

WSR 12-02-049
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 30, 2011, 11:45 a.m., effective January 1, 2012]

Effective Date of Rule: January 1, 2012.

Purpose: The purpose of the new language in chapters 388-71 and 388-112 WAC is to implement and clarify the training requirements and the criminal history background check requirements as directed in chapter 74.39A RCW and to revise the implementation effective dates as directed by Initiative 1163. Chapter 74.39A WAC requires training for long-term care workers which includes seventy-five hours of entry-level training and also requires federal and state criminal history background checks for all long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually. Initiative 1163, enacted by the people in November 2011, requires implementation of these rules effective beginning January 7, 2012 (unless otherwise specified). These emergency rules are necessary in order to reflect the effective dates. Two additional changes were made based on two other law changes: A change was made to WAC 388-112-0075(3) to comply with section 206(16) of ESHB 1277 which requires that an adult family home has a qualified caregiver that is on-site whenever a resident is in the adult family home. A change was made to WAC 388-71-0517 to implement another state law, RCW 74.39A.326, which was enacted in 2009 as SHB 2361.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-05665, 388-71-05670, 388-71-05675, 388-71-05680, 388-71-05685, 388-71-05690, 388-71-05695, 388-71-05700, 388-71-05705, 388-71-05710, 388-71-05715, 388-71-05720, 388-71-05725, 388-71-05730, 388-71-05735, 388-71-05740, 388-71-05745, 388-71-05750, 388-71-05755, 388-71-05760, 388-71-05765, 388-71-05770, 388-71-05775, 388-71-05780, 388-71-05785, 388-71-05790, 388-71-05795, 388-71-05799, 388-71-05805, 388-71-05810, 388-71-05815, 388-71-05820, 388-71-05825, 388-71-05830, 388-71-05832, 388-71-05835, 388-71-05840, 388-71-05845, 388-71-05850, 388-71-05855, 388-71-05860, 388-71-05865, 388-71-05870, 388-71-05875, 388-71-05880, 388-71-05885, 388-71-05890, 388-71-05895, 388-71-05899, 388-71-05905, 388-71-05909, 388-71-0801, 388-71-0806, 388-71-0811, 388-71-0816, 388-71-0821, 388-71-0826, 388-112-0025, 388-112-0030, 388-112-0050, 388-112-0060, 388-112-0065, 388-112-0090, 388-112-0095, 388-112-0105, 388-112-0245, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625, 388-112-02630 and 388-112-0375; and amending WAC 388-71-0500, 388-71-0505, 388-71-0510, 388-71-0513, 388-71-0515, 388-71-0520, 388-71-0540, 388-71-0546, 388-71-0551, 388-71-0560, 388-112-0001, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0035, 388-112-0040, 388-112-0045, 388-112-0055, 388-112-0070, 388-112-0075, 388-112-0080, 388-112-0085, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0125, 388-112-0130, 388-112-0135, 388-112-0140, 388-112-0145, 388-112-0150, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0195,

388-112-0200, 388-112-0205, 388-112-0210, 388-112-0220, 388-112-0225, 388-112-0230, 388-112-0235, 388-112-0240, 388-112-0255, 388-112-0260, 388-112-0270, 388-112-0295, 388-112-0300, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0340, 388-112-0345, 388-112-0350, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0380, 388-112-0385, 388-112-0390, 388-112-0395, 388-112-0405, and 388-112-0410.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, Washington state 2009-11 budget (ESHB 1244, section 206(5)).

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

Reasons for this Finding: See above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 88, Amended 66, Repealed 72.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 88, Amended 66, Repealed 72.

Date Adopted: December 22, 2011.

Katherine I. Vasquez
Rules Coordinator

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

WAC 388-71-0500 What is the purpose of WAC 388-71-0500 through ~~((388-71-05952) [388-71-05909])~~ **388-71-0562 and 388-71-0836 through 388-71-1006?** ~~((A client/legal representative may choose an individual provider or a home care agency provider.))~~ The ~~((intent))~~ purpose of WAC 388-71-0500 through ~~((388-71-05952) [388-71-05909])~~ **388-71-0562 and WAC 388-71-0836 through 388-71-1006** is to describe the:

(1) Qualifications of an individual provider, as defined in WAC 388-106-0010;

(2) Qualifications of a long-term care worker employed by a home care agency ((provider)), as defined in WAC 388-106-0010 and chapter 246-336 WAC;

(3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an individual provider or a home care agency ~~((provider))~~ long-term care worker;

(4) Training requirements for an individual provider and home care agency ~~((provider))~~ long-term care worker.

(5) Client's options for obtaining a long-term care worker. A client, as described in WAC 388-71-0836 eligible

to receive long-term care services, or his/her legal representative on the client's behalf, may choose to receive personal care services in the client's home from an individual provider or a long-term care worker from a home care agency. If the client chooses to receive services from a home care agency, the agency will assign a long-term care worker employed by the agency to provide services to the client. Individual providers and home care agency long-term care workers are "long-term care workers" as defined in RCW 74.39A.009 and are subject to background checks under RCW 74.39A.055 and 43.20.710.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0505 How does a client hire an individual provider? The client, or legal representative:

- (1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider;
- (2) Establishes an employer/employee relationship with the individual provider; and
- (3) May receive assistance from the social worker/case manager or other resources in this process.

AMENDATORY SECTION (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

WAC 388-71-0510 How does a person become an individual provider? In order to become an individual provider, a person must:

- (1) Be eighteen years of age or older;
- (2) Provide the social worker/case manager/designee with:
 - (a) A valid Washington state driver's license or other valid picture identification; and either
 - (b) A Social Security card; or
 - (c) Proof of authorization to work in the United States.
- (3) ~~((Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW;~~
 - (a) ~~Preliminary results may require a thumb print for identification purposes;~~
 - (b) ~~An FBI fingerprint based background check is required if the person has lived in the state of Washington less than three years.~~
- (4) Effective January 2, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.
- (4) Effective January 2, 2012, be screened through the national fingerprint-based background check, as required by chapter 74.39A RCW.
- (5) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:
 - (a) Is disqualified based on a disqualifying crime or negative action; or

(b) Should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.

(6) Disqualifying crimes and negative actions are listed in WAC 388-71-0540 (4), (5) and (6).

(7) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(8) The department may require a long-term care worker to have a Washington state name and date of birth background check or national fingerprint-based background check, or both, at any time.

(9) Sign a home and community-based service provider contract/agreement to provide services to a COPEs, MNIW, PACE, WMIP, or medicaid personal care client, or sign a contract as an individual provider to provide services to a New Freedom waiver, WMIP, or PACE client under chapter 388-106 WAC.

NEW SECTION

WAC 388-71-0512 What is included in Washington state's name and date of birth background check and the national fingerprint-based background check? (1) Washington state's name and date of birth background check includes a check of:

- (a) Records contained in databases maintained by the Washington state patrol, including records of:
 - (i) Pending charges; and
 - (ii) criminal conviction.
- (b) Records maintained:
 - (i) By the Washington state department of corrections; and
 - (ii) By the Washington state administrative office of the courts judicial information system.
- (c) Records of negative actions, final findings, or civil adjudication proceedings of any agency or subagency including, but not limited to:
 - (i) DSHS adult protective services;
 - (ii) DSHS residential care services;
 - (iii) DSHS children's protective services;
 - (iv) The Washington state department of health;
 - (v) The nursing assistant registry; and
 - (iv) Any pending charge, criminal conviction, civil adjudicative proceeding and/or negative action disclosed by the applicant.
- (2) The national fingerprint-based background check includes a check of records maintained in the:
 - (a) Federal Bureau of Investigation; and
 - (b) National sex offender's registry.
- (3) A "civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds any agency finding of, domestic violence, abuse, sexual abuse, exploitation, financial exploitation, neglect, abandonment, violation of a child or vulnerable adult under any provision of law, including but not limited to chapters 13.34, 26.44, or 74.34 RCW or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"

also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(4) A "negative action" includes the denial, suspension, revocation, or termination of a license, certification, or contract for the care of children, as defined in RCW 26.44.020, or vulnerable adults, as defined in RCW 74.34.020, for non-compliance with any state or federal regulation.

(5) Except as prohibited by federal law, results are shared with the employer or prospective employer and with the department of health as authorized.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0513 Is a background check required of a long-term care worker employed by a home care agency (~~provider~~) licensed by the department of health?

In order to be a long-term care worker employed by a home care agency (~~provider~~), a person must (~~complete the department's criminal conviction background inquiry application, which is submitted by the agency to the department. This includes an FBI fingerprint-based background check if the home care agency provider has lived in the state of Washington less than three years~~).

(1) Effective January 2, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.

(2) Effective January 2, 2012, be screened through the national fingerprint-based background check, as required by chapter 74.39A RCW.

(3) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying crime or negative action; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(4) Disqualifying crimes and negative actions are those listed in WAC 388-71-0540 (4), (5) and (6).

(5) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(6) The department may require a long-term care worker to have a Washington state name and date of birth background check or national fingerprint-based background check, or both, at any time.

(7) The required background checks on long-term care workers employed by home care agencies will be performed at department expense. Home care agencies are not responsible for payment for the required background checks.

NEW SECTION

WAC 388-71-0514 Can an individual provider or licensed home care agency long-term care worker work pending the outcome of the national fingerprint-based

background check? An individual provider or licensed home care agency long-term care worker may work up to one hundred twenty days pending the outcome of the national fingerprint-based background check provided that the person is not disqualified as a result of Washington state's name and date of birth background check or for character, competence, or suitability.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

WAC 388-71-0515 What are the responsibilities of an individual provider (~~or home care agency provider~~) when (~~employed to provide care~~) providing services to a client? An individual provider (~~or home care agency provider~~) must:

(1) Understand the client's plan of care that is signed by the client or legal representative (~~and social worker/case manager~~), and which may be translated or interpreted, as necessary, for the client (~~and the provider~~);

(2) Provide the services as outlined on the client's plan of care, as (~~defined~~) described in WAC 388-106-0010;

(3) Accommodate the client's individual preferences and (~~differences~~) unique needs in providing care;

(4) Contact the (~~client's~~) client, client's representative and case manager when there are changes (~~which~~) that affect the personal care and other tasks listed on the plan of care;

(5) Observe (~~the client for~~) and consult with the client or representative, regarding change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately (~~if~~) in the event of the (~~client dies~~) client's death;

(8) Notify the department or AAA immediately when unable to staff/serve the client; and

(9) Notify the department/AAA when the individual provider (~~or home care agency~~) will no longer provide services. (~~Notification to the client/legal guardian~~) The individual provider must:

(a) Give at least two weeks' notice, and

(b) (~~Be~~) Notify the client or legal guardian in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

(~~12~~) A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

NEW SECTION

WAC 388-71-0516 What are the responsibilities of home care agency when providing care to a client? In providing care to a client, a home care agency must:

(1) Ensure that the assigned home care agency long-term care worker(s) understands the client's plan of care that is signed by the client or legal representative, and which may be translated or interpreted, as necessary, for the client;

(2) Provide services as outlined in a client's plan of care, as described in WAC 388-106-0010;

(3) Accommodate the client's individual preferences and unique needs in providing care;

(4) Contact the client, client's representative and case manager when there are changes observed by the assigned home care agency long-term care worker that affect the personal care and other tasks listed on the plan of care;

(5) Ensure that the assigned home care agency long-term care worker(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately in the event of the client's death;

(8) Notify the department or AAA immediately when unable to staff/serve the client;

(9) Notify the department/AAA when the home care agency will no longer provide services. The home care agency must:

(a) Give at least two weeks' notice; and

(b) Notify the client or legal guardian in writing.

(10) Complete and keep accurate time sheets that are accessible to the appropriate department or designee staff; and

(11) Comply with all applicable laws and regulations.

NEW SECTION

WAC 388-71-0517 What are the responsibilities of a home care agency when the home care agency long-term care worker is a family member of the client and the client is receiving in-home medicaid-funded personal care or DDD respite services? A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

AMENDATORY SECTION (Amending WSR 09-03-066, filed 1/14/09, effective 2/14/09)

WAC 388-71-0520 ~~((Are there))~~ What are the training requirements for an individual provider or a home care agency ~~((provider of an adult client))~~ long-term care worker? An individual provider or a home care agency ~~((provider for an adult client))~~ long-term care worker:

(1) Hired on or before January 6, 2012, must meet the training requirements under WAC 388-71-05665 through 388-71-05865 and WAC 388-71-0801 through 388-71-0826 within one hundred twenty days of hire.

(2) Hired on or after January 7, 2012, must meet the training requirements ~~((in))~~ under WAC ~~((388-71-05665))~~

388-71-0836 through ~~((388-71-05865 and WAC 388-71-0801 through 388-71-0826))~~ 388-71-1006. These training requirements also apply to individual providers or home care agency long-term care workers who were hired before January 7, 2012, if they did not complete their training requirements within one hundred twenty days of hire.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

WAC 388-71-0540 When will the department, AAA, or department designee deny payment for services of an individual provider or home care agency ~~((provider))~~ long-term care worker? The department, AAA, or department designee will deny payment for the services of a home care agency provider if the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client.

The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency ~~((provider))~~ long-term care worker who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(3) Is a foster parent providing personal care to a child residing in their licensed foster home;

(4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(7) ~~((Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;~~

~~((8)))~~ Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

~~((9)))~~ (8) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(9) Does not successfully complete applicable training requirements, within one hundred twenty days of hire or the begin date of authorization or within the timeframes described in WAC 388-71-0875, 388-71-0880, 388-71-0890, and 388-71-0991. If an individual provider or long-term care worker employed by a home care agency does not complete required training within the required timeframe and:

(a) If the worker is not required to be a certified home care aide, then the long-term care worker may not provide care until the training is completed.

(b) If the worker is required to be a certified home care aide, then the long-term care worker may not provide care until the certification has been granted.

(10) Does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975;

(11) Has had a home care aide certification denied, suspended, or revoked and is not eligible to work until his or her certification has been reissued;

(12) When the client's needs are already being met on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(13) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of a home care agency long-term care worker).

In addition, the department, AAA, or department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551(~~and 388-71-0556~~).

NEW SECTION

WAC 388-71-0543 When may the department, AAA, or department designee deny payment for the services of an individual provider? In addition to mandatory denials of payment under WAC 388-71-0540, the department, AAA, or department designee may deny payment for the services of an individual provider:

(1) Who has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution, even though it has been more than three years since the conviction;

(b) Forgery or theft in the second degree, even though it has been more than five years since the conviction;

(c) Any conviction that the department determines is reasonably related to the competency of the person to provide care to a client; or

(d) Any act of violence against a person.

(2) Has engaged in the illegal use of drugs, or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a denial of payment under this chapter;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

(12) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records.

NEW SECTION

WAC 388-71-0544 When may the department, AAA, or department designee deny payment to a home care agency for the services of a long-term care worker that it employs? In addition to mandatory denials of payment under WAC 388-71-0540, the department, AAA, or department designee may deny payment to a home care agency for services provided to a department client by a home care agency long-term care worker that it employs:

(1) Who has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution, even though it has been more than three years since the conviction;

(b) Forgery or theft in the second degree, even though it has been more than five years since the conviction;

(c) Any conviction that the department determines is reasonably related to the competency of the person to provide care to a client; or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use of drugs, or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a denial of payment under this chapter;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

(12) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0546 When ~~((can))~~ may the department, AAA, or ((managed care entity)) department designee reject ((the client's)) your choice of an individual provider? The department, AAA, or ~~((managed care entity))~~ department designee may reject ~~((a client's))~~ your request to have a family member or other person serve as ~~((his or her))~~ your individual provider if the case manager has a reasonable, good faith belief that the person is or will be unable to appropriately meet ((the client's)) your needs. Examples of circumstances indicating an inability to meet ~~((the client's))~~ your needs ~~((could))~~ include, ((without limitation)) but are not limited to:

(1) Evidence of alcohol or drug abuse;

(2) A reported history of domestic violence committed by the individual provider, no-contact orders entered against the individual provider, or criminal conduct committed by the individual provider (whether or not the conduct is disqualifying under ~~((RCW 43.43.830 and 43.43.842))~~ WAC 388-71-0540);

(3) A report from ~~((the client's health care provider or other))~~ any knowledgeable person that the ~~((requested))~~ individual provider lacks the ability or willingness to provide adequate care;

(4) The individual provider has other employment or responsibilities that prevent or interfere with the provision of required services;

(5) Excessive commuting distance that would make it impractical for the individual provider to provide services as they are needed and outlined in ~~((the client's))~~ your service plan.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0551 When ~~((can))~~ may the department, AAA, or ((managed care entity)) department designee terminate or summarily suspend an individual provider's contract? The department, AAA, or ~~((managed care entity))~~ department designee may take action to terminate an individual provider's home and community-based service provider contract/agreement to provide services to a COPEs, MNIW, or medicaid personal care client, or terminate a contract to an individual provider to provide services to a New Freedom waiver, WMIP, or PACE client under chapter 388-106 WAC if the provider's:

(1) Home care aide certification has been revoked; or

(2) Inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being.

(3) The department, AAA, or ((managed care entity)) department designee may summarily suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client ((could)) include, ((without limitation)) but are not limited to:

~~((4))~~ (a) The individual provider has committed domestic violence or abuse, neglect, abandonment, or exploitation of a ((minor)) child, as defined in RCW 26.44.020 or a vulnerable adult, as defined in RCW 74.34.020;

~~((2))~~ Using or being (b) The individual provider uses or is under the influence of alcohol or illegal drugs during working hours;

~~((3))~~ (c) The individual provider engages in other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

~~((4))~~ (d) A report from the client's health care provider that the client's health is negatively affected by inadequate care being provided by the individual provider;

~~((5))~~ (e) A complaint from the client or client's representative that the client is not receiving adequate care from the individual provider;

~~((6))~~ (f) The ((absence of)) individual provider's failure to engage in essential interventions identified in the service plan, such as medications or medical supplies; and/or

~~((7))~~ (g) The individual provider's failure to respond appropriately to emergencies.

(4) The department, AAA or managed care entity may otherwise terminate the individual provider's contract for default or convenience in accordance with the terms of the contract and to the extent that those terms are not inconsistent with these rules.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0560 What are the client's rights if the department denies, terminates, or summarily suspends an individual provider's contract? (1) If the department denies, terminates, or summarily suspends the individual provider's contract, the client has the right to:

~~((1))~~ (a) An administrative hearing to appeal the decision, ~~((per))~~ under chapter 388-02 WAC, and

~~((2))~~ (b) Receive services from another currently contracted individual provider or home care agency ~~((provider))~~ long-term care worker, or ~~((other options))~~ to receive services through other programs the client is eligible for ~~((, if a contract is summarily suspended))~~.

~~((3))~~ (2) The hearing rights ~~((afforded))~~ provided under this section are those of the client, not the individual provider's rights.

NEW SECTION

WAC 388-71-0561 When does an individual provider have the right to an administrative hearing? (1) An individual provider has the right to an administrative hearing when the department denies payment to the individual provider because:

(a) He or she has not been certified by the department of health as a home care aide within the required timeframe; or

(b) If exempted from certification, he or she has not completed required training within the required timeframe.

