a firm under contract with the board for development and grading of the written examination will review the written examination and *Protest Form* completed by the pilot applicant; and

(b) After completion of such review the pilot applicant will be provided with written notification of the decision regarding review of the *Protest Form* submitted by the pilot applicant. The written notification will show any adjusted credits and scores for any answers that have been changed following such review.

(5) A pilot applicant who is not satisfied with the result of such review of his/her *Protest Form* may request an adjudicative hearing pursuant to RCW 88.16.090 and governed by the provisions of chapter 34.05 RCW to appeal his/her written examination results. Such hearing must be requested within thirty days of receipt of the result of the review of the *Protest Form* by sending a written request for an adjudicative hearing to the board of pilotage commissioners' office. The grounds and issues for the adjudicative hearing and any further appeal shall be limited to the following:

(a) Was the administrative protest procedure set forth in subsections (2) through (4) of this section followed?;

(b) Was the examination conducted in accordance with accepted psychometric and industrial/organizational psychology principles as determined by an expert in these fields of study?;

(c) Was the examination "job related" as determined by an expert in these fields of study?; and

(d) Was the examination, scoring, and appeal process validated by an expert in these fields of study?

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

WAC 363-116-084 Simulator evaluation review and appeal procedures. (1) Pilot applicants who take a simulator evaluation as provided in this chapter shall provide the board with an address to be used for notification of his/her simulator evaluation results. Such address shall be a place at which mail is delivered. In addition, a pilot applicant may provide the board with other means of contact such as telephone numbers and/or e-mail addresses. It will be the responsibility of the pilot applicant to ensure that the board has a current mailing address at all times. The mailing address will be considered the primary means of notice by the board. If the pilot applicant cannot personally receive mail at the address provided to the board for any period of time, another person may be designated in writing and notarized to the board as having power of attorney specifically to act on the pilot applicant's behalf regarding such notice. Notice delivered to the address provided by the pilot applicant will be considered received by the pilot applicant for the purpose of "receipt of notification of the simulator evaluation results" as provided in subsection (2) of this section.

(2) A pilot applicant who takes a simulator evaluation as provided in this chapter may request a review of his/her simulator evaluation results. This request must be in writing and must be received by the board within five business days of receipt of notification of the simulator evaluation results. The standard of review for reviewing the simulator evaluation results challenged by a pilot applicant is that the challenged evaluation score will not be set aside unless the pilot applicant proves the challenged score was the result of fraud, coercion, arbitrariness or manifest unfairness.

(3) The procedure for filing a request for review of the simulator evaluation is as follows:

(a) The pilot applicant must contact the board office for an appointment to appear personally to review his/her simulator evaluation;

(b) The pilot applicant will be provided a *Review Form* to complete in the board designated review location in defense of his/her simulator evaluation performance;

(c) In review of his/her simulator evaluation performance, the pilot applicant must demonstrate that his/her proposed evaluation of the simulator evaluation is correct;

(d) In review of his/her simulator evaluation performance, the pilot applicant must cite on the *Review Form* provided by the board, the specific situation(s) presented in the simulator evaluation (i.e., crossing, passing, meeting situations, environmental changes like fog descending, navigational decisions and/or rules-of-the-road interpretations) and detail why the actions he/she took in that situation should receive more credit than that which was given, to demonstrate that his/her score on the simulator evaluation provided by the board is incorrect;

(e) Only the recorded performance of the pilot applicant will be considered in any review of the simulator evaluation performance. If there are assertions regarding improprieties in the administration, proctoring, grading or scoring of the simulator evaluations, these assertions must be documented in writing with sufficient detail naming times, people, places,

protested activities and witnesses to permit the board to conduct an investigation;

(f) The pilot applicant will be identified only by number or letter for the purpose of this review;

(g) The board will make available to the pilot applicant reviewing his/her simulator evaluation a copy of his/her simulator evaluation performance; and

(h) At the completion of the review session, the pilot applicant will submit all the *Review Forms* to the board and return all materials used to review his/her simulator evaluation. The pilot applicant will not be allowed to take any notes or materials from the board designated review location upon leaving.

(4) The procedure for the board's review of the request for review of the simulator evaluation filed by the pilot applicant is as follows:

(a) The board, and/or a committee designated by it, and/or a firm under contract with the board for development and grading of the simulator evaluation will review the simulator evaluation and *Review Form* completed by the pilot applicant; and

(b) After completion of such review the pilot applicant will be provided with written notification of the decision regarding review of the *Review Form* submitted by the pilot applicant. The written notification will show any adjusted credits and scores for any answers that have been changed following such review.

(5) A pilot applicant who is not satisfied with the result of such review of his/her *Review Form* may request an adjudicative hearing pursuant to RCW 88.16.090 and governed by the provisions of chapter 34.05 RCW to appeal his/her simulator evaluation results. Such hearing must be requested within thirty days of receipt of the result of the review of the *Review Form* by sending a written request for an adjudicative hearing to the board of pilotage commissioners' office. The grounds and issues for the adjudicative hearing and any further appeal shall be limited to the following:

(a) Was the administrative protest procedure set forth in WAC 363-116-083 (2) through (4) followed?;

(b) Was the examination conducted in accordance with accepted psychometric and industrial/organizational psychology principles as determined by an expert in these fields of study?;

(c) Was the examination "job related" as determined by an expert in these fields of study?; and

(d) Was the examination, scoring, and appeal process validated by an expert in these fields of study?

WSR 11-24-106

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed December 7, 2011, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-059.

Title of Rule and Other Identifying Information: WAC 308-104-075 Prohibited practices.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on January 10, 2012, at 3:00 p.m.

Date of Intended Adoption: January 11, 2012.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by January 9, 2012.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by January 9, 2012, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 308-104-075 to impose a five-year denial period following fraudulent application for a driver's license or identicard. It is anticipated that such amendments will deter fraudulent application.

Reasons Supporting Proposal: The department has experienced a recent increase in incidences of fraudulent application from individuals who have falsely used a Washington state residence address in an attempt to obtain an initial Washington state driver's license or identicard. It is anticipated that denying application or reapplication for five years following determination that a fraudulent application has been submitted will deter fraudulent application by others.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.0921, and 46.20.119.

Statute Being Implemented: RCW 46.20.119.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose a cost on small businesses as required for an economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

December 7, 2011

Ben T. Shomshor

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-087, filed 7/31/06, effective 8/31/06)

WAC 308-104-075 Driver's licenses and identicards—Prohibited practices—Suspension, cancellation, or denial periods. (1) The department shall suspend, cancel, or deny all driving privileges of a person who has been convicted of or determined by the department to have committed one of the prohibited practices relating to drivers' licenses listed in RCW 46.20.0921 for a period of not less than sixty consecutive days and not more than three hundred sixty-four consecutive days. For purposes of RCW 46.20.0921 (1)(e), an application for a commercial driver's license includes the

application for a driver's license under RCW 46.20.091 and the application for a commercial driver's license under RCW 46.25.070.

(2) The department may deny the application or reapplication for a driver's license or identicard of a person who has been convicted of or determined by the department to have committed one of the prohibited practices listed in RCW 46.20.0921 (1)(e) when making application for an original driver's license or identicard for a period of five years.