(2) An individual provider has the right to an administrative hearing when the department terminates the individual provider's contract, or takes other enforcement measures against the individual provider because:

(a) He or she has not completed required training within the required timeframe.

(b) His or her certification as a home care aide has been revoked by the department of health.

(3) In an administrative hearing challenging DSHS action to deny payment to an individual provider or to terminate the contract of an individual provider, the individual provider may not challenge the action by the department of health affecting the individual provider's certification. Action by the department of health affecting the individual provider's certification must be challenged in a department of health hearing, as provided in department of health rules.

NEW SECTION

WAC 388-71-0562 When does a medicaid contracted home care agency have the right to an administrative hearing? (1) A medicaid contracted home care agency has the right to an administrative hearing when the department terminates its contract or takes other enforcement action related to its contract because the home care agency:

(a) Knowingly employs a long-term care worker who has not completed training within the required timeframe.

(b) Knowingly employs a long-term care worker who does not meet the certification requirements or whose certification has been revoked by the department of health.

(2) In an administrative hearing challenging DSHS action to terminate the contract or challenge some other enforcement against its contract, a medicaid contracted home care agency may not challenge the action by the department of health affecting the home care aide certification of a long-term care worker employed by the home care agency. Action by the department of health affecting the long-term care worker's certification must be challenged in a department of health hearing, as provided in department of health rules.

NEW SECTION

WAC 388-71-0836 What definitions apply to the long-term care worker training requirements? "Care team" includes the client and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, long-term care workers, social workers and case managers. The role of the care team is to support the well-being of the client, however, the client directs the care plan.

"Certified home care aide" means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

"Challenge test" means a challenge test taken for specialty training, without first taking the class for which the test is designed and can only be used when basic training is not required.

"Client" means an individual receiving in-home services.

"Competency" defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

"Competency testing" is evaluating a trainee to determine if he or she can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training and the specialty trainings. Training programs may integrate competency testing within their approved curriculums.

"DDD" refers to the division of developmental disabilities.

"Department" or **"DSHS"** refers to the department of social and health services.

"Direct care worker" means a paid individual who provides direct, hands-on, personal care services to persons with disabilities or the elderly requiring long-term care.

"Enhancement" is additional time provided for skills practice and additional training materials or classroom activities that help a worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, on-line materials, and/or additional student activities.

"Functionally disabled person" or **"person who is functionally disabled"** is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform

activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

"**Guardian**" means an individual as defined in chapter 11.88 RCW.

"**Individual provider**" means a person who has contracted with the department to provide personal care or respite care services to persons with functional disabilities under medicaid personal care, community options program entry system (COPES), chore services, or respite care program, or to provide respite care or residential services and supports to person with developmental disabilities under chapter 71A.12 RCW or to provide respite care as defined in RCW 74.13.270.

"**Learning objectives**" are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

"**Long-term care worker**" includes all persons providing paid, hands-on, personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities, and supported living providers.

The following persons are not long-term care workers:

- (1) Persons who are:
 - (a) Providing personal care services to individuals who are not receiving state-funded services; and
 - (b) The person is not employed by an agency or facility that is licensed by the state.
- (2) Persons employed by:
 - (a) Nursing homes licensed under chapter 18.51 RCW;
 - (b) Facilities certified under 42 CFR Part 483;
 - (c) Residential habilitation centers under chapter 71A.20 RCW;
 - (d) Hospitals or other acute care settings;
 - (e) Hospice agencies licensed under chapter 70.127 RCW;
 - (f) Adult day care centers or adult day health centers.
- (3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

"**Personal care services**" means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living which is, provided because a person is a functionally disabled person as defined in this chapter.

"**Training entity**" means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities may only deliver approved curriculum.

"**Training partnership**" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

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

ORIENTATION AND SAFETY TRAINING

NEW SECTION

WAC 388-71-0841 What is orientation? (1) Orientation is a training of two hours regarding the long-term care worker's role as long-term care workers and the applicable terms of employment.

(2) The department must approve orientation curricula and instructors.

(3) There is no challenge test for orientation.

NEW SECTION

WAC 388-71-0846 What content must be included in orientation? Orientation must include introductory information in the following areas:

(1) The care setting and the characteristics and special needs of the population served or to be served;

(2) Basic job responsibilities and performance expectations;

(3) The care plan, including what it is and how to use it;

(4) The care team;

(5) Process, policies, and procedures for observation, documentation and reporting;

(6) Client rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;

(7) Mandatory reporter law and worker responsibilities; and

(8) Communication methods and techniques that can be used while working with a client or guardian, and other care team members.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-71-0850 What is safety training? (1) Safety training is a training of three hours that includes basic safety precautions, emergency procedures, and infection control.

(2) The department must approve safety training curricula and instructors.

(3) There is no challenge test for safety training.

NEW SECTION

WAC 388-71-0855 What content must be included in safety training? Safety training consists of introductory information in the following areas:

(1) Safety planning and accident prevention, including but not limited to:

- (a) Proper body mechanics;
- (b) Fall prevention;
- (c) Fire safety;
- (d) In-home hazards;
- (e) Long-term care worker safety; and
- (f) Emergency and disaster preparedness.

(2) Standard precautions and infection control, including but not limited to:

- (a) Proper hand washing;
- (b) When to wear gloves and how to correctly put them on and take them off;
- (c) Basic methods to stop the spread of infection;
- (d) Protection from exposure to blood and other body fluids;
- (e) Appropriate disposal of contaminated/hazardous articles;
- (f) Reporting exposure to contaminated articles; and
- (g) What to do when sick or injured, including whom to report this to.

(3) Basic emergency procedures, including but not limited to:

- (a) Evacuation preparedness;
- (b) When and where to call for help in an emergency;
- (c) What to do when a client is falling or falls;
- (d) Location of any advanced directives and when they are given; and
- (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-71-0860 Who must complete orientation and safety training and by when? Unless exempted in WAC 388-71-0901, or the long-term care worker is a parent provider as described in WAC 388-71-0890, all long-term care workers must complete orientation and safety training prior to providing care to a client.

BASIC TRAININGNEW SECTION

WAC 388-71-0870 What is basic training? (1) Basic training is seventy hours of training that includes:

- (a) Core competencies; and
- (b) Population specific competencies.

(2) All basic training curriculum must be approved by the department and include qualified instructors.

(3) The DSHS developed revised fundamentals of caregiving (RFOC) learner's guide may be used to teach core basic training but it must include enhancements which must be approved by the department. Enhancements include:

(a) Adding more time for workers to practice skills including:

- The mechanics of completing the skill correctly.
- Client centered communication and problem solving associated with performing the skill.
- The different levels of care required for each skill (independent, supervision, limited, extensive, total).
- Working with assistive devices associated with a skill.
- Helpful tips or best practices in working through common client challenges associated with a skill.
- Disease specific concerns or challenges associated with a skill.

In most of these examples, additional student materials would be required to ensure the skill enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026.

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

- More deeply reinforce and fortify the learning outcomes required for basic training.
- Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care.
- Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials and/or activities that:

- Are out of the scope of practice for a LTC worker such as content clearly written for registered nurses.
- Are identical to, or a direct replacement of, those already included in RFOC.
- Do not reinforce Washington state laws associated with client rights and client directed care.
- LTC workers are not paid to provide.
- Are written above a high school reading level.

(4) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(5) The training entity must establish a way for the long-term care worker to ask the instructor questions.

(6) There is no challenge test for basic training.

NEW SECTION

WAC 388-71-0875 Who must complete basic training and by when? Unless exempt from training in WAC 388-71-0901, all long-term care workers must complete core

and population specific competencies within one hundred twenty days of:

- (1) The date of hire for home care agency long-term care workers; or
- (2) From the begin date of the authorization to provide department-paid in-home services for a client for individual providers.

NEW SECTION

WAC 388-71-0880 Who must take the thirty hour training instead of the seventy hour basic training and when must it be completed? The thirty hour basic training, as described in WAC 388-71-0885, must be completed within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services by an individual provider caring only for his or her biological, step, or adoptive child or parent.

NEW SECTION

WAC 388-71-0885 What is the thirty hour training? The thirty hour training is a subset of the seventy hour basic training that must include core and population specific basic training. Topics completed in the subset must be on topics relevant to the care needs of the client(s). There is no challenge test for the thirty hour training.

NEW SECTION

WAC 388-71-0890 What are the training requirements for parent providers who are individual providers for their adult children through DDD? A natural, step, or adoptive parent who is the individual provider for his or her adult child receiving services through the DSHS division of developmental disabilities must complete the twelve hour parent provider training, as described in WAC 388-71-0895, within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services.

NEW SECTION

WAC 388-71-0895 What is the twelve hour parent provider training? (1) The twelve hour parent provider training must include the following topics:

- (a) Medicaid personal care;
 - (b) Assessments completed by the division of developmental disabilities;
 - (c) Community resources;
 - (d) State and federal benefits;
 - (f) Networking; and
 - (g) Client self-determination.
- (2) There is no challenge test for this training.

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.

NEW SECTION

WAC 388-71-0901 What long-term care workers are exempt from the basic training requirement? The follow-

ing long-term care workers are exempt from the basic training requirement:

- (1) A person already employed as a long-term care worker on January 6, 2012, who completed the basic training requirements in effect on the date of his or her hire;
- (2) A person employed as a long-term care worker on January 6, 2012, who completes within one hundred twenty days of hire the basic training requirements in effect on the date of his or her hire;
- (3) A person previously employed as a long-term care worker who completed the basic training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point between January 1, 2011 and January 6, 2012;
- (4) An individual provider who worked as a respite provider or who provided care to a minor between January 1, 2011 and January 6, 2012, and who completed the training requirements in effect on the date of his or her hire;
- (5) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;
- (6) Nursing assistants-certified under chapter 18.88A RCW;
- (7) Certified counselors under chapter 18.19 RCW;
- (8) Speech language pathologists or audiologists under chapter 18.35 RCW;
- (9) Occupational therapists under chapter 18.59 RCW;
- (10) Physical therapists under chapter 18.74 RCW;
- (11) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 CFR, Part 483.35;
- (12) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010;
- (13) Parent providers as described in WAC 388-71-0890; and
- (14) Providers described in WAC 388-71-0880.

NEW SECTION

WAC 388-71-0906 What topics must be taught in the core competencies of basic training? Basic training must include all of the competencies under WAC 388-71-0911 for the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Client rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;
- (6) Client directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;

- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

NEW SECTION

WAC 388-71-0911 What are the competencies and learning objectives for the core competencies of basic training? The core competencies describe the behavior and skills that a long-term care worker should exhibit when working with clients. Learning objectives are associated with each competency.

(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with clients, family members, and care team members:

- (a) Recognize how verbal and nonverbal cues impact communication with the client and care team;
- (b) Engage and respect the client through verbal and nonverbal communication;
- (c) Listen attentively and determine that the client understands what has been communicated;
- (d) Recognize and acknowledge clients' communication including indicators of pain, confusion, or misunderstanding;
- (e) Utilize communication strategies to deal with difficult situations; and
- (f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care, take appropriate action to reduce stress and avoid burnout:

- (a) Identify behaviors, practices and resources to reduce stress and avoid burnout;
- (b) Recognize common barriers to self-care and ways to overcome them; and
- (c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

- (a) Explain why it is necessary to understand and utilize a problem solving method;
- (b) Implement a problem solving process/method; and
- (c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of client rights and dignity, take appropriate action to promote and protect a client's legal and human rights as protected by federal and Washington state laws including:

- (a) Protect a client's confidentiality, including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a noncare team member asks for confidential information;
- (b) Promote dignity, privacy, encourage, and support a client's maximum independence when providing care; and
- (c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use;
- (d) Protect and promote the client's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as defined in RCW 74.34.020 through 74.34.053; and

(b) Identify common signs and symptoms of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of client directed care, take appropriate action when following a client's direction regarding his or her care:

(a) Describe a worker's role in client directed care including determining, understanding, and supporting a client's choices;

(b) Describe the importance and impact of client directed care on a client's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a client's choice with personal safety; and

(d) Report concerns when a client refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the care plan.

(9) Regarding the competency on fall prevention, prevent or reduce the risk of falls:

(a) Identify fall risk factors and take action to reduce fall risks for a client; and

(b) Take proper steps to assist when a client is falling or has fallen.

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a client's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what actions to take if a client develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a client's skin integrity including position changes when sitting or lying for extended periods and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and to whom.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a client's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a client's baseline based on information provided in the care plan and explain why it is important to know a client's baseline;

(c) Identify changes in a client's physical, mental, and emotional state;

(d) Report changes from baseline and/or concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a client's safety and well-being;

(f) Explain the purpose of a care plan and describe how it is created, used and modified;

(g) Use a client's care plan to direct a worker's job tasks and any client directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-71-0946, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

(i) Helping an individual walk;

(ii) Transferring an individual from bed to wheelchair;

(iii) Turning and repositioning an individual in bed;

(iv) Providing mouth care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting an individual with a weak arm to dress;

(xi) Putting knee-high elastic stockings on an individual;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting an individual to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate client preferences, maintain pri-

vacy and dignity, support the client's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified in the care plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a client's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a client's health;

(b) Plan, shop, and prepare meals for a client according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the care plan and client preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a client;

(e) Recognize when a client's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves (if possible), and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a client who refuses to take medications, identifying when and to whom to report when a client refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what blood-borne (BB) pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for clients and long-term care workers.

Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the client in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a client and long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

NEW SECTION

WAC 388-71-0916 What topics may be taught in the population specific competencies of basic training? Population specific training may include but is not limited to one or more of the following topics. Which topic(s) to include in population specific training is based on the needs of the population(s) served or to be served.

(1) Dementia;

(2) Mental health;

(3) Developmental disabilities;

(4) Young adults with physical disabilities; and

(5) Aging and older adults.

NEW SECTION

WAC 388-71-0921 What are the population specific competencies? There are no DSHS mandatory competencies or learning objectives for population specific training. The training entity developing the training determines the competencies and learning objectives that best meet the care needs of the population(s) served.

Competencies and learning objectives described for developmental disability specialty training in WAC 388-112-0122, dementia specialty training in WAC 388-112-0132, mental health specialty training in WAC 388-112-0142, aging and older adults in WAC 388-112-0091 and young adults with physical disabilities in WAC 388-112-0083 may be used to develop the population specific training in these topic areas. This is not a requirement.

Competencies and learning objectives used to develop the training must be submitted with the curricula when sent to DSHS for approval as described in WAC 388-71-1026.

NEW SECTION

WAC 388-71-0931 What other methods of training may count towards the seventy hour basic training requirement? On-the-job training, as defined in WAC 388-71-0932, provided after July 1, 2012 may count towards the seventy hour basic training requirement.

ON-THE-JOB TRAINING

NEW SECTION

WAC 388-71-0932 What is on-the-job training? (1) Effective July 1, 2012, on the job training is a method of training when the long-term care worker successfully demonstrates any or all of the personal care or infection control skills included in the core basic training while working with a client versus in a practice training setting.

(2) On-the-job training is provided by a qualified instructor as described in WAC 388-71-1055, who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) Cannot be someone whose primary job duty is providing direct care to clients; or

(c) Cannot be the immediate supervisor of the long-term care worker receiving the on-the-job training.

(3) The person overseeing on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on the job training may count for up to twelve hours toward the completion of basic training requirements. It is not a requirement to include on-the-job training hours in the basic training hours.

NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING

NEW SECTION

WAC 388-71-0936 What is nurse delegation core training? (1) Nurse delegation core training is the required course a nursing assistant, certified or registered, must successfully complete before being delegated a nursing task.

(2) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants" meets the training requirement for nurse delegation core training.

(3) DSHS must approve the instructors for nurse delegation core training prior to an instructor offering a course.

NEW SECTION

WAC 388-71-0941 What is specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training is the required course for nursing assistants, certified or registered, who will be delegated the task of insulin injections.

(2) The specialized diabetes nurse delegation training consists of three modules which are diabetes, insulin, and injections.

(3) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes" may be used for the specialized diabetes nurse delegation training.

(4) DSHS approves the instructors for the specialized diabetes nurse delegation training prior to an instructor offering a course.

NEW SECTION

WAC 388-71-0946 Who is required to complete the nurse delegation core training, and when? Before performing any delegated task, a long-term care worker must:

(1) Be a:

(a) Certified home care aide and nursing assistant registered; or

(b) Nursing assistant certified under chapter 18.88A RCW; or

(c) If exempt from the home care aide certification, become a nursing assistant registered and complete the basic training core competencies.

(2) Successfully complete "Nurse Delegation for Nursing Assistants" training.

NEW SECTION

WAC 388-71-0951 Who is required to complete the specialized diabetes nurse delegation training, and when? Specialized diabetes nurse delegation training is required before a nursing assistant, certified or registered, who meets the qualifications in WAC 388-71-0946 may be delegated the task of insulin injections.

NEW SECTION

WAC 388-71-0953 Can nurse delegation core and specialized diabetes training occur in the same year as basic training? Nurse delegation core and specialized diabetes training can occur in the same year as basic training if required to be able to perform delegated tasks. If this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards basic training.

NEW SECTION

WAC 388-71-0956 Is competency testing required for the nurse delegation core training and specialized diabetes training? Passing the DSHS competency test is required for successful completion of nurse delegation core training and specialized diabetes training, as provided in WAC 388-71-1106 through 388-71-1130.

DOCUMENTATION REQUIREMENTS

NEW SECTION

WAC 388-71-0970 What documentation is required for completion of each training? Orientation, safety, basic training, including core and population specific, the thirty hour training, the twelve hour parent provider training, on-the-job training, continuing education, and nurse delegation core and specialized diabetes training, must be documented by a certificate(s) or transcript or proof of completion of training issued by a qualified instructor or qualified training entity that includes:

(1) The name of the trainee;

(2) The name of the training;

(3) The number of hours of the training;

(4) The name and/or identification number of the training entity. The training entity's identification number for basic core training is provided by the department and is issued by the department of health's contractor for the home care aide certification test;

(5) The instructor's name. For basic core training, the instructor's name and identification number. The instructor's identification number of basic core training is provided by the department and is issued by the department of health's contractor for the home care aide certification test;

(6) The instructor's signature or an authorized signature from the training entity the qualified instructor is training on behalf of; and

(7) The completion date of the training.

The long-term care worker must retain the original certificate or transcript for proof of completion of the training. A home care agency must keep a copy of the certificate or transcript on file.

NEW SECTION

WAC 388-71-0973 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved training entity who has provided or verified that a total of seventy-five hours of training has occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. Only a DSHS or training partnership seventy-five hour training certificate or transcript can be submitted by a long-term care worker applying to the department of health for a home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a DSHS certificate issued by an approved training entity who has provided all twelve hours of continuing education training. If all twelve hours of continuing education were not provided by the same training entity, then an approved training entity must verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing education. Only a DSHS or training partnership twelve-hour continuing education certificate or transcript can be submitted by a certified home care aide applying to the department of health for recertification.

(4) The long-term care worker, certified home care aide, and their employer must retain the original seventy-five hour training certificate or transcript and any twelve-hour continuing education training certificates as long as the worker is employed and up to three years after termination of employment. Training entities must keep a copy of these certificates on file for six years.

HOME CARE AIDE CERTIFICATION

NEW SECTION

WAC 388-71-0975 Who is required to obtain certification as a home care aide, and when? All long-term care workers, who do not fall within the exemptions under the department of health WAC 246-980-070, must obtain certification within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 7, 2012.

NEW SECTION

WAC 388-71-0980 Can a home care agency employ a long-term care worker who has not completed the training and/or certification requirements? A home care agency cannot employ an individual to work as a long-term care worker if the individual has previously worked as a long-term care worker and has not completed applicable training and/or certification requirements within the required timeframe. Such individual may be employed by a home care agency to work as a long-term care worker only after applicable training and/or certification requirements are met. The department is authorized by RCW 74.39A.085 to take enforcement action for noncompliance related to training and/or certification requirements.

CONTINUING EDUCATION

NEW SECTION

WAC 388-71-0985 What is continuing education? Continuing education is additional caregiving-related training designed to keep current a person's knowledge and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic. Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

NEW SECTION

WAC 388-71-0990 How many hours of continuing education are required each year? (1) Until June 30, 2012, individual providers and home care agency long-term care workers must complete ten hours of continuing education each calendar year after the year in which they complete basic training. If the ten hours of continuing education were completed between January 1, 2012 and June 30, 2012, then the continuing education requirements have been met for 2013.

(2) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110 and 246-112-020(3).

(3) If exempt from certification as described in RCW 18.88B.040, all long-term care workers must complete twelve hours of continuing education per calendar year unless exempt from continuing education as described in WAC 388-71-1001.

(4) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in WAC 388-71-0991 cannot be paid to provide care after that date and cannot be reinstated as a long-term care worker until they complete the continuing education requirements.

(5) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-71-0991 When must a long-term care worker or certified home care aide complete continuing education? (1) Effective July 1, 2012, all long-term care workers and certified home care aides must complete the continuing education requirements described in WAC 388-71-0990 by their birthday.

(2) For long-term care workers who are required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

NEW SECTION

WAC 388-71-1001 What long-term care workers are exempt from the continuing education requirement? Unless voluntarily certified as a home care aide, continuing education is not required for:

(1) Individual providers caring only for his or her biological, step, or adoptive son or daughter; and

(2) Before June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

NEW SECTION

WAC 388-71-1006 What kinds of training topics may be covered in continuing education? Continuing education must be on a topic relevant to the care setting, care needs of clients, or long-term care worker career development. Topics may include but are not limited to:

- (1) Client rights;
- (2) Personal care services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive client behavior support;
- (10) Developing or improving client-centered activities;
- (11) Dealing with wandering;
- (12) Dealing with challenging client behaviors;
- (13) Medical conditions; and
- (14) Nurse delegation core and specialized diabetes.

CURRICULUM APPROVALNEW SECTION

WAC 388-71-1021 What trainings must be taught with a curriculum approved by DSHS? (1) Orientation, safety, on-the-job, basic training (core and population specific training), the thirty hour basic training, the twelve hour parent provider training, and continuing education must be taught with a curriculum approved by DSHS before use.

(2) The nurse delegation core and diabetes training must use only the DSHS curriculum.

NEW SECTION

WAC 388-71-1026 What must be submitted to DSHS for curriculum approval? DSHS developed curriculum(s) do not require submission to the department for approval unless the curriculum is being modified in any manner by the training entity.

(1) For orientation and/or safety training:

(a) Effective January 7, 2012, submit an outline of what will be covered in each training offered (for example, a table of contents or a class syllabus) showing where the required introductory topics as listed in WAC 388-71-0846 for orientation and WAC 388-71-0855 for safety training are covered in the training. Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. Training cannot be offered before receiving department curriculum and instructor approval.

(2) For continuing education:

(a) Effective July 1, 2012, submit an outline of what will be covered in the training (for example, a table of contents or the class syllabus), the number of training hours, and a description of how the training is relevant to the care setting, care needs of the client, or long-term care worker career development. For on line training courses, also submit a description of how the instructor will assess that the students have integrated the information being taught. Department required continuing education training application forms must be submitted at least forty-five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval.

(3) For basic training, the thirty hour basic training, and the twelve hour parent provider training:

(a) If the instructor or training entity wants to use the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, submit the DSHS required form with all required information. Curricula must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training, for the thirty hour basic training, and for the twelve hour parent provider training. When submitting one or both sections of the basic training curriculum for DSHS approval, it must at a minimum include:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts and books;

(iii) The table of contents or outline of the curriculum including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-71-0911 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) How that section will be taught including teaching methods and learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the material covered and can demonstrate all skills;

(D) A list of sources or references, that were used to develop the curriculum. If the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based:

(E) Description of how the curriculum was designed to accommodate long-term care workers with limited English proficiency and/or learning disabilities; and

(F) Description and proof of how input was obtained from consumers and long-term care worker representatives in the development of the curriculum.

(vi) In addition, for curricula being submitted for the core competency section of the basic training as described in WAC 388-71-0911, the curriculum must include how much time long-term care workers will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(vii) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

NEW SECTION

WAC 388-71-1031 What is the curriculum approval process for orientation, safety, basic training (core and population specific training), the thirty hour basic training, the twelve hour parent provider training, and continuing education? (1) Submit the required training application forms and any other materials required for specific curriculums to the department.

(2) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum(s).

(3) If curriculum(s) are not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.

(4) The submitter can make the requested changes and resubmit the curriculum(s) for review.

(5) If after working with the department the reasons why the curriculum is not approved cannot be resolved, the submitter may seek review of the nonapproval decision from the assistant secretary of aging and disability services administration. The assistant secretary's review decision shall be the final decision of DSHS; no other administrative review is available to the submitter.

INSTRUCTOR QUALIFICATIONS, APPROVAL, AND RESPONSIBILITIES

NEW SECTION

WAC 388-71-1045 What are a training entity's responsibilities? The training entity is responsible for:

- (1) Coordinating and teaching classes;
- (2) Assuring that the curriculum used is DSHS-approved and taught as designed;
- (3) Selecting and monitoring qualified guest speakers, where applicable;
- (4) Administering or overseeing the administration of the DSHS competency tests for nurse delegation core and specialized diabetes trainings;
- (5) Maintaining training records including long-term care worker tests and attendance records for a minimum of six years;
- (6) Reporting training data to DSHS in DSHS-identified timeframes; and
- (7) Issuing or reissuing training certificates to long-term care workers.

NEW SECTION

WAC 388-71-1050 Must training entities and their instructors be approved by DSHS? All training entities and their instructor(s) for orientation, safety, and continuing education must meet the minimum qualifications under WAC 388-71-1060. All instructors for basic training (core and population specific training), on-the-job training, nurse delegation core training and nurse delegation specialized diabetes training must meet the minimum qualifications under WAC 388-71-1055.

(1) DSHS must approve and/or contract with a training entity and their instructor(s) to conduct orientation, safety, basic training (core and population specific training), nurse delegation core training and nurse delegation specialized diabetes training, on-the-job training, and continuing education. DSHS may contract with training entities and their instructor(s) using any applicable contracting procedures.

(2) The training partnership must ensure that its instructors meet the minimum qualifications under this chapter.

NEW SECTION

WAC 388-71-1055 What are the minimum qualifications for an instructor of basic training (core and population specific training), on-the-job training, nurse delegation core training, and nurse delegation specialized diabetes training? An instructor for basic training (core and population specific training), on-the-job training, nurse delegation core training, and nurse delegation specialized diabetes training must meet the following minimum qualifications:

- (1) General qualifications:
 - (a) Twenty-one years of age; and
 - (b) Has not had a professional health care, adult family home, boarding home, or social services license or certification revoked in Washington state.
- (2) Education and work experience:
 - (a) Upon initial approval or hire, an instructor must:

(i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or

(ii) Have an associate degree or higher degree in the field of health or human services and six months of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting; or

(iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting.

(3) Teaching experience:

(a) Must have one hundred hours of teaching adults in a classroom setting on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education that meets the requirements in WAC 388-71-1066.

(4) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;

(5) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(6) An instructor for nurse delegation core and specialized diabetes trainings must have a current Washington state RN license in good standing without practice restrictions.

NEW SECTION

WAC 388-71-1060 What are the minimum qualifications for an instructor of orientation, safety, and continuing education? An instructor of orientation, safety, and continuing education must be a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care or other relevant services to the elderly or persons with disabilities requiring long-term care.

NEW SECTION

WAC 388-71-1066 What must be included in a class on adult education? A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

(1) Adult education theory and practice principles;

(2) Instructor facilitation techniques;

(3) Facilitating learning activities for adults;

(4) Administering competency testing; and

(5) Working with adults with special training needs (for example, English as a second language or learning or literacy issues).

NEW SECTION

WAC 388-71-1076 What is a guest speaker, and what are the minimum qualifications to be a guest speaker? (1) A guest speaker is a person selected by an approved instructor to teach on a specific topic. A guest speaker:

(a) May only teach a specific subject in which he or she has expertise, background, and experience that establishes his or her expertise on that specific topic;

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must ensure the guest speaker meets these minimum qualifications;

(b) Maintain documentation of the guest speaker's qualifications and background;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for ensuring the required content is taught.

(3) DSHS does not approve guest speakers.

NEW SECTION

WAC 388-71-1081 What are the requirements for the training partnership to conduct training? (1) The training partnership must:

(a) Verify, document using the department's attestation process, keep on file, and make available to the department upon request, that all instructors meet the minimum instructor qualifications in WAC 388-71-1055 and 388-71-1060 for the course they plan to teach;

(b) Teach using a complete DSHS-developed or approved curriculum;

(c) When requested by DSHS, notify DSHS in writing of their intent to conduct training prior to providing training, when changing training plans, including:

(i) Name and schedule of training(s) the partnership will conduct;

(ii) Name of approved curriculum(s) the partnership will use; and

(iii) Name of the instructor(s) for only the core basic training.

(d) Ensure that DSHS competency tests are administered when conducting nurse delegation core or specialized diabetes training;

(e) Keep a copy of long-term care worker certificates on file for six years and give the original certificate to the trainee;

(f) Keep attendance records and testing records of long-term care workers trained and tested on file for six years; and

(g) Report training data to DSHS when requested by the department.

(2) The department may conduct a random audit at any time to review training and instructor qualifications.

NEW SECTION

WAC 388-71-1083 Must the department verify that training entities and their community instructors meet the minimum instructor qualifications? The department through its contracting process must verify that the community instructors meet the minimum qualifications as described in WACs 388-71-1055 and 388-71-1060. The department

will conduct random audits of the training provided and of the instructor qualifications.

PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING

NEW SECTION

WAC 388-71-1091 What physical resources are required for classroom training and testing? (1) Classroom facilities used for classroom training must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning, such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites for nurse delegation core and specialized diabetes training must provide adequate space for testing, comfort, lighting, lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

NEW SECTION

WAC 388-71-1096 What standard training practices must be maintained for classroom training and testing? The following training standards must be maintained for classroom training and testing:

- (1) Training must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill, or concept;
- (3) Training must include regular breaks; and
- (4) Long-term care workers attending classroom training must not be expected to leave the class to attend job duties, except in an emergency.

COMPETENCY TESTING FOR NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING

NEW SECTION

WAC 388-71-1106 What components must competency testing include? Competency testing must include the following components:

- (1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate to the training;
- (2) Written evaluation to show knowledge of the learning objectives included in the training; and
- (3) A scoring guide for the tester with clearly stated scoring criteria and minimum proficiency standards.

NEW SECTION

WAC 388-71-1111 What experience or training must individuals have to be able to perform competency testing? Individuals who perform competency testing must have

documented experience or training in assessing competencies.

NEW SECTION

WAC 388-71-1120 How must competency test administration be standardized? To standardize competency test administration, testing must include the following components:

- (1) An instructor for the course who meets all minimum qualifications for the course he or she teaches must oversee all testing; and
- (2) The tester must follow the DSHS guidelines for:
 - (a) The maximum length of time allowed for the testing;
 - (b) The amount and nature of instruction given long-term care workers before beginning a test;
 - (c) The amount of assistance to long-term care workers allowed during testing;
 - (d) The accommodation guidelines for long-term care workers with disabilities; and
 - (e) Accessibility guidelines for long-term care workers with limited English proficiency.

NEW SECTION

WAC 388-71-1125 What form of identification must long-term care workers show before taking a competency test? Long-term care workers must show photo identification before taking a competency test.

NEW SECTION

WAC 388-71-1130 How many times may a competency test be taken? For the trainings under WAC 388-71-0936 and 388-71-0941, competency testing may be taken twice. If the test is failed a second time, the person must retake the course before taking the test for that course again.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-05665	What definitions apply to WAC 388-71-05670 through 388-71-05909?
WAC 388-71-05670	What is orientation?
WAC 388-71-05675	What content must be included in an orientation?
WAC 388-71-05680	Is competency testing required for orientation?
WAC 388-71-05685	Is there a challenge test for orientation?
WAC 388-71-05690	What documentation is required for orientation?
WAC 388-71-05695	Who is required to complete orientation, and when must it be completed?

WAC 388-71-05700	What is basic training?	WAC 388-71-05785	What kinds of training topics are required for continuing education?
WAC 388-71-05705	Is there an alternative to the basic training for some health care workers?	WAC 388-71-05790	Is competency testing required for continuing education?
WAC 388-71-05710	What core knowledge and skills must be taught in basic training?	WAC 388-71-05795	May basic or modified basic training be completed a second time and used to meet the continuing education requirement?
WAC 388-71-05715	Is competency testing required for basic training?	WAC 388-71-05799	What are the documentation requirements for continuing education?
WAC 388-71-05720	Is there a challenge test for basic training?	WAC 388-71-05805	What is nurse delegation core training?
WAC 388-71-05725	What documentation is required for successful completion of basic training?	WAC 388-71-05810	What knowledge and skills must nurse delegation core training include?
WAC 388-71-05730	Who is required to complete basic training, and when?	WAC 388-71-05815	Is competency testing required for nurse delegation core training?
WAC 388-71-05735	What is modified basic training?	WAC 388-71-05820	Is there a challenge test for nurse delegation core training?
WAC 388-71-05740	What knowledge and skills must be included in modified basic training?	WAC 388-71-05825	What documentation is required for successful completion of nurse delegation core training?
WAC 388-71-05745	Is competency testing required for modified basic training?	WAC 388-71-05830	Who is required to complete nurse delegation core training, and when?
WAC 388-71-05750	Is there a challenge test for modified basic training?	WAC 388-71-05832	What is safety training?
WAC 388-71-05755	What documentation is required for successful completion of modified basic training?	WAC 388-71-05835	What is competency testing?
WAC 388-71-05760	Who may take modified basic training instead of the full basic training?	WAC 388-71-05840	What components must competency testing include?
WAC 388-71-05765	What are the training requirements and exemptions for parents who are individual providers for their adult children receiving services through DDD?	WAC 388-71-05845	What experience or training must individuals have to be able to perform competency testing?
WAC 388-71-05770	What are the training requirements and exemptions for parents who are individual providers for their adult children who do not receive services through DDD?	WAC 388-71-05850	What training must include the DSHS-developed competency test?
WAC 388-71-05775	What is continuing education?	WAC 388-71-05855	How must competency test administration be standardized?
WAC 388-71-05780	How many hours of continuing education are required each year?	WAC 388-71-05860	What form of identification must providers show a tester before taking a competency or challenge test?

WAC 388-71-05865	How many times may a competency test be taken?		pletion of specialized diabetes nurse delegation training?
WAC 388-71-05870	What are an instructor's or training entity's responsibilities?	WAC 388-71-0826	Who is required to complete the specialized diabetes nurse delegation training, and when?
WAC 388-71-05875	Must instructors be approved by DSHS?		
WAC 388-71-05880	Can DSHS deny or terminate a contract with an instructor or training entity?		<u>AMENDATORY SECTION</u> (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)
WAC 388-71-05885	What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training?		WAC 388-112-0001 What is the purpose of this chapter? The ((residential)) purpose of this chapter is to describe the residential long-term care training requirements that apply to individuals hired on or before January 6, 2012 who complete their training requirements within one hundred and twenty days of their date of hire.
WAC 388-71-05890	What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core and specialized diabetes training?		This chapter also describes the long-term care worker training requirements ((under this chapter apply to:
WAC 388-71-05895	What additional qualifications are required for instructors of nurse delegation core training and specialized diabetes nurse delegation training?		(1) All adult family homes licensed under chapter 70.128 RCW; and (2) All boarding homes licensed under chapter 18.20 RCW) for long-term care workers who are hired on or after January 7, 2012, or who were hired before January 7, 2012 and did not complete their training within one hundred and twenty days of their date of hire.
WAC 388-71-05899	What must be included in a class on adult education?		<u>NEW SECTION</u>
WAC 388-71-05905	What physical resources are required for basic, modified basic, or nurse delegation core classroom training and testing?		WAC 388-112-0002 To whom do the training requirements apply? (1) The residential long-term care training requirements under this chapter apply to:
WAC 388-71-05909	What standard training practices must be maintained for basic, modified basic, or nurse delegation core classroom training and testing?		(a) Adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who are hired or begin to provide hands-on personal care to residents on or before January 6, 2012 and who completed their required training within one hundred and twenty days of hire. (2) Unless exempt under RCW 18.88B.040, the long-term care worker training described in this chapter applies to the following individuals who were hired on or after January 7, 2012:
WAC 388-71-0801	What is specialized diabetes nurse delegation training?		(a) All direct care workers in boarding homes licensed under chapter 18.20 RCW and chapter 388-78A WAC;
WAC 388-71-0806	What knowledge and skills must specialized diabetes nurse delegation training include?		(b) Boarding home administrators (or their designees) in accordance with chapter 388-78A WAC;
WAC 388-71-0811	Is competency testing required for the specialized diabetes nurse delegation training?		(c) All direct care workers in adult family homes licensed under chapter 70.128 RCW and chapter 388-76 WAC; and (d) Adult family home applicants, resident managers, and entity representatives in accordance with chapter 388-76 WAC.
WAC 388-71-0816	Is there a challenge test for specialized diabetes nurse delegation training?		(3) The adult family home provider and boarding home provider, must ensure that any one used by them receives orientation and training from an approved instructor, appropriate for their expected duties, even if the person, including a volunteer, is not included in the definition of long-term care worker.
WAC 388-71-0821	What documentation is required for successful com-		

NEW SECTION

WAC 388-112-0003 What action(s) may the department take for provider noncompliance with the requirements of this chapter? A provider's failure to comply with the requirements of this chapter may be subject to an enforcement action authorized under:

- (1) WAC 388-78A-3170, for boarding home providers;
or
(2) WAC 388-76-10960, for adult family home providers.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0005 What definitions apply to this chapter? "Applicant" means an individual, partnership, corporation, or other entity seeking to operate an adult family home.

"Caregiver" means anyone who is subject to the residential long-term care training requirements under this chapter and who is providing hands-on personal care to another person including but not limited to cuing, reminding, or supervision of residents, on behalf of an adult family home or boarding home, except volunteers who are directly supervised.

"Care team" includes the resident and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, long-term care workers, social workers and case managers. The role of the care team is to support the well-being of the resident, however, the resident directs the service plan.

"Certified home care aide" means a person who has obtained and maintains a home care aide certification through the department of health.

"Challenge test" means a competency test taken for specialty training without first taking the class for which the test is designed and can only be used when basic training is not required.

"Client" means a person as defined in WAC 388-101-3000.

"Competency" ((means the minimum level of information and skill trainees are required to know and be able to demonstrate)) defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

"Competency testing" including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training and the specialty trainings. Training programs may integrate competency testing within their approved curriculums.

"DDD" refers to the division of developmental disabilities.

"Designee" means a person in a boarding home who supervises ((caregivers)) long-term care workers and who is designated by a boarding home administrator to take the trainings in this chapter required of the boarding home

administrator. A boarding home administrator may have more than one designee.

"Direct care worker" means a paid individual who provides direct, hands-on, personal care services to persons with disabilities or the elderly requiring long-term care.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the ((caregiver)) long-term care worker.

"DSHS" or "department" refers to the department of social and health services.

"Enhancement" is additional time provided for skills practice and additional training materials or classroom activities that help a worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, on-line materials, and/or additional student activities.

"Entity representative" means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

"Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

"Guardian" means an individual as defined in chapter 11.88 RCW.

"Home" refers to adult family homes and boarding homes.

"Indirect supervision" means oversight by a person who has demonstrated competency in the basic training ((and specialty training if required)), or who has been exempted from the basic training requirements, and who is quickly and easily available to the ((caregiver)) long-term care worker, but not necessarily on-site.

"Learning ((outcomes)) objectives" ((means the specific information, skills and behaviors desired of the learner as a result of a specific unit of instruction, such as what they would learn by the end of a single class or an entire course. Learning outcomes are generally identified with a specific lesson plan or curriculum)) are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum designers have the flexibility to determine how learning objectives are met and may

include additional content deemed necessary to best meet the competency in a particular setting.

"Long-term care worker" includes all persons providing paid, hands-on personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under title 71A RCW, all direct care workers in state-licensed boarding homes, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

The following persons are not long-term care workers:

(1) Persons who are:

(a) Providing personal care services to individuals who are not receiving state-funded services; and

(b) The person is not employed by an agency or facility that is licensed by the state.

(2) Persons employed by:

(a) Nursing homes licensed under chapter 18.51 RCW;

(b) Facilities certified under 42 CFR Part 483;

(c) Residential habilitation centers under chapter 71A.20 RCW;

(d) Hospitals or other acute care settings;

(e) Hospice agencies licensed under chapter 70.127 RCW;

(f) Adult day care centers or adult day health centers.

(3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

"Personal care services" means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living which is provided because a person is a functionally disabled person as defined in this chapter.

"Provider" means any person or entity who is licensed by the department to operate an adult family home or boarding home, or certified by the department to provide instruction and support services to meet the needs of persons receiving services under title 71A RCW.

"Resident" means a person residing and receiving long-term care services at a boarding home or adult family home. As applicable, the term resident also means the resident's legal guardian or other surrogate decision maker.

"Resident manager" means a person employed or designated by the provider to manage the adult family home who meets the requirements in chapter 388-76 WAC and this chapter.

"Residential long-term care training requirements" are those requirements that apply to individuals hired on or before January 6, 2012 who completed their training requirements within one hundred and twenty days of the date they were hired.

"Routine interaction" means contact with residents that happens regularly.

"Training entity" means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities may only deliver approved curriculum.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0010 When do the training requirements go into effect? (1) The residential long-term care training requirements under this chapter apply to individuals hired before January 7, 2012, if they completed their training within one hundred and twenty days of the date they were hired.

(2) The long-term care worker training requirements ~~((of))~~ under this chapter ~~((begin September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and apply to:~~

(1) Adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who are hired or begin to provide hands-on personal care to residents subsequent to September 1, 2002; and

(2) Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 and this chapter. Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 are subject to all applicable requirements of this chapter. However, until September 1, 2002, nothing in this chapter affects the current training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130)) apply to persons described in WAC 388-112-0002(2), who are hired on or apply on or after January 7, 2012, unless exempt under RCW 18.88B.040.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0015 What is orientation? (1) For individuals required to complete residential long-term care training requirements orientation provides basic introductory information appropriate to the residential care setting and population served. The department does not approve residential long-term care specific orientation programs, materials, or trainers for homes. No test is required for this orientation. There is no competency testing required for this orientation.

(2) For individuals required to complete long-term care worker training, orientation ~~((provides basic introductory information appropriate to the residential care setting and population served))~~ is a training of two hours regarding the long-term care worker's role as long-term care workers and the applicable terms of employment.

(a) The department ~~((does not))~~ must approve ~~((specific))~~ long-term care worker orientation ~~((programs, materials, or trainers for homes))~~ curricula and instructors.

(b) There is no challenge test ~~((is required))~~ for orientation.

NEW SECTION

WAC 388-112-0016 What content must be included in orientation? (1) For residential long-term care services orientation:

(a) Residential long-term care services orientation may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Orientation must include introductory information in the following areas:

- (i) The care setting;
- (ii) The characteristics and special needs of the population served;
- (iii) Fire and life safety, including:
 - (A) Emergency communication (including phone system if one exists);
 - (B) Evacuation planning (including fire alarms and fire extinguishers where they exist);
 - (C) Ways to handle resident injuries and falls or other accidents;
 - (D) Potential risks to residents or staff (for instance, aggressive resident behaviors and how to handle them); and
 - (E) The location of home policies and procedures.
- (iv) Communication skills and information, including:
 - (A) Methods for supporting effective communication among the resident/guardian, staff, and family members;
 - (B) Use of verbal and nonverbal communication;
 - (C) Review of written communications and/or documentation required for the job, including the resident's service plan;
 - (D) Expectations about communication with other home staff; and
 - (E) Whom to contact about problems and concerns.
- (v) Universal precautions and infection control, including:
 - (A) Proper hand washing techniques;
 - (B) Protection from exposure to blood and other body fluids;
 - (C) Appropriate disposal of contaminated/hazardous articles;
 - (D) Reporting exposure to contaminated articles, blood, or other body fluids; and
 - (E) What staff should do if they are ill.
- (vi) Resident rights, including:
 - (A) The resident's right to confidentiality of information about the resident;
 - (B) The resident's right to participate in making decisions about the resident's care, and to refuse care;
 - (C) Staff's duty to protect and promote the rights of each resident, and assist the resident to exercise his or her rights;
 - (D) How and to whom staff should report any concerns they may have about a resident's decision concerning the resident's care;
 - (E) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of a resident;
 - (F) Advocates that are available to help residents (LTC ombudsmen, organizations); and
 - (G) Complaint lines, hot lines, and resident grievance procedures.

(vii) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

(2) For long-term care worker orientation:

(a) Long-term care worker orientation must include introductory information in the following areas:

- (i) The care setting and the characteristics and special needs of the population served;
- (ii) Basic job responsibilities and performance expectations;
- (iii) The care plan, including what it is and how to use it;
- (iv) The care team;
- (v) Process, policies, and procedures for observation, documentation and reporting;
- (vi) Resident rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;
- (vii) Mandatory reporter law and worker responsibilities; and
- (viii) Communication methods and techniques that can be used while working with a resident or guardian and other care team members.

One hour of completed classroom instruction or other form of training (such as a video or on line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-112-0018 What is safety training? (1) Safety is part of the long-term care worker training requirements. It is a training of three hours that includes basic safety precautions, emergency procedures, and infection control.

- (2) The department must approve safety training curricula and instructors.
- (3) There is no challenge test for safety training.

NEW SECTION

WAC 388-112-0019 What content must be included in safety training? Safety training consists of introductory information in the following areas:

- (1) Safety planning and accident prevention, including but not limited to:
 - (a) Proper body mechanics;
 - (b) Fall prevention;
 - (c) Fire safety;
 - (d) In home hazards;
 - (e) Long term care worker safety; and
 - (f) Emergency and disaster preparedness.
- (2) Standard precautions and infection control, including but not limited to:
 - (a) Proper hand washing;
 - (b) When to wear gloves and how to correctly put them on and take them off;
 - (c) Basic methods to stop the spread of infection;
 - (d) Protection from exposure to blood and other body fluids;
 - (e) Appropriate disposal of contaminated/hazardous articles;

- (f) Reporting exposure to contaminated articles; and
- (g) What to do when the worker or the resident is sick or injured, including whom to report this to.

(3) Basic emergency procedures, including but not limited to:

- (a) Evacuation preparedness;
- (b) When and where to call for help in an emergency;
- (c) What to do when a resident is falling or falls;
- (d) Location of any advanced directives and when they are given; and
- (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on line course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions. In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0035 What documentation is required for orientation and safety training? The adult family home or boarding home must maintain documentation of the completion of orientation and, if required, safety training, issued by the ~~((home))~~ instructor as described in WAC 388-112-0383, that includes:

- (1) The ~~((trainee's))~~ name of the trainee;
- (2) A list of the specific information taught;
- (3) The number of hours of the training;
- (4) The signature of the ~~((person overseeing))~~ instructor providing orientation ~~((, indicating completion of the required information))~~ and safety training;
- ~~((4))~~ (5) The trainee's date of employment;
- ~~((5))~~ (6) The name and identification number of the home or service provider giving the orientation and safety training; and
- ~~((6))~~ (7) The date(s) of orientation and safety training.
- (8) The home must keep a copy as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for boarding homes).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0040 Who ~~((is required to))~~ must complete orientation and safety training, and by when ~~((must it be completed))~~? ~~((Adult family home))~~

(1) ~~((All paid or volunteer staff in adult family homes who begin work September 1, 2002 or later must complete orientation before having routine interaction with residents. Orientation must be provided by appropriate adult family home staff.~~

Boarding home

(2) ~~Boarding home administrators (or their designees), caregivers, and all paid or volunteer staff who begin work September 1, 2002 or later must complete orientation before having routine interaction with residents. Orientation must be provided by appropriate staff))~~ The following individuals must complete residential long-term care training orientation requirements:

(a) Adult family homes - All paid or volunteer staff in adult family homes who begin work September 1, 2002 or later must complete orientation before having routine interaction with residents. Orientation must be provided by appropriate adult family home staff.

(b) Boarding homes - Boarding home administrators (or their designees), caregivers, and all paid or volunteer staff who begin work September 1, 2002 or later must complete orientation before having routine interaction with residents. Orientation must be provided by appropriate staff.

(2) The following individuals must complete long-term care worker orientation and safety training requirements:

(a) All long-term care workers must complete orientation and safety training before providing care to residents/clients. All volunteers who routinely interact with resident/clients must complete orientation and safety training before interacting with resident/clients. Orientation and safety training must be provided by qualified instructors as described in WAC 388-112-0383.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0045 What is basic training? (1) Basic training for individuals required to complete residential long-term care training includes the core knowledge and skills that caregivers need in order to provide personal care services effectively and safely. DSHS must approve basic training curricula. Certain health care workers may complete the modified basic training instead of basic training if they meet the requirements in WAC 388-112-0105.

(2) Basic training for individuals required to complete long-term care worker training is a training of seventy hours which includes ~~((the))~~:

(a) The core ~~((knowledge))~~ competencies and skills that ~~((caregivers))~~ long-term care workers need in order to provide personal care services effectively and safely;

(b) Practice and demonstration of skills;

(c) Population specific competencies.

(3) DSHS must approve basic training curricula.

(4) Effective July 1, 2012, no more than twelve hours may be applied for on-the-job training;

(5) The DSHS developed revised fundamentals of caregiving (RFOC) learner's guide may be used to teach core basic training but it must include enhancements which must be approved by the department. Enhancements include:

(a) Adding more time for workers to practice skills including:

• The mechanics of completing the skill correctly.

• Client centered communication and problem solving associated with performing the skill.

• The different levels of care required for each skill (independent, supervision, limited, extensive, total).

• Working with assistive devices associated with a skill.

• Helpful tips or best practices in working through common client challenges associated with a skill.

• Disease specific concerns or challenges associated with a skill. In most of these examples, additional student materials would be required to ensure the skill enhancements are well planned and documented for students. Materials must

be submitted for approval and approved per WAC 388-112-0325.

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

• More deeply reinforce and fortify the learning outcomes required for basic training.

• Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care.

• Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials and/or activities that:

• Are out of the scope of practice for a LTC worker such as content clearly written for registered nurses.

• Are identical to, or a direct replacement of, those already included in RFOC.

• Do not reinforce Washington state laws associated with client rights and client directed care.

• LTC workers are not paid to provide.

• Are written above a high school reading level.

(6) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(7) The training entity must establish a way for the long-term care worker to ask the instructor questions.

(8) There is no challenge test for basic training.

NEW SECTION

WAC 388-112-0053 What topics must be taught in the core competencies of basic training for long-term care workers? Basic training for long-term care workers must include all of the competencies under WAC 388-112-0055 for the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Resident rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;
- (6) Resident directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

NEW SECTION

WAC 388-112-0054 What knowledge and skills must be taught in basic training for individuals required to complete residential long-term care training? (1) The basic training knowledge and skills must include all of the learning outcomes and competencies published by the department for the following core knowledge and skills:

(a) Understanding and using effective interpersonal and problem solving skills with the resident, family members, and other care team members;

(b) Taking appropriate action to promote and protect resident rights, dignity, and independence;

(c) Taking appropriate action to promote and protect the health and safety of the resident and the caregiver;

(d) Correctly performing required personal care tasks while incorporating resident preferences, maintaining the resident's privacy and dignity, and creating opportunities that encourage resident independence;

(e) Adhering to basic job standards and expectations.

(2) The basic training learning outcomes and competencies may be obtained from the DSHS aging and disability services administration.

(3) Passing the DSHS competency test is required for successful completion of basic training as provided under WAC 388-112-0290 through 388-112-0315.

(4) For licensed adult family home providers and employees, successfully completing basic training includes passing the safe food handling section or obtaining a valid food handler permit.

(5) Individuals may take the DSHS challenge test instead of the required training. If a person does not pass a challenge test on the first attempt, they may not retake the challenge test and must attend a class.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0055 What ~~((knowledge and skills must be taught in))~~ are the core competencies and learning objectives for long-term care worker basic training?

~~((1))~~ The ~~((basic training knowledge and skills must include all of the learning outcomes and competencies published by the department for the following core knowledge and skills:~~

~~(a) Understanding and using effective interpersonal and problem solving skills with the resident, family members, and other care team members;~~

~~(b) Taking appropriate action to promote and protect resident rights, dignity, and independence;~~

~~(c) Taking appropriate action to promote and protect the health and safety of the resident and the caregiver;~~

~~(d) Correctly performing required personal care tasks while incorporating resident preferences, maintaining the resident's privacy and dignity, and creating opportunities that encourage resident independence;~~

~~(e) Adhering to basic job standards and expectations.~~

~~(2) The basic training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration)) core competencies describe the behavior and skills that a long-term care worker must exhibit when working with residents. Learning objectives are associated with each competency.~~

~~(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with residents, family members, and care team members:~~

~~(a) Recognize how verbal and non-verbal cues impact communication with the resident and care team;~~

(b) Engage and respect the resident through verbal and non-verbal communication;

(c) Listen attentively and determine that the resident understands what has been communicated;

(d) Recognize and acknowledge residents' communication including indicators of pain, confusion, or misunderstanding;

(e) Utilize communication strategies to deal with difficult situations; and

(f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care, take appropriate action to reduce stress and avoid burnout:

(a) Identify behaviors, practices and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of resident rights and dignity, take appropriate action to promote and protect a resident's legal and human rights as protected by federal and Washington state laws, including:

(a) Protect a resident's confidentiality including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a noncare team member asks for confidential information;

(b) Promote dignity, privacy, encourage and support a resident's maximum independence when providing care; and

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use;

(d) Protect and promote the resident's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as described under RCW 74.34.020 through 74.34.053; and

(b) Identify common symptoms of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of resident directed care, take appropriate action when following a resident's direction regarding his or her care:

(a) Describe a worker's role in resident directed care including determining, understanding, and supporting a resident's choices;

(b) Describe the importance and impact of resident directed care on a resident's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a resident's choice with personal safety; and

(d) Report concerns when a resident refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the service plan.

(9) Regarding the competency on fall prevention, prevent or reduce the risk of falls:

(a) Identify fall risk factors and take action to reduce fall risks for a resident; and

(b) Take proper steps to assist a resident who is falling or has fallen.

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a resident's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what to take if a resident develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a resident's skin integrity including position changes when sitting or lying for extended periods and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and to whom.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a resident's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a resident's baseline based on information provided in the service plan and explain why it is important to know a resident's baseline;

(c) Identify changes in a resident's physical, mental, and emotional state through observation;

(d) Report changes from baseline and/or concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a resident's safety and well-being;

(f) Explain the purpose of a service plan and describe how it is created, used, and modified;

(g) Use a resident's service plan to direct a worker's job tasks and any resident directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-112-0195, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

(i) Helping a resident walk;

(ii) Transferring a resident from a bed to a wheelchair;

(iii) Turning and repositioning a resident in bed;

(iv) Providing mouth care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting a resident with a weak arm to dress;

(xi) Putting knee-high elastic stockings on a resident;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting a resident to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate resident preferences, maintain privacy and dignity, support the resident's level of ability, and assure their comfort and safety;

(c) Appropriately utilize assistive device(s) specified on the service plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a resident's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a resident's health;

(b) Plan, shop, and prepare meals for a resident according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the service plan and resident preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a resident;

(e) Recognize when a resident's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves (if possible) and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete a DSHS-approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a resident who refuses to take medications, identifying when and to whom to report when a resident refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections:

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control:

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves:

(d) Demonstrate proper hand washing and putting on and taking off gloves:

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria:

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection:

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces:

(h) Describe what BB pathogens are and how they are transmitted:

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases:

(j) Identify measures to take to prevent BB diseases:

(k) Describe what to do if exposed to BB pathogens and how to report an exposure:

(l) Describe how HIV works in the body:

(m) Explain that testing and counseling for HIV/AIDS is available:

(n) Describe the common symptoms of HIV/AIDS:

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for residents and long-term care workers.

Long-term care workers who complete a DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the resident in the grieving process:

(a) Define grief and loss:

(b) Describe common losses a resident and long-term care worker may experience:

(c) Identify common symptoms associated with grief and loss:

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

NEW SECTION

WAC 388-112-0062 What is on-the-job training? (1) Effective July 1, 2012, on-the-job training is a method of training when the long-term care worker successfully demonstrates any or all of the personal care or infection control skills included in the core basic training while working with a client versus in a practice training setting.

(2) On-the-job training is provided by a qualified instructor as defined in WAC 388-112-0380 who directly observes,

coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) Cannot be someone whose primary job duty is providing direct care to clients; or

(c) Cannot be the immediate supervisor of the long-term care worker receiving the on-the-job training.

(3) The person overseeing on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on-the-job training may count for up to twelve hours toward the completion of basic training requirements. It is not a requirement to include on-the-job training hours in the basic training hours.

NEW SECTION

WAC 388-112-0066 What is the population specific component of basic training? Population specific basic training is training on topics that are unique to the care needs of the population that the home or provider is serving. Topics can include but are not limited to:

(1) Dementia;

(2) Mental health;

(3) Developmental disabilities;

(4) Young adults with physical disabilities; and

(5) Aging and older adults.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0070 What documentation is required ((for successful)) to show completion of basic training, including core competencies and population specific competencies? (1) Residential long-term services basic training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

(a) The name of the trainee;

(b) The name of the training;

(c) The name of the home or training entity giving the training;

(d) The instructor's name and signature;

(e) The date(s) of training; and

(f) The trainee must be given an original certificate. A home must keep a copy of the certificate on file.

(2) Long-term care worker basic training must be documented by a certificate(s) or transcript of ((successful)) completion of training, issued by the instructor or training entity, that includes:

(a) The name of the trainee;

(b) The name of the training;

(c) The number of hours of the training;

(d) The name and the identification number of the instructor for core competencies, and the home or training entity giving the training. The instructor's, home's, or training entity's identification number for basic core training is provided by the department and is issued by the department of health's contractor for the home care aide certification test;

~~((d))~~ (e) The instructor's ~~((name and))~~ signature; and
~~((e))~~ (f) The completion date~~((s))~~ of the training.

~~((2))~~ (g) The trainee must be given an original certificate(s) or transcript for proof of completion of the training. A home must keep a copy of the certificate on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for boarding homes).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0075 Who is required to complete basic training, and when, unless exempt as described in WAC 388-112-0076? Adult family homes

(1) Adult family home ~~((providers (including entity representatives as defined under chapter 388-76 WAC)))~~ applicants must complete basic training ~~((and demonstrate competency))~~ before ~~((operating an))~~ licensure of the adult family home.

(2) Adult family home entity representatives and resident managers must complete basic training and demonstrate competency before ~~((providing services in an))~~ assuming the duties of the position in the adult family home.

(3) Caregivers or long-term care workers in adult family homes must complete basic training within one hundred twenty days of ~~((when they begin providing hands-on personal care or within one hundred twenty days of September 1, 2002, whichever is later))~~ employment. Until competency in the basic training has been demonstrated, caregivers may not provide hands-on personal care without ~~((indirect))~~ direct supervision. Until completion of the basic training long-term care workers may not provide hands-on, personal care without direct supervision.

Boarding homes

(4) Boarding home administrators (or their designees), except administrators with a current nursing home administrator license, must complete basic training ~~((and demonstrate competency))~~ within one hundred twenty days of employment ~~((or within one hundred twenty days of September 1, 2002, whichever is later)).~~

(5) Caregivers or long-term care workers must complete basic training within one hundred twenty days of ~~((when they begin providing hands-on personal care or within one hundred twenty days of September 1, 2002, whichever is later))~~ employment. Until competency in the basic training has been demonstrated, caregivers may not provide hands-on personal care without direct supervision. Until completion of the basic training, long-term care workers may not provide hands-on personal care without direct supervision.

NEW SECTION

WAC 388-112-0076 What long-term care workers are exempt from the basic training requirement? The fol-

lowing long-term care workers are exempt from the basic training requirement:

(1) A person employed as a long-term care worker on December 31, 2011, who completed prior to January 7, 2012, the basic training requirements in effect on the date of his or her hire;

(2) A person employed as a long-term care worker on December 31, 2011, who completes within one hundred twenty days of hire, the basic training requirements in effect on the date of his or her hire;

(3) A person previously employed as a long-term care worker prior to December 31, 2011, who completed prior to January 7, 2012, the basic training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point during the calendar year 2011;

(4) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;

(5) Nursing assistants-certified under chapter 18.88A RCW;

(6) Certified counselors under chapter 18.19 RCW;

(7) Speech language pathologists or audiologists under chapter 18.35 RCW;

(8) Occupational therapists under chapter 18.59 RCW;

(9) Physical therapists under chapter 18.74 RCW;

(10) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 CFR, Part 483.35; and

(11) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010.

NEW SECTION

WAC 388-112-0078 What DSHS-developed curriculum may be used in the population specific component of the basic training? Homes or providers may use the following DSHS-developed curriculum to meet all or some of the population specific component of basic training depending on the needs of the population served:

(1) Dementia specialty training;

(2) Mental health specialty training; and

(3) Developmental disabilities specialty training.

NEW SECTION

WAC 388-112-0079 What are the requirements for using basic training to meet the specialty training requirements as described in WAC 388-112-0385, 388-112-0390 and 388-112-0395 When basic training is used to meet the specialty training requirements:

(1) It must include the department developed competencies and learning objectives as described in WAC 388-112-0385, 388-112-0390, or 388-112-0395. Homes or providers may enhance the specialty training component by adding additional competencies, learning objectives, content, or activities. If the department approves the enhancements and an increased number of training hours, the worker's training hours will apply to the seventy hour training requirement.

(2) Long-term care workers must take and pass a department competency test to meet the licensing requirements for

adult family homes and boarding homes for all specialty training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0080 What is modified basic training for residential long-term care training? Modified basic training for residential long-term care training is a subset of the basic training curriculum designed for certain health care workers defined in WAC 388-112-0105, whose previous training includes many of the outcomes taught in the full basic training. DSHS must approve modified basic training curricula.

NEW SECTION

WAC 388-112-0081 What topics may the training on young adults with physical disabilities include? The training on young adults with physical disabilities may include all of the competencies and learning objectives under WAC 388-112-0083 for the following topics:

- (1) Introduction to physical disabilities;
- (2) Common physical disabilities and ability limitations;
- (3) Supporting residents living with chronic conditions;
- (4) Independent living and resident-directed care; and
- (5) Social connections and sexual needs of adults living with disabilities.

NEW SECTION

WAC 388-112-0083 What are the competencies and learning objectives for the training on young adults with physical disabilities? The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on young adults with physical disabilities. Learning objectives are associated with each competency.

(1) Regarding the competency on young adults with physical disabilities, work effectively with young adults with physical disabilities based upon a basic understanding of disability:

- (a) Identify basic information regarding physical disabilities, injuries, and illnesses that are more common in young adults;
- (b) Describe the impact of changing and fluctuating abilities;
- (c) Identify stereotypes, biases, and misconceptions regarding the perception of young adults with physical disabilities;
- (d) Describe how biases, stereotypes, and misconceptions can influence care to young adults with physical disabilities;
- (e) Identify and explain the Americans with Disabilities Act and rights for adults with physical disabilities; and
- (f) Describe the value of personalizing care and support to the specific resident with a disability.

(2) Regarding the competency on common physical disabilities and ability limitations, provide individualized care based upon a basic understanding of common physical disabilities and their impact on functioning:

(a) Describe common physical disabilities, including paraplegia and quadriplegia, diabetes, multiple sclerosis, and pulmonary disease.

(b) Describe the characteristics and functional limitations of residents with these specific disabilities.

(3) Regarding the competency on supporting residents living with chronic conditions, provide appropriate care by recognizing chronic secondary conditions that impact functioning:

(a) Identify how common chronic medical conditions affect physical disability;

(b) Describe how chronic medical conditions influence and impact care for a young resident with a physical disability;

(c) Describe how to support a resident with a physical disability and multiple chronic conditions; and

(d) Describe how to support the resident's dignity while providing personal care.

(4) Regarding the competency on independent living and resident-directed care, support independent living and self-determination for the resident living with a disability:

(a) Define the independent living philosophy and describe what it might look like;

(b) Describe barriers to independent living, including accessibility and attitudes;

(c) Describe ways to support independent living and self-determination with the resident living with a disability;

(d) Describe resident-directed support;

(e) Identify ways to promote resident-directed support; and

(f) Identify resources that promote independence and self-determination for a resident living with a disability.

(5) Regarding the competency of social connections and sexual needs of young adults living with a physical disability, provide optimum support to a resident living with a disability in his or her expression of social and sexual needs:

(a) Describe and explain the importance of full, appropriate, and equal participation of resident's living with a physical disability;

(b) Identify ways to support social connections and activities;

(c) Describe and explain the importance of honoring the resident as a sexual being with diverse sexual needs, desires, and orientation; and

(d) Identify ways to support expression of sexual needs in a respectful, professional, and confidential manner.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0085 What knowledge and skills must be included in modified basic training for residential long-term care training, is challenge testing available, and what exemptions apply? (1) Modified basic training must include all of the learning outcomes and competencies published by DSHS for the following core knowledge and skills:

(a) Resident rights, including mandatory reporting requirements;

(b) Medication assistance regulations;

(c) Nurse delegation regulations;

(d) Assessment and observations in home and community settings;

(e) Documentation in home and community settings;

(f) Service planning in home and community care settings;

(g) Resource information, including information on continuing education; and

(h) Self-directed care regulations for home care.

(2) The modified basic training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration.

(3) Passing the DSHS competency test is required for successful completion of modified basic training as provided in WAC 388-112-0290 through 388-112-0315.

(4) For licensed adult family home providers and employees, successfully completing modified basic training includes passing the safe food handling section or obtaining a valid food handler permit.

(5) Individuals may take the department's challenge test instead of the required training. If a person does not pass a challenge test on the first attempt, they may not re-take the challenge test and must attend the class.

(6) Modified basic training may be taken, instead of the full basic training, by a person who can document that they have successfully completed training as a registered or licensed practical nurse, certified nursing assistant, physical therapist, occupational therapist, or medicare-certified home health aide.

NEW SECTION

WAC 388-112-0088 What topics may the training on aging and older adults include? Training on aging and older adults may include all of the competencies and learning objectives under WAC 388-112-0091 for the following core knowledge and skills:

(1) Introduction to aging;

(2) Age-associated physical changes;

(3) Cultural impacts on aging;

(4) Ageism and supporting resident dignity;

(5) Supporting residents living with a chronic condition;

(6) Dealing with death, grief, and loss; and

(7) Supporting health and wellness.

NEW SECTION

WAC 388-112-0091 What are the competencies and learning objectives for training on aging and older adults? The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on aging and older adults. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to aging, draw upon a basic understanding of the aging process and demonstrate awareness of the unique needs of older adults:

(a) Describe basic information on the aging process, including the difference between age-related changes and a disease process;

(b) List typical changes that occur with aging;

(c) Identify common stereotypes, biases, myths, and misconceptions regarding aging, ageism, and older adults;

(d) Describe how ageism, biases, myths, and misconceptions can influence care to older residents;

(e) Describe how aging affects the resident's needs and behaviors; and

(f) Describe the value of adapting caregiving to the age-related concerns of the resident.

(2) Regarding the competency on age-associated physical changes, provide individualized care by understanding physical changes that are experienced in aging:

(a) Identify common physical changes experienced in the aging process;

(b) Describe common sensory changes that occur in aging and their impact on an older adult's activities;

(c) Describe the difference between age-associated physical changes versus a disease process; and

(d) Describe how age-related physical changes can impact functioning and the ability to perform personal care.

(3) Regarding the competency on cultural impacts of aging, provide culturally compassionate care by utilizing a basic understanding of issues related to culture and aging:

(a) Describe how race/ethnicity, poverty, and class influence the aging process;

(b) Describe how race/ethnicity, poverty, and class influence an older adult's help-seeking behavior; and

(c) Describe a culturally sensitive approach to working with older adults that demonstrates shared decision-making and mutual respect.

(4) Regarding the competency on ageism and supporting resident dignity, overcome ageism and support resident dignity by understanding stereotypes and myths regarding aging:

(a) Describe the concept of "ageism" and its possible impact on working with older adults;

(b) Identify his or her perceptions about aging and how these perceptions may contribute to "ageism";

(c) Describe how "ageism" can influence resident dignity; and

(d) Describe strategies for overcoming "ageism" and supporting resident dignity.

(5) Regarding the competency on supporting residents living with chronic medical conditions, provide appropriate care by recognizing how chronic conditions impact functioning:

(a) Describe how chronic medical conditions can influence and impact care for older adults;

(b) Describe strategies for working with an older adult with multiple chronic medical conditions;

(c) Describe proactive ways to support an older adult living with chronic medical conditions; and

(d) Describe how to help support the older adult's dignity while providing care.

(6) Regarding the competency on dealing with death, grief and loss, respond appropriately to a resident experiencing loss:

(a) Describe common examples of losses encountered in the aging process;

(b) Describe common reactions to loss of significant roles;

(c) Describe strategies for dealing with loss;

(d) Describe the value of promoting social engagement for the older adult;

(e) Identify strategies and opportunities for promoting social engagement; and

(f) Identify actions and resources that can be used to help an older adult work through feelings of grief and loss.

(7) Regarding the competency on supporting optimum health and wellness, support the optimum health and wellness of older adults:

(a) Identify key factors that support resident health and wellness;

(b) Identify strategies for promoting resident optimum health while aging;

(c) Identify strategies and opportunities to support an older adult to engage in healthy life style choices; and

(d) Describe his or her role in promoting optimum health and wellness for older residents.

NEW SECTION

WAC 388-112-0092 What learning objectives may be included in the curriculum for young adults with physical disabilities and/or for aging and older adults? Homes or providers may develop a curriculum for young adults with physical disabilities and/or for aging and older adults using the learning objectives in WACs 388-112-0083 and WAC 388-112-0091 or any other relevant learning objectives for these populations and submit it for approval by the department.

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.

NEW SECTION

WAC 388-112-0106 Who is required to obtain certification as a home care aide, and when? Unless exempt under WAC 246-980-070, the following must be certified by the department of health as a home care aide within the required timeframes:

(1) All long-term care workers, within one hundred and fifty days of hire;

(2) Adult family home applicants, before licensure;

(3) Adult family home entity representatives and resident managers, before assuming the duties of the position; and

(4) Boarding home administrators or their designee within one hundred and fifty days of hire.

NEW SECTION

WAC 388-112-0107 Can an adult family home or boarding home, employ an individual to work as a long-term care worker if the individual has not completed the training and/or certification requirements? An adult family home or boarding home cannot employ an individual to work as a long-term care worker if the individual has previously worked as a long-term care worker and has not completed applicable training and/or certification requirements within the specific time limits. Such individual may be employed by an adult family home or boarding home to work

as a long-term care worker only after applicable training and/or certification requirements are met. The department is authorized by RCW 70.128.160 to take enforcement action against an adult family home provider for noncompliance related to training and/or certification requirements. The department is authorized by RCW 18.20.190 to take enforcement action against a boarding home provider for noncompliance related to training and/or certification requirements.

NEW SECTION

WAC 388-112-0108 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved training entity who has provided or verified that a total of seventy-five hours of training have occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. Only a DSHS or training partnership seventy-five hour training certificate can be submitted by a long-term care worker applying to the department of health for a home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a DSHS certificate issued by an approved training entity who has provided all twelve hours of continuing education training. If all twelve hours of continuing education were not provided by the same training entity, then an approved training entity must verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing education. Only a DSHS or a training partnership twelve-hour continuing education certificate can be submitted by a certified home care aide applying to the department of health for recertification.

(4) The long-term care worker and certified home care aide must retain the original seventy-five hour training certificate and any twelve-hour continuing education training certificates as long as they are employed and up to three years after termination of employment. Training entities must keep a copy of the certificates on file for six years.

AMENDATORY SECTION (Amending WSR 06-16-072, filed 7/28/06, effective 8/28/06)

WAC 388-112-0110 What is specialty training and who is required to take specialty training? (1) Specialty or "special needs" training (~~(including caregiver specialty training)~~) provides instruction in caregiving skills that meet the special needs of people living with mental illness, dementia, or developmental disabilities. Specialty trainings are different for each population served and are not interchangeable. Specialty training may be integrated with basic training if the complete content of each training is included. DSHS must approve specialty training curricula for managers, caregivers,

and ~~((caregivers, except for adult family home caregiver specialty training))~~ long-term care workers.

(2) Manager specialty training is required for boarding home administrators (or designees), adult family home applicants or providers ~~((and))~~, resident managers, and entity representatives who are affiliated with homes that serve residents who have one or more of the following special needs: developmental disabilities, dementia, or mental health. The managers described in subsection (2) of this section must take one or more of the following specialty trainings:

(a) Developmental disabilities specialty training, under WAC 388-112-0120 ~~((is the required training on that specialty for adult family home providers and resident managers, and for boarding home administrators (or designees)))~~;

(b) Manager dementia specialty training, under WAC 388-112-0125 ~~((;))~~; and

(c) Manager mental health specialty training, under WAC 388-112-0135 ~~((are the required trainings on those specialties for adult family home providers and resident managers, and for boarding home administrators (or designees)))~~.

(3) ~~((Caregiver specialty training for boarding homes))~~ All caregivers and long-term care workers including those who are exempt from basic training and who work in a boarding home or adult family home, serving residents/clients with the special needs described in subsection (2) of this section, must take caregiver or long-term care worker specialty training. The caregiver or long-term care worker specialty training is as follows:

(a) Developmental disabilities specialty training, under WAC 388-112-0120 ~~((is the required training on that specialty for boarding home caregivers))~~.

(b) Caregiver or long-term care worker dementia specialty training, under WAC 388-112-0130 ~~((;))~~; and ~~((caregiver))~~

(c) Caregiver or long-term care worker mental health specialty training, under WAC 388-112-0140 ~~((are the required trainings on those specialties for boarding home caregivers))~~.

(4) ~~((Caregiver specialty training for adult family homes: The provider or resident manager who has successfully completed the manager specialty training, or a person knowledgeable about the specialty area, trains adult family home caregivers in the specialty needs of the individual residents in the adult family home, and there is no required curriculum))~~ Specialty training may be used to meet the requirements for the basic training population specific component if completed within one hundred and twenty days of employment.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0115 What specialty training ~~((including caregiver specialty training))~~ is required if a resident has more than one special need? If ~~((an individual))~~ a resident has needs in more than one of the special needs areas, the home must determine which of the specialty trainings will most appropriately address the overall needs of the person and ensure that the specialty training that addresses the overall needs is completed as required. If additional training beyond the specialty training is needed to meet

all of the resident's needs, the home must ensure that additional training is completed.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0120 What ~~((knowledge and skills))~~ topics must ~~((manager and caregiver))~~ developmental disabilities specialty trainings include? (1) ~~((Manager and caregiver developmental disabilities specialty trainings))~~ Developmental disabilities specialty training must include all of the ~~((learning outcomes and competencies published by DSHS))~~ competencies and learning objectives described under WAC 388-112-0122 for the following ~~((core knowledge and skills))~~ topics:

(a) Overview of developmental disabilities;

(b) Values of service delivery;

(c) Effective communication;

(d) Introduction to interactive planning;

(e) Understanding behavior;

(f) Crisis prevention and intervention; and

(g) Overview of legal issues and ~~((individual))~~ resident rights.

(2) For adult family homes, the division of developmental disabilities (DDD) will provide in-home technical assistance to the adult family home upon admission of the first resident eligible for services from DDD and, thereafter, as determined necessary by DSHS.

~~((3) The manager and caregiver developmental disabilities specialty training learning outcomes and competencies may be obtained from the DSHS division of developmental disabilities.)~~

NEW SECTION

WAC 388-112-0122 What are the competencies and learning objectives for the departmental disability specialty training? The developmental disabilities specialty competencies describe the behavior and skills a caregiver or long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on an overview of developmental disabilities, draw upon a basic understanding of developmental disabilities and demonstrate awareness of the unique needs of residents with developmental disabilities:

(a) Define developmental disability and describe intellectual disability, cerebral palsy, epilepsy, and autism;

(b) Identify common myths and misconceptions about developmental disabilities;

(c) Describe the negative effects of using labels such as "retarded" or "handicapped" to represent people and positive alternatives; and

(d) Differentiate between developmental disabilities and mental illness.

(2) Regarding the competency on values of service delivery, promote and support a resident's self-determination:

(a) Identify the principle of normalization and its significance to the work of caregivers or long-term care workers;

(b) Explain how understanding each resident's needs leads to better services and supports, which lead to better outcomes for the resident;

(c) Describe each of the residential services guidelines and identify how the values represented in the guidelines are important in the lives of people with developmental disabilities;

(d) Describe the principle of self-determination; and

(e) Identify positive outcomes for residents with developmental disabilities when they are connected to the community they live in.

(3) Regarding the competency on communication, provide culturally compassionate and individualized care by utilizing a basic understanding of a resident or resident's history, experience, and cultural beliefs:

(a) List the key elements of effective communication;

(b) Describe the impact communication has on the lives of residents with developmental disabilities;

(c) Explain the impact a caregiver's or long-term care worker's behavior can have on eliciting communication;

(d) Explain the impact of a resident's physical environment on their ability to communicate;

(e) Describe methods of communication, other than verbal, that caregivers or long-term care workers might use when supporting residents with developmental disabilities; and

(f) List tips for communication with residents with developmental disabilities.

(4) Regarding the competency on interactive planning, use person-centered and interactive planning when working with residents with developmental disabilities:

(a) Identify the benefits of using a person-centered planning process rather than the traditional planning methods used to develop supports for people with developmental disabilities;

(b) Identify key elements involved in interactive planning;

(c) Identify ways to include people with developmental disabilities and their families in the planning process; and

(d) Identify the required planning document for the setting and list ways to have a positive impact on the plan.

(5) Regarding the competency on challenging behaviors, use a problem solving approach and positive support principles when dealing with challenging behaviors:

(a) Identify the essential components of the concept of positive behavioral supports;

(b) Define the "ABCs" and describe how to use that process to discover the function of behavior;

(c) Explain why it is critical to understand the function of behavior before developing a support plan;

(d) Define reinforcement and identify ways to utilize it as a tool to increase a resident's ability to be successful;

(e) Identify the problems with using punishment to manage behavior;

(f) Identify behavior management techniques that are not allowed under DSHS policies and applicable laws;

(g) Identify factors that can positively and negatively influence the behavior of residents with developmental disabilities; and

(h) List steps to be taken when crisis or danger to people is immediate.

(6) Regarding the competency on crisis prevention, support a resident experiencing a crisis and get assistance when needed:

(a) Identify behaviors in people with developmental disabilities that might constitute "normal stress";

(b) Define "crisis";

(c) Differentiate the behaviors a resident who is in crisis exhibits from mental illness;

(d) Identify the principles of crisis prevention and intervention;

(e) Identify what types of situations require outside assistance and at what point it becomes necessary; and

(f) Name several ways to provide support to a resident experiencing a crisis.

(7) Regarding the competency on legal rights, promote and protect the legal and resident rights of residents with developmental disabilities:

(a) Explain how the rights of residents with disabilities compare to those of the general population;

(b) List the rights of residents living in adult family homes and boarding homes and the laws that support those rights;

(c) Describe how caregivers or long-term care workers can help residents to exercise their rights;

(d) List ways a caregiver or long-term care worker must safeguard each resident's confidentiality;

(e) Describe the three types of guardianship an resident with developmental disabilities might be subject to and why;

(f) List less restrictive alternatives to guardianship;

(g) Describe the responsibilities, powers, and limitations of a guardian; and

(h) Describe the relationship between caregivers or long-term care workers and guardians/families.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0125 What knowledge and skills must manager dementia specialty training include? (1) Manager dementia specialty training must include all the learning (~~outcomes~~) objectives and competencies published by DSHS for the following core knowledge and skills:

(a) Introduction to the dementias;

(b) Differentiating dementia, depression, and delirium;

(c) Caregiving goals, values, attitudes and behaviors;

(d) Caregiving principles and dementia problem solving;

(e) Effects of cognitive losses on communication;

(f) Communicating with people who have dementia;

(g) Sexuality and dementia;

(h) Rethinking "problem" behaviors;

(i) Hallucinations and delusions;

(j) Helping with activities of daily living (ADLs);

(k) Drugs and dementia;

(l) Working with families;

(m) Getting help from others; and

(n) Self-care for caregivers or long-term care workers.

~~((2) The manager dementia specialty training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration.))~~

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0130 What ~~((knowledge and skills))~~ topics must caregiver or long-term care worker dementia specialty training include? ~~((+))~~ Caregiver or long-term care worker dementia specialty training must include all the ~~((learning outcomes and competencies published by DSHS))~~ competencies and learning objectives under WAC 388-112-0132 for the following ~~((core knowledge and skills))~~ topics:

- ~~((a))~~ (1) Introduction to the dementias;
 - ~~((b))~~ (2) Dementia, depression, and delirium;
 - ~~((c) Resident based caregiving;~~
 - ~~((d))~~ (3) Dementia caregiving principles;
 - ~~((e))~~ (4) Communicating with people who have dementia;
 - ~~((f))~~ (5) Sexuality and dementia;
 - ~~((g))~~ (6) Rethinking "problem" behaviors;
 - ~~((h))~~ (7) Hallucinations and delusions;
 - ~~((i))~~ (8) Helping with activities of daily living (ADLs);
- and
- ~~((j))~~ (9) Working with family and friends.
- ~~((2) The learning outcomes and competencies for caregiver dementia training may be obtained from the DSHS aging and adult services administration.))~~

NEW SECTION

WAC 388-112-0132 What are the competencies and learning objectives for the caregiver or long-term care worker dementia specialty training? The dementia specialty competencies describe the behavior and skills a caregiver or long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to dementia, draw upon a basic understanding of dementia and demonstrate awareness of the unique needs of residents with dementia:

- (a) Identify basic information on dementia, including causes and treatments;
- (b) Describe how dementia affects resident needs and behaviors;
- (c) List typical behaviors and symptoms a resident with dementia would most likely experience;
- (d) Describe the differences that might be seen based on the type of dementia a resident has.

(2) Regarding the competency on dementia, depression, and delirium, respond appropriately to residents who have dementia, delirium, and/or depression:

- (a) Identify and differentiate between dementia, depression, and delirium;
- (b) Describe common symptoms of dementia, depression, and delirium and list possible causes;
- (c) Compare and contrast among common symptoms of dementia, depression, and delirium; and

(d) Identify what symptom changes require immediate professional attention and how to access professional help.

(3) Regarding the competency on dementia caregiving principles, incorporate current best practices when providing dementia care:

- (a) Identify current best practices in dementia caregiving;
- (b) Describe current best practices in caregiving;
- (c) Demonstrate the ability to support the resident's strengths using caregiving techniques to support those strengths; and
- (d) Describe how to use cultural and life information to develop and enhance care provided to residents with dementia.

(4) Regarding the competency on communicating with people who have dementia, communicate in a respectful and appropriate manner with residents with dementia:

- (a) Describe common dementia-caused cognitive losses and how those losses can affect communication;
- (b) Identify appropriate and inappropriate nonverbal communication skills and discuss how each impacts a resident's behavior;
- (c) Describe how to effectively initiate and conduct a conversation with a resident who has dementia; and
- (d) Identify communication strategies to work with residents who have dementia.

(5) Regarding the competency on sexuality and dementia, protect a resident or resident's rights when dealing with issues of sexuality and appropriately manage unwanted or inappropriate sexual behavior:

- (a) Identify ways in which dementia affects sexuality and sexual behaviors;
- (b) Identify a resident's rights as they relate to sexuality and sexual behavior and discuss ways to support these rights; and
- (c) Describe how to respond using nonjudgmental caregiving skills to residents' appropriate and inappropriate sexual behaviors.

(6) Regarding the competency on dealing with challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

- (a) Describe how to use a problem-solving method to intervene in challenging behaviors or situations;
- (b) Describe some possible common causes of challenging behaviors, including aggression, catastrophic reactions, wandering, and inappropriate sexual behavior and explore their causes;
- (c) Describe how to implement a problem-solving process when working with a resident who has dementia; and
- (d) Describe how to respond appropriately to a resident who is expressing a challenging behavior.

(7) Regarding the competency on hallucinations and delusions, respond appropriately when a resident is experiencing hallucinations or delusions:

- (a) Define and differentiate between hallucinations and delusions;
- (b) List different types of dementia-related hallucinations; and

(c) Describe how to appropriately and safely respond to a resident with dementia who is experiencing hallucinations and delusions.

(8) Regarding the competency on activities of daily living, make activities of daily living pleasant and meaningful:

(a) Identify and describe ways in which to support making activities of daily living pleasant for residents with dementia; and

(b) Describe strategies that support meaning and utilize an individualized approach when assisting a resident with dementia with activities of daily living.

(9) Regarding the competency on working with family and friends, respond respectfully, appropriately, and with compassion when interacting with families and friends of residents with dementia:

(a) Identify common concerns friends and family have when a loved one has dementia;

(b) Describe ways to be supportive and compassionate in interactions with family and friends of the resident with dementia;

(c) Identify how to find local resources for family support needs; and

(d) Describe a method to gather cultural and life history information from a resident and/or representative(s).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0135 What knowledge and skills must manager mental health specialty training include? (1) Manager mental health specialty training must include all the learning ~~((outcomes))~~ objectives and competencies published by DSHS for the following core knowledge and skills:

(a) Introduction to mental illness;

(b) Culturally compassionate care;

(c) Respectful communications;

(d) Understanding mental illness - major mental ~~((disorders))~~ illnesses;

(e) Understanding mental illness - baseline, decompensation, and relapse planning; responses to hallucinations and delusions;

(f) Understanding and interventions for behaviors perceived as problems;

(g) Aggression;

(h) Suicide;

(i) Medications;

(j) Getting help from others; and

(k) Self-care for caregivers or long-term care workers.

~~((2) The manager mental health specialty training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration.))~~

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0140 What ~~((knowledge and skills))~~ topics must the caregiver or long-term care worker mental health specialty training include? (1) ~~((Caregiver))~~ The caregiver or long-term care worker mental health specialty training must include all the ~~((learning outcomes and competencies published by DSHS))~~ competencies under WAC 388-

112-0142 for the following ~~((core knowledge and skills))~~ topics:

(a) Understanding major mental ~~((disorders))~~ illnesses;

(b) ~~((Individual))~~ Resident background, experiences and beliefs;

(c) ~~((Responding to))~~ Respectful communication;

(d) Creative approaches to challenging behaviors;

(e) Decompensation~~((;))~~ and relapse~~((;))~~ planning;

(f) Responding to hallucinations and delusions;

~~((d) Interventions for behaviors perceived as problems;~~

~~((e))~~ (g) Crisis intervention and dealing with aggression; and

~~((f))~~ (h) Suicide prevention.

~~((2) The learning outcomes and competencies for caregiver mental health training may be obtained from the DSHS aging and adult services administration.))~~

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

NEW SECTION

WAC 388-112-0142 What are the competencies and learning objectives for the caregiver or long-term care worker mental health specialty training? The mental health specialty competencies describe the behavior and skills a caregiver or long-term care worker should exhibit when working with residents. Learning objectives are associated with each competency.

(1) Regarding the competency on understanding major mental illnesses, draw upon a basic understanding of mental illness and demonstrate awareness of the unique needs of residents with mental illness:

(a) Define and describe main symptoms of depression, bipolar schizophrenia, and anxiety disorder, and list treatment options for each;

(b) Describe causes of mental illness;

(c) Describe the progression of mental illness;

(d) Identify common myths and misinformation about mental illness; and

(e) Define stigma and identify how stigma can impact caregiving.

(2) Regarding the competency on resident background, experiences and beliefs, provide culturally compassionate and individualized care by utilizing a basic understanding of the resident's history, experience, and cultural beliefs:

(a) Demonstrate a method for gathering cultural, lifestyle, and personal value information from a resident;

(b) Identify why obtaining cultural information from a resident is important;

(c) Describe the importance of being sensitive to cultural differences when providing care;

(d) Differentiate how cultural beliefs and symptoms may be misinterpreted as mental illness; and

(e) Identify how the caregiver's or long-term care worker's culture might affect caregiving.

(3) Regarding the competency on communication and mental illness, communicate respectfully and appropriately with residents with a mental illness:

(a) Identify what is considered respectful and disrespectful communication when interacting with a resident with a mental illness;

(b) Identify what is judgmental communication toward a resident with a mental illness and ways to ensure communication is nonjudgmental;

(c) Identify examples of verbal and nonverbal communication and describe how each impacts communication; and

(d) Describe how to effectively initiate and conduct a respectful conversation with a resident who has a mental illness.

(4) Regarding the competency on creative approaches to challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

(a) Define and differentiate between inappropriate learned behaviors and symptoms of a mental illness;

(b) Identify possible common causes of challenging behaviors in a resident with a mental illness;

(c) Differentiate how challenging behaviors may be misinterpreted as mental illness; and

(d) Describe intervention strategies that can be used to reduce or prevent challenging behaviors.

(5) Regarding the competency on responding to de-compensation and relapse, respond appropriately when a resident is decompensating to help prevent a relapse:

(a) Define the terms baseline, de-compensation, and relapse;

(b) Identify common causes and symptoms of de-compensation and relapse;

(c) Describe the term "relapse plan" and review an example of a relapse plan; and

(d) Identify how a caregiver or long-term care worker can support and use the relapse plan.

(6) Regarding the competency on responding to hallucinations and delusions, respond appropriately to a resident experiencing hallucinations or delusions:

(a) Define the terms hallucination and delusion;

(b) Identify common triggers (including stress) of delusions and hallucinations;

(c) Identify and describe appropriate intervention strategies for a resident experiencing a hallucination or delusion; and

(d) Describe how to accurately document a resident's behavioral symptoms, interventions, and outcomes.

(7) Regarding the competency on crisis intervention and dealing with aggression, intervene early when dealing with aggressive behavior to increase emotional stability and ensure safety:

(a) Define the term aggression;

(b) Identify the difference between aggressive behaviors and aggressive feelings;

(c) List de-escalation "do's" and "don'ts" as they relate to working with a resident expressing aggressive behavior;

(d) Describe appropriate de-escalation techniques when working with a resident expressing aggressive behavior; and

(e) Differentiate between nonimmediate and immediate danger and at what point additional assistance may be needed.

(8) Regarding the competency on suicide prevention, respond appropriately to a resident at risk of suicide:

(a) Identify and list signs a resident is possibly suicidal;

(b) Describe how to respond appropriately to a resident experiencing suicidal thoughts, including:

(i) How, where, and when to refer a resident who is experiencing suicidal thoughts and/ or planning; and

(ii) Methods to keep a suicidal resident safe and ensure the safety for others.

(c) Describe strategies to help cope with a resident's suicide.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0145 ((Is)) Who is required to complete competency testing ((required)) for specialty training((, including caregiver specialty training))? Passing the DSHS competency test, as provided under WAC 388-112-0295 through 388-112-0315 is required for successful completion of specialty training for:

(1) All adult family home applicants or providers ((and)), resident managers, ((and for)) entity representatives, caregivers and long-term care workers; and

(2) All boarding home administrators (or designees) ((and caregivers, as provided under WAC 388-112-0290 through 388-112-0315. Competency testing is not required for adult family home)), caregivers and long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0150 Is there a challenge test for specialty training((s)) (including the manager and caregiver or long-term care worker specialty trainings)? There is a challenge test for ((and)) each of the specialty trainings((, including caregiver specialty trainings, except the adult family home caregiver training)). Individuals may take the DSHS challenge test instead of required specialty training. A person who does not pass a challenge test on the first attempt must attend the class.

NEW SECTION

WAC 388-112-0152 Is competency testing required for population specific trainings on young adults with physical disabilities, or aging and older adults? No, there is no competency testing required for the population specific trainings on young adults with physical disabilities, or aging and older adults.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0155 What documentation is required for successful completion of specialty training((, including caregiver specialty training))? Specialty training((, including caregiver specialty training,)) as applicable, must be documented by a certificate or transcript of successful completion of training, issued by the instructor or training entity((s)) that includes:

(1) The ((trainee's)) name of the trainee;

- (2) The name of the training;
- (3) The number of hours of the training;
- (4) The name and identification number of the home or training entity giving the training;
- ~~((4))~~ (5) The instructor's name and signature; and
- ~~((5))~~ (6) The date(s) of training.
- ~~((6))~~ The trainee must be given an original certificate. The home must keep a copy of the certificate on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for boarding homes).

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0160 Who is required to complete manager specialty training, and when? Adult family homes

(1) Adult family home applicants, providers ~~((including))~~, entity representatives ~~((as defined under chapter 388-76 WAC))~~ and resident managers must complete manager specialty training and demonstrate competency before ~~((admitting and serving residents))~~ the home is licensed or before a new resident manager is hired in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(2) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete manager specialty training and demonstrate competency.

Boarding homes

(3) If a boarding home serves one or more residents with special needs, the boarding home administrator (or designee) must complete manager specialty training and demonstrate competency within one hundred twenty days of employment ~~((or within one hundred twenty days of September 1, 2002, whichever is later))~~. A boarding home administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train ~~((their facility caregivers))~~ the facility's long-term care workers in a ~~((caregiver))~~ specialty.

(4) If a resident develops special needs while living in a boarding home, the boarding home administrator (or designee) has one hundred twenty days to complete manager specialty training and demonstrate competency. A boarding home administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train ~~((their facility caregivers))~~ the facility's long-term care workers in a ~~((caregiver))~~ specialty.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0165 Who is required to complete caregiver and long-term care worker specialty training, and when? ((Adult family homes))

~~((If an adult family home serves one or more residents with special needs, all caregivers must receive training regarding the specialty needs of individual residents in the~~

~~home. The provider or resident manager knowledgeable about the specialty area may provide this training.))~~

((Boarding homes))

If a boarding home or adult family home serves one or more residents with special needs, caregivers and long-term care workers in those settings must complete ~~((caregiver))~~ specialty training and demonstrate competency.

(1) If the ~~((caregiver))~~ specialty training is integrated with basic training, caregivers and long-term care workers must complete the ~~((caregiver))~~ specialty training within one hundred twenty days of ~~((when they begin providing hands-on personal care to a resident having special needs or within one hundred twenty days of September 1, 2002, whichever is later))~~ hire.

(2) ~~((If the caregiver specialty training is not integrated with basic training,))~~ Caregivers and long-term care workers who are exempt from basic training must complete the relevant ~~((caregiver))~~ specialty training within ninety days of ~~((completing basic training))~~ hire.

(3) Until competency in the ~~((caregiver))~~ specialty training has been demonstrated, caregivers and long-term care workers may not provide hands-on personal care to a resident with special needs without direct supervision in a boarding home or in an adult family home.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0195 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training, and when? ((Adult family homes))

(1) Before performing any delegated nursing task, caregivers and long-term care workers in adult family ~~((home staff))~~ homes and boarding homes must:

(a) Successfully complete DSHS-designated nurse delegation core training, "Nurse Delegation for Nursing Assistants";

(b) Be a:

(i) Certified home care aide and a nursing assistant registered; or

(ii) Nursing assistant certified under chapter 18.88A RCW; ~~((and))~~ or

(iii) If exempt from the home care aide certification, become a nursing assistant registered and complete the core competencies of basic training.

~~((c))~~ If a nursing assistant registered, successfully complete basic training.

Boarding homes))

(2) Before performing ~~((any delegated nursing task, boarding home staff))~~ the task of insulin injections, caregivers and long-term care workers in adult family homes and boarding homes must:

(a) ~~((Successfully complete DSHS-designated nurse delegation core training))~~ Meet the requirements in subsections (1)(a) and (b) of this section; and

(b) ~~((Be a nursing assistant registered or certified under chapter 18.88A RCW; and~~

~~(e) If a nursing assistant registered, successfully complete basic training)) Successfully complete DSHS-designated specialized diabetes nurse delegation training.~~

NEW SECTION

WAC 388-112-0197 Can nurse delegation core and specialized diabetes training occur in the same year as basic training? Nurse delegation core and specialized diabetes training can occur in the same year as basic training if required to be able to perform delegated tasks. If this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards the population specific training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0200 What is continuing education? Continuing education is additional caregiving-related training designed to increase and keep current a person's knowledge and skills. DSHS ~~((does not preapprove))~~ must approve continuing education ((programs or instructors)) curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic. Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0205 Who is required to complete continuing education training, and how many hours of continuing education are required each year? Adult family homes

~~(1) ((Individuals subject to a continuing education requirement))~~ Until June 30, 2012, adult family home providers, entity representatives, resident managers, and long-term care workers must complete ((at least)) ten hours of continuing education each calendar year ((January 1 through December 31)) after the year in which they ((successfully)) complete basic ((or modified basic)) training. If the ten hours of continuing education were completed between January 1, 2012 and June 30, 2012, then the continuing education requirements have been met for 2014.

(2) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110.

(3) If exempt from certification as described in RCW 18.88B.040, all long-term care workers must complete twelve hours of continuing education per calendar year. Continuing education must include one-half hour per year on safe food handling in adult family homes.

Boarding homes

(4) Until June 30, 2012, boarding home administrators (or their designees) and long-term care workers must complete ten hours of continuing education each calendar year

after the year in which they complete basic training. If the ten hours of continuing education were completed between January 1, 2012 and June 30, 2012, then the continuing education requirements have been met for 2012.

(5) Effective July 1, 2012, certified home care aides must complete twelve hours of continuing education each calendar year after obtaining certification as described in department of health WAC 246-980-110 and 246-12-020(3).

(6) If exempt from certification as described in RCW 18.88.040, all long-term care workers must complete twelve hours of continuing education per calendar year. A boarding home administrator with a current nursing home administrator license is exempt from this requirement.

(7) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in WAC 388-112-0207 cannot be paid to provide care after that date and cannot be reinstated as a long-term care worker until they complete the continuing education requirements.

(8) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-112-0207 When must a long-term care worker or certified home care aide complete continuing education? (1) Effective July 1, 2012, all long-term care workers and certified home care aides must complete the continuing education requirements described in WAC 388-112-0205 by their birthday.

(2) For long term care workers who are required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0210 What kinds of training topics ~~((are required for))~~ may be covered in continuing education? Continuing education must be on a topic relevant to the care setting ~~((and)),~~ care needs of residents, ~~((including))~~ or long-term care career development. Topics may include but are not limited to:

- (1) Resident rights;
- (2) Personal care ~~((such as transfers or skin care))~~ services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive resident behavior support;
- (10) Developing or improving resident centered activities;
- (11) Dealing with wandering or aggressive resident behaviors;

- (12) Medical conditions; ~~((and))~~
- (13) In adult family homes, safe food handling; and
- (14) Nurse delegation core and specialized diabetes.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0220 May basic ~~((or modified basic))~~ training be completed a second time and used to meet the continuing education requirement? Retaking basic ~~((or modified basic))~~ training may not be used to meet the continuing education requirement.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0225 May specialty training be used to meet continuing education requirements? Manager specialty training and ~~((caregiver))~~ long-term care worker specialty training, except any specialty training completed through a challenge test, may be used to meet continuing education requirements.

~~((1)) If one or more specialty trainings are completed in the same year as basic or modified basic training, the specialty training hours may be applied toward the continuing education requirement for up to two calendar years following the year of completion of the basic and specialty trainings.~~

~~((2)) If ~~((one or more))~~ a different specialty training ~~((s are))~~ is completed in a different year than the year when basic ~~((or modified basic))~~ training was taken, the specialty training hours may be applied toward the continuing education requirement for the calendar year in which ~~((the))~~ this other specialty training is taken ~~((and the following calendar year))~~.~~

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0230 May nurse delegation core training or nurse delegation specialized diabetes training be used to meet continuing education requirements? Nurse delegation training under WAC 388-112-0175 and 388-112-01961 may be applied toward continuing education requirements for the calendar year in which it is completed.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0235 May residential care administrator training be used to meet continuing education requirements? Residential care administrator training under WAC 388-112-0275 may be used to meet ~~((ten hours of))~~ the continuing education requirements described in WAC 388-112-0205.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0240 What are the documentation requirements for continuing education? (1) The adult family home or boarding home must maintain ~~((documentation))~~

DSHS certificates or transcripts of continuing education including:

- (a) The ~~((trainee's))~~ name of the trainee;
- (b) The title or content of the training;
- (c) The number of hours of the training;
- ~~((d))~~ The instructor's name, name of the home or training entity giving the training, or the name of the video, on-line class, professional journal, or equivalent instruction materials completed; and
- ~~((d))~~ The number of hours of training; and
- (e) The date(s) of training.

(2) The trainee must be given an original DSHS certificate or other documentation of continuing education. The adult family home or boarding home must keep a copy of the certificate on file as described in WAC 388-76-10198 (for adult family homes) and as described in WAC 388-78A-2450 (for boarding homes).

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0255 What is first-aid training? First-aid training is training that meets the guidelines established by the Occupational Safety and Health Administration (OSHA) and ~~((listed))~~ described at www.osha.gov. Under OSHA guidelines, training must include hands-on skills development through the use of mannequins or trainee partners. Topics include:

- (1) General program elements, including:
 - (a) Responding to a health emergency;
 - (b) Surveying the scene;
 - (c) Basic cardiopulmonary resuscitation (CPR);
 - (d) Basic first aid intervention;
 - (e) Standard precautions;
 - (f) First aid supplies; and
 - (g) Trainee assessments.

(2) Type of injury training, including:

- (a) Shock;
- (b) Bleeding;
- (c) Poisoning;
- (d) Burns;
- (e) Temperature extremes;
- (f) Musculoskeletal injuries;
- (g) Bites and stings;
- (h) Confined spaces; and
- (i) Medical emergencies; including heart attack, stroke, asthma attack, diabetes, seizures, and pregnancy.

(3) Site of injury training, including:

- (a) Head and neck;
- (b) Eye;
- (c) Nose;
- (d) Mouth and teeth;
- (e) Chest;
- (f) Abdomen; and
- (g) Hand, finger and foot.

(4) Successful completion of first aid training, following the OSHA guidelines, also serves as proof of the CPR training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0260 What are the CPR and first-aid training requirements? Adult family homes

(1) Adult family home applicants, providers, entity representatives, and resident managers must possess a valid CPR and first-aid card or certificate prior to (~~providing care for residents~~) obtaining a license, and must maintain valid cards or certificates.

(2) Licensed nurses working in adult family homes must possess a valid CPR card or certificate within thirty days of employment and must maintain a valid card or certificate. If the licensed nurse is an adult family home provider or resident manager, the valid CPR card or certificate must be obtained prior to providing care for residents.

(3) Adult family home (~~caregivers~~) long-term care workers must obtain and maintain a valid CPR and first-aid card or certificate:

(a) Within thirty days of beginning to provide care for residents, if the provision of care for residents is directly supervised by a fully qualified (~~caregiver~~) long-term care worker who has a valid first-aid and CPR card or certificate; or

(b) Before providing care for residents, if the provision of care for residents is not directly supervised by a fully qualified (~~caregiver~~) long-term care worker who has a valid first-aid and CPR card or certificate.

Boarding homes

(4) Boarding home administrators who provide direct care, and (~~caregivers~~) long-term care workers must possess a valid CPR and first-aid card or certificate within thirty days of employment, and must maintain valid cards or certificates. Licensed nurses working in boarding homes must possess a valid CPR card or certificate within thirty days of employment, and must maintain a valid card or certificate.

AMENDATORY SECTION (Amending WSR 07-01-045, filed 12/14/06, effective 1/14/07)

WAC 388-112-0270 Who must take the forty-eight hour adult family home residential care administrator training and when? (~~Providers licensed prior to December 31, 2006: Before operating more than one adult family home, the provider (including an entity representative as defined under chapter 388-76 WAC) must successfully complete the department approved forty-eight hour residential care administrator training.~~

~~Prospective providers applying for a license after January 1, 2007: Before a license for an adult family home is granted, the prospective provider~~) All applicants submitting an application for an adult family home license must successfully complete the department approved forty-eight hour residential care administrator training for adult family homes before a license for an adult family home will be issued.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0295 What components must competency testing include? Competency testing must include the following components:

(1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate for the training;

(2) Written evaluation to show level of comprehension and knowledge of the learning (~~outcomes~~) objectives for the training; and

(3) A scoring guide for the tester with clearly stated criteria and minimum proficiency standards.

(4) Instructors who conduct competency testing must have experience or training in assessing competencies.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0300 What training must include the DSHS-developed competency test? (~~Basic, modified basic, manager specialty, caregiver specialty, and nurse delegation core training must include the DSHS-developed competency test~~) The following trainings must include the DSHS-developed competency test:

(1) Manager dementia specialty training;

(2) Manager mental health specialty training;

(3) Long-term care worker dementia specialty training;

(4) Long-term care worker mental health specialty training;

(5) Developmental disabilities specialty training;

(6) Nurse delegation core training; and

(7) Nurse delegation specialized diabetes training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0315 How many times may a competency test be taken? (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered. (~~Licensed adult family providers and employees who fail the food handling section of the basic training competency test a second time, must obtain a valid food worker permit.~~)

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0320 What trainings must be taught with a curriculum approved by DSHS? (1) The following trainings must be taught (~~using the DSHS~~) with a curriculum (~~or other curriculum~~) approved by DSHS before use:

(a) Basic training (core and population specific training);

(b) (~~Modified basic~~) Orientation, safety, on-the-job, and continuing education;

(c) Manager mental health, dementia, and developmental disabilities specialty training;

(d) ~~((Caregiver))~~ Long-term care worker mental health, dementia, and developmental disabilities specialty training ~~((in boarding homes))~~; and

(e) Any training that integrates basic training with a ~~((manager or caregiver))~~ specialty training.

(2) The residential care administrator training must use a curriculum approved by DSHS.

(3) The nurse delegation core and diabetes training must use only the DSHS curriculum.

~~(4) ((A curriculum other than the DSHS curriculum must be approved before it is used. An attestation that the curriculum meets all requirements under this chapter will be sufficient for initial approval. Final))~~ Approval will be based on curriculum review, as described under WAC 388-112-0330.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0325 ~~What ((are the minimum components that an alternative curriculum must include in order to be approved))~~ must be submitted to DSHS for curriculum approval? ~~((In order to be approved, an alternative curriculum must at a minimum include:~~

~~(1) All the DSHS-published learning outcomes and competencies for the course;~~

~~(2) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio visual materials, handouts, and books;~~

~~(3) The recommended sequence and delivery of the material;~~

~~(4) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:~~

~~(a) The expected learning outcomes;~~

~~(b) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;~~

~~(c) Practice of skills to increase competency;~~

~~(d) Feedback to the student on knowledge and skills;~~

~~(e) An emphasis on facilitation by the teacher; and~~

~~(f) An integration of knowledge and skills from previous lessons to build skills.~~

~~(5) A list of the sources or references, if any, used to develop the curriculum;~~

~~(6) Methods of teaching and student evaluation for students with limited English proficiency and/or learning disabilities; and~~

~~(7) A plan for updating material. Substantial changes to a previously approved curriculum must be approved before they are used))~~ DSHS developed curriculum(s) do not require submission to the department for approval unless the curriculum is being modified in any manner by the training entity.

(1) For orientation and/or safety training:

Effective January 7, 2012, submit an outline of what will be covered in each training offered (for example, a table of contents or a class syllabus) showing where the required introductory topics as listed in WAC 388-112-0016 for orientation and WAC 388-112-0855 for safety training are cov-

ered in the training. Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered. Training cannot be offered before receiving department curriculum and instructor approval.

(2) For continuing education:

Effective July 1, 2012, submit an outline of what will be covered in the training (for example, a table of contents or the class syllabus), the number of training hours, and a description of how the training is relevant to the care setting, care needs of residents, or long-term care worker career development. For on line training courses, also submit a description of how the instructor will assess that the students have integrated the information being taught. Department required continuing education training application forms must be submitted at least forty five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval.

(3) For basic training:

(a) If the instructor or training entity wants to use the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, submit the DSHS required form with all required information. Otherwise, the following must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training. When submitting one or both sections of basic training curriculum for DSHS approval, it must at a minimum include:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or outline of the curriculum, including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-112-0055 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teachers guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) How that section will be taught, including teaching methods and learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;

(D) A list of the sources or references that were used to develop the curriculum. If the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with limited English proficiency and/or learning disabilities; and

(F) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.

(b) In addition, for curricula being submitted for the core competency section of basic training as described in WAC 388-112-0055, the curriculum must include how much time students will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(c) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

(4) For specialty training:

For specialty training that is not the DSHS developed curriculum or other department approved curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learning objectives checklist, the enhancements that have been added, and additional student materials or handouts. In order to be approved, an alternative curriculum must at a minimum include:

(a) All the DSHS-published learning outcomes and competencies for the course;

(b) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;

(c) The recommended sequence and delivery of the material;

(d) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:

(i) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;

(ii) Practice of skills to increase competency;

(iii) Feedback to the student on knowledge and skills;

(iv) An emphasis on facilitation by the teacher; and

(v) An integration of knowledge and skills from previous lessons to build skills.

(e) A list of the sources or references, if any, used to develop the curriculum;

(f) Methods of teaching and student evaluation for students with limited English proficiency and/or learning disabilities;

(g) A plan for updating material;

(h) Substantial changes to a previous approved curriculum must be approved before they are used.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0330 What is the curriculum approval process for orientation, safety, basic training (core and population specific training), and continuing education? ~~((1) An alternative curriculum must be submitted to DSHS for approval with:~~

~~(a) Identification of where each DSHS published required learning outcome and competency is located in the alternate curriculum;~~

~~(b) All materials identified in WAC 388-112-0325; and~~

~~(c) A letter from the boarding home administrator or adult family home provider attesting that the training curriculum addresses all of the training competencies identified by DSHS;~~

~~(2) DSHS may approve a curriculum based upon the attestation in (1)(c) above, until it has been reviewed by DSHS;~~

~~(3) If, upon review by DSHS, the curriculum is not approved, the alternative curriculum may not be used until all required revisions have been submitted and approved by DSHS.~~

~~(4)) In order to obtain the department's approval of the curriculum for orientation, safety, basic training (core and population specific training), and continuing education:~~

~~(1) Submit the required training application forms and any other materials required for specific curriculums to the department.~~

~~(2) After review of the ((alternative)) curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum(s) ((and if disapproved, the reasons for denial;)).~~

~~((5)) (3) If curriculum(s) are not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review in order for the curriculum to be approved.~~

~~(4) The submitter can make the requested changes and resubmit the curriculum(s) for review.~~

~~(5) If after working with the department the ((alternative curriculum is not approved, a revised curriculum may be resubmitted to DSHS for another review)) reasons why the curriculum is not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and disability services administration (ADSA). The assistant secretary's review decision shall be the final decision of DSHS. No other administrative review is available to the submitter.~~

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0335 What are the requirements for a boarding home or adult family home that wishes to conduct orientation, safety, basic, ((modified basic, manager specialty, or caregiver)) on-the-job training, continuing education, or long-term care worker specialty training?

~~(1) A boarding home provider or adult family home provider wishing to conduct orientation, safety, basic, ((modified basic, manager specialty)) on-the-job training, continuing education, or ((caregiver)) long-term care worker specialty training ((for boarding home caregivers)) may do so if the ((home)) provider:~~

~~(a) Verifies ((and)), documents using the department's attestation process, keeps on file, and makes available to the department upon request that all instructors meet ((each of)) the minimum instructor qualifications in WAC 388-112-0370 through 388-112-0395 for the course they plan to teach;~~

(b) Teaches using a complete DSHS-developed or approved ~~((alternative))~~ curriculum.

(c) Notifies DSHS in writing of the ~~((home's))~~ provider's intent to conduct staff training prior to providing the ~~((home's))~~ provider's first training, and when changing training plans, including:

(i) ~~((Home))~~ The provider's name;

(ii) Name of training(s) the ~~((home))~~ provider will conduct;

(iii) Name of approved curriculum(s) the ~~((home))~~ provider will use;

(iv) Name of lead instructor and instructor's past employment in boarding homes ~~((and))~~ or adult family homes; and

(v) Whether the ~~((home))~~ provider will train only the ~~((home's))~~ provider's staff, or will also train staff from other ~~((homes))~~ providers. If training staff outside the home or corporation, the instructor must become a DSHS-contracted community instructor;

(d) Ensures that DSHS competency tests are administered as required under this chapter;

(e) Provides a certificate or transcript of completion of training to all staff that successfully complete the entire course~~(, including:~~

~~(i) The trainee's name;~~

~~(ii) The name of the training;~~

~~(iii) The name of the home giving the training;~~

~~(iv) The instructor's name and signature; and~~

~~(v) The date(s) of training);~~

(f) Keeps a copy of ~~((student))~~ long-term care worker certificates on file for six years, and gives the original certificate to the trainee;

(g) Keeps attendance records and testing records of ~~((students))~~ long-term care workers trained and tested on file for six years; and

(h) Reports training data to DSHS ~~((in DSHS-identified time frames))~~ when requested by the department.

~~(2) ((An adult family home wishing to conduct caregiver specialty training that is taught by the provider, resident manager, or person knowledgeable about the specialty area, as required under WAC 388-112-0110 subsection (3), must document the specialty training as provided under WAC 388-112-0155)) The department may conduct a random audit at any time to review training and instructor qualifications.~~

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0340 ~~((Do homes need))~~ Is department approval required to provide continuing education ~~((for their staff))~~? Homes or entities may provide continuing education for their staff with~~((out))~~ prior approval of the training curricula ~~((or))~~ and instructors by the department.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0345 When can DSHS prohibit a home from conducting its own training? DSHS may prohibit a home from providing its own basic, ~~((modified~~

~~basic,))~~ population specific, specialty, ~~((or caregiver specialty))~~ training when:

(1) DSHS determines that the training fails to meet the standards under this chapter;

(2) The home fails to notify DSHS of changes in the curriculum content prior to teaching the curriculum;

(3) The home provides false or misleading information to long-term care workers or the public concerning the courses offered or conducted;

(4) The home's instructor does not meet the applicable qualifications under WAC ~~((388-112-0375))~~ 388-112-0370 through 388-112-0395; or

~~((2))~~ (5) The home's instructor has been a licensee, boarding home administrator, or adult family home resident manager, as applicable, of any home subject to temporary management or subject to a revocation or summary suspension of the home's license, a stop placement of admissions order, a condition on the license related to resident care, or a civil fine of five thousand dollars or more, while the instructor was the licensee, administrator, or resident manager; or

~~((4))~~ (6) The home has been operated under temporary management or has been subject to a revocation or suspension of the home license, a stop placement of admissions order, a condition on the license related to resident care, or a civil fine of five thousand dollars or more, within the previous ~~((twelve))~~ eighteen months.

~~((5))~~ (7) Nothing in this section shall be construed to limit DSHS' authority under chapters 388-76 ~~((or)),~~ 388-78A, or 388-101 WAC to require the immediate enforcement, pending any appeal, of a condition on the home license prohibiting the home from conducting its own training programs.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0350 What trainings must be taught by an instructor who meets the applicable minimum qualifications under this chapter? (1) The following trainings must be taught by an instructor who meets the applicable minimum qualifications as described in WAC 388-112-0380, 388-112-0383 and 388-112-0385 through 388-112-0395 for that training: Orientation, safety training, basic training ~~((;)),~~ modified basic training ~~((;)),~~ young adults with physical disabilities, aging and older adults, manager and long-term care worker mental health, dementia, ~~((and))~~ developmental disability specialty training ~~((; and caregiver specialty training that is not taught by the boarding home administrator (or designee) or adult family home provider or resident manager)),~~ on-the-job training, and continuing education.

(2) Nurse delegation core and specialized diabetes training ~~((and residential care administrator training))~~ must be taught by ~~((an instructor))~~ a current Washington state RN who is approved by DSHS. The RN's license must be in good standing without practice restrictions.

NEW SECTION

WAC 388-112-0352 What trainings may be taught by an instructor that does not meet the minimum qualifications under this chapter? The following trainings may be

taught by an instructor that does not meet the minimum qualifications under this chapter:

- (1) CPR; and
- (2) First aid training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0355 What are ~~((an instructor's or))~~ a training entity's responsibilities? The ~~((instructor or))~~ training entity is responsible for:

- (1) Coordinating and teaching classes,
- (2) Assuring that the curriculum used is taught as designed,
- (3) Selecting qualified guest speakers where applicable,
- (4) Administering or overseeing the administration of DSHS competency and challenge tests,
- (5) Maintaining training records including ~~((student))~~ long-term care worker tests and attendance records for a minimum of six years,
- (6) Reporting training data to DSHS in DSHS-identified time frames, and
- (7) Issuing or reissuing training certificates to ~~((students))~~ long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0360 Must training entities and their instructors be approved by DSHS? (1) DSHS-contracted ~~((instructors))~~ training entities:

(a) DSHS must approve ~~((any))~~ and/or contract with a training entity and their instructor(s) ~~((under contract with DSHS))~~ to conduct orientation, safety, basic, modified basic, population specific, residential care administrator, manager and long-term care worker specialty, ~~((or))~~ nurse delegation core and specialized diabetes training ~~((classes using the training curricula developed by DSHS)), on-the-job training, and continuing education.~~

(b) DSHS may select ~~((contracted instructors through a purchased services contract procurement pursuant to chapter 236-48 WAC or through other))~~ training entities using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through ~~((a request for qualifications and quotations (RFQQ) or other applicable))~~ the contracting procedure.

(2) Homes conducting their own training

~~((Homes conducting their own training))~~ programs using the training curricula developed by DSHS or ~~((alternative))~~ another curricula approved by DSHS must ensure, through an attestation process, that their instructors meet the minimum qualifications for instructors under this chapter.

(3) ~~((Other instructors))~~

DSHS must approve all other training entities and their instructor(s) not described in subsection (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0365 Can DSHS deny or terminate a contract with or approval of an instructor or training entity? (1) DSHS may ~~((determine not to accept a bid or other offer by))~~ deny a person or organization seeking a contract with or approval by DSHS to conduct orientation, safety, basic, modified basic, population specific, residential care administrator, specialty, continuing education, or nurse delegation core or specialized diabetes training ~~((classes using the training curricula developed by DSHS. The protest procedures under chapter 236-48 WAC, as applicable, are a bidder's exclusive administrative remedy))~~. No administrative remedies are available to dispute DSHS' decision not to ~~((accept an offer that is not governed by chapter 236-48 WAC))~~ contract with or approve of a person or organization, except as may be provided through the contracting process.

(2) DSHS may terminate ~~((any))~~ an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

(3) DSHS may terminate an existing training approval of a person or organization who has been approved to conduct orientation, safety, basic, modified basic, population specific, residential care administrator, specialty, continuing education, or nurse delegation core or diabetes training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0370 What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic and developmental disabilities specialty training? (1) A guest speaker ~~((s for basic and developmental disabilities specialty training))~~ is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) May only teach a specific subject in which they have expertise, ~~((under the supervision of the instructor. A guest speaker must have as minimum qualifications, an appropriate))~~ and background and experience that demonstrates that the guest speaker has expertise on the topic he or she will teach.

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor;

(a) Must select guest speakers that meet the minimum qualifications ~~((, and))~~;

(b) Maintain documentation of ~~((this))~~ the guest speaker's background and qualifications;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for insuring the required content is taught.

(3) DSHS does not approve guest speakers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0380 ~~What are the minimum qualifications for ((an instructor for basic or modified basic)) an instructor for basic, population specific, on-the-job training, residential care administrator, and nurse delegation core and specialized diabetes training?~~ An instructor for basic ~~((or modified basic)), population specific, on-the-job training, residential care administrator, nurse delegation core and nurse delegation specialized diabetes training~~ must meet the following minimum qualifications ~~((in addition to the general instructor qualifications in WAC 388-112-0375))~~:

- (1) Twenty-one years of age; and
- (2) Has not had a professional health care, adult family home, boarding home, or social services license or certification revoked in Washington state.
- (3) Education and work experience:
 - (a) Upon initial approval or hire, must ~~((have))~~:
 - (i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or
 - (ii) Have an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD, or home care setting; or
 - (iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD ((per chapter 388-820 WAC)), or home care setting((; or
 - (ii) An associate degree in a health field and six months professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting)).
- ~~((2))~~ (4) Teaching experience:
 - (a) Must have one hundred hours of experience teaching adults in a classroom setting on topics directly related to the basic training; or
 - (b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class ((in)) on adult education that meets the requirements of WAC 388-112-0400.
- ~~((3))~~ (5) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;
- ~~((4))~~ (6) Instructors who will administer tests must have experience or training in assessment and competency testing; and
- ~~((5))~~ If required under WAC 388-112-0075 or 388-112-0105, instructors must successfully complete basic or modified basic training prior to beginning to train others.))
- (7) In addition, an instructor for nurse delegation core and diabetes training must have a current Washington state RN license in good standing without practice restrictions.

NEW SECTION

WAC 388-112-0383 **What are the minimum qualifications for an instructor for orientation, safety, and continuing education?** An instructor for orientation, safety, and continuing education must be a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care or other relevant services to the elderly or persons with disabilities requiring long-term care.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0385 **What are the minimum qualifications for instructors for manager and ~~((caregiver)) long-term care worker mental health specialty training?~~**

- (1) ~~((Instructors for manager mental health specialty training.))~~ The minimum qualifications for instructors for manager mental health specialty, in addition to the general qualifications in WAC ~~((388-112-0375))~~ 388-112-0380 (1) and (2) include:
 - (a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;
 - (b) Education:
 - (i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or in college classes, in subjects directly related to mental health, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, and continuing education.)
 - (ii) If required under WAC 388-112-0160, successful completion of the mental health specialty training, prior to beginning to train others.
 - (c) Work experience - Two years full-time equivalent direct work experience with people who have a mental illness; and
 - (d) Teaching experience:
 - (i) Two hundred hours experience teaching mental health or closely related subjects; and
 - (ii) Successful completion of an adult education class ~~((or train the trainer as follows))~~:
 - (A) For instructors teaching alternate curricula, a class in adult education that meets the requirements of WAC 388-112-0400~~((; or a train the trainer class for the curriculum they are teaching.))~~.
 - (B) For instructors teaching ~~((DSHS-developed))~~ mental health specialty training, successful completion of the DSHS~~((-developed train the trainer))~~ instructor qualification/demonstration process.
 - (e) Instructors who will administer tests must have experience or training in assessment and competency testing.
 - (2) Instructors for ~~((caregiver))~~ long-term care worker mental health specialty training:
 - (a) ~~((Caregiver))~~ Long-term care worker mental health specialty may be taught by a boarding home administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the manager mental health

specialty training and has been approved by the department as a community instructor. A qualified instructor under this subsection may teach ~~((caregiver))~~ specialty to ~~((caregivers))~~ long-term care workers employed at other home(s) licensed by the same licensee.

(b) ~~((Caregiver))~~ Long-term care worker mental health specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager mental health specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0390 What are the minimum qualifications for instructors for manager and ~~((caregiver))~~ long-term care worker dementia specialty? (1) The minimum qualifications for instructors for manager dementia specialty, in addition to the general qualifications under WAC ~~((388-112-0375,))~~ 388-112-0380 (1) and (2) include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, or continuing education.)

(ii) If required under WAC 388-112-0160, successful completion of the dementia specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have dementia; and

(d) Teaching experience:

(i) Two hundred hours experience teaching dementia or closely related subjects; and

(ii) Successful completion of an adult education class ~~((or train the trainer))~~ as follows:

(A) For instructors teaching alternate curricula, a class in adult education that meets the requirements of WAC 388-112-0400 ~~((, or a train the trainer class for the curriculum they are teaching:))~~.

(B) For instructors teaching DSHS-developed dementia specialty training, successful completion of the DSHS ~~((-developed train the trainer))~~ instructor qualification/demonstration process.

~~((d))~~ (e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ long-term care worker dementia specialty training:

(a) ~~((Caregiver))~~ Long-term care worker dementia specialty may be taught by a boarding home administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the manager dementia specialty training and has been approved by the department as a

community instructor. A qualified instructor under this subsection may teach ~~((caregiver))~~ specialty to ~~((caregivers))~~ long-term care workers employed at other home(s) licensed by the same licensee.

(b) ~~((Caregiver))~~ Long-term care worker dementia specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager dementia specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0395 What are the minimum qualifications for instructors for ~~((manager and caregiver))~~ long-term care worker developmental disabilities specialty? (1) The minimum qualifications for instructors for ~~((manager))~~ developmental disabilities specialty, in addition to the general qualifications under WAC ~~((388-112-0375))~~ 388-112-0380 (1) and (2), include:

(a) The instructor must be experienced in developmental disabilities caregiving practices and capable of demonstrating competency in the entire course content, including the administration of competency testing:

~~((b))~~ (b) Education and work experience:

(i) Bachelor's degree with at least two years of full-time work experience in the field of disabilities; or

(ii) High school diploma or equivalent, with four years full time work experience in the field of developmental disabilities, including two years full time direct work experience with people who have a developmental disability.

~~((b))~~ (c) Successful completion of the eighteen hour developmental disabilities specialty training under WAC 388-112-0120; and

~~((c))~~ (d) Teaching experience:

(i) Two hundred hours of teaching experience; and

(ii) Successful completion of an adult education ~~((or train the trainer as follows:~~

~~((A))~~ (A) for instructors teaching alternative curricula, a class in adult education that meets the requirements of WAC 388-112-0400 ~~((, or a train the trainer class for the curriculum they are teaching;~~

~~((B))~~ (B) For instructors teaching DSHS-developed developmental disabilities specialty training, successful completion of the DSHS-developed train the trainer).

(d) Instructors who will administer tests must have experience in assessment and competency testing.

(2) Instructors for ~~((caregiver))~~ developmental disabilities specialty training:

(a) ~~((Caregiver))~~ Developmental disabilities specialty may be taught by a boarding home administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the ~~((manager developmental disabilities specialty training))~~ mental health or manager dementia specialty course, the eighteen hour developmental disabilities specialty training, and has successfully completed the instructor qualification/demonstration process. A qualified instructor under this subsection may teach ~~((caregiver))~~ developmental disabilities specialty to ~~((caregivers))~~ long-term care workers employed at other home(s) licensed by the same licensee.

(b) ((Caregiver)) Developmental disabilities specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for ((manager)) developmental disabilities specialty in subsection (1).

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

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0405 What physical resources are required for ((basic, modified basic, specialty, or nurse delegation core)) classroom training and testing? (1) Classroom ((space used for basic, modified basic, specialty, or nurse delegation core classroom training)) facilities must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites must provide adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0410 What standard training practices must be maintained for ((basic, modified basic, specialty, or nurse delegation core)) classroom training and testing? The following training standards must be maintained for ((basic, modified basic, specialty or nurse delegation core)) classroom training and testing:

(1) Training((, including all breaks,)) must not exceed eight hours within one day;

(2) Training provided in short time segments must include an entire unit, skill or concept;

(3) Training must include regular breaks; and

(4) ((Students)) Long-term care workers attending a classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-112-0025 Is competency testing required for orientation?
- WAC 388-112-0030 Is there a challenge test for orientation?
- WAC 388-112-0050 Is there an alternative to the basic training for some health care workers?

- WAC 388-112-0060 Is competency testing required for basic training?
- WAC 388-112-0065 Is there a challenge test for basic training?
- WAC 388-112-0090 Is competency testing required for modified basic training?
- WAC 388-112-0095 Is there a challenge test for modified basic training?
- WAC 388-112-0105 Who may take modified basic training instead of the full basic training?
- WAC 388-112-0245 Who is required to complete continuing education training, and when?
- WAC 388-112-02610 What is HIV/AIDS training?
- WAC 388-112-02615 Is competency testing required for HIV/AIDS training?
- WAC 388-112-02620 Is there a challenge test for HIV/AIDS training?
- WAC 388-112-02625 What documentation is required for completion of HIV/AIDS training?
- WAC 388-112-02630 Who is required to complete HIV/AIDS training, and when?
- WAC 388-112-0375 What are the minimum general qualifications for an instructor teaching a DSHS curriculum or DSHS-approved alternate curriculum as defined under chapter 388-112 WAC?

WSR 12-03-086

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed January 13, 2012, 3:25 p.m., effective January 13, 2012, 3:25 p.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply:

- WAC 458-20-19402 (Rule 19402) Single factor receipts apportionment—Generally.
- WAC 458-20-19403 (Rule 19403) Single factor receipts apportionment—Royalties.
- WAC 458-20-19404 (Rule 19404) Financial institutions—Income apportionment.

There are no changes from the previous emergency rules filed October 3, 2011, under WSR 11-20-074.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Reasons for this Finding: An emergency adoption of these new rules is necessary because permanent rules cannot be adopted at this time.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: January 13, 2012.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19402 Single factor receipts apportionment—Generally. (1) Introduction.

(a) Section 105, chapter 23, Laws of 2010 1st sp. sess. establishes a new apportionment method for businesses engaged in apportionable activities and that have nexus with Washington. The new apportionment method explained in this rule only applies to business and occupation (B&O) tax liability incurred after May 31, 2010. This rule does not apply to the apportionment of income of financial institutions taxable under RCW 82.04.290, which is governed by WAC 458-20-19404, nor the receipt of royalty income from granting the right to use intangible property under WAC 458-20-19403.

(b) Taxpayers may also find helpful information in the following sections:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19403 Single factor receipts apportionment — Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment — Financial institutions. This rule describes the

application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions — Income apportionment. This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(c) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(2) **Definitions.** The following definitions apply to this rule:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(i) Example 1. Corporation A received \$2,000,000 in gross income from its world-wide apportionable activities, including \$500,000 in world-wide bona fide initiation fees deductible under RCW 82.04.4282. Corporation A's apportionable income would be \$1,500,000.

(b) "Apportionable activities" means only those activities subject to B&O tax under the following classifications:

(i) Service and other activities,

(ii) Royalties (see WAC 458-20-19403 for apportionment of royalties),

(iii) Travel agents and tour operators,

2

(iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent,

(v) Stevedoring and associated activities,

(vi) Disposing of low-level waste,

(vii) Title insurance producers, title insurance agents, or surplus line brokers,

(viii) Public or nonprofit hospitals,

(ix) Real estate brokers,

(x) Research and development performed by nonprofit corporations or associations,

(xi) Inspecting, testing, labeling, and storing canned salmon owned by another person,

(xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW,

(xiii) Contests of chance,

(xiv) Horse races,

(xv) International investment management services,

(xvi) Room and domiciliary care to residents of a boarding home;

(xvii) Aerospace product development,

(xviii) Printing or publishing a newspaper (but only with respect to advertising income),

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income), and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xviii) of this subsection (2) if this special tax classification did not exist.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. The term includes personal income taxes if the gross income from apportionable activities is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(f) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **Apportionment general:** Persons earning apportionable income subject to B&O tax and that are also taxable in another state are entitled to determine their taxable income for B&O

3

tax purposes by using the apportionment method provided in this rule. Taxable income is determined by multiplying apportionable income from each apportionable activity by its receipts factor.

(4) **Receipts Factor.** The receipts factor is a fraction that applies to all apportionable income for each calendar year. Separate receipts factors must be calculated for each apportionable activity taxed under a separate business and occupation tax classification.

(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the calendar year from engaging in an apportionable activity.

(b) The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during

the tax year, less amounts that are attributed to states where the taxpayer is not taxable and at least some of the activity is performed in Washington.

(c) Example 2. XYZ Corp. is a Washington business, has no property or payroll outside of Washington, and performs all of its services inside this state. XYZ Corp. has gross income from apportionable activities that is attributed using the criteria listed in subsection (5) below as follows: Washington \$500,000; Idaho \$200,000; Oregon \$100,000; and California \$300,000. XYZ Corp. is subject to Oregon corporate income tax, but does not owe any California or Idaho business activities taxes. The \$200,000 that would be attributed to Idaho is excluded from the denominator because XYZ Corp. performs the services in Washington, and it is not subject to actual Idaho business activities taxes and does not have substantial nexus with Idaho under Washington thresholds. Although California does not impose a business activities tax on XYZ Corp., XYZ Corp. does have substantial nexus with California using Washington thresholds (more than \$250,000 in receipts). Therefore, the California attributed income is not excluded from the denominator. The Oregon receipts remain in the denominator because XYZ Corp. is subject to Oregon corporate income taxes. The receipts factor is $500,000/900,000$ or 55.56%.

(d) Example 3. The same facts as Example 2 except all of XYZ's property and payroll are located in Oregon, and XYZ Corp. performs no activities in Washington related to the \$200,000 attributed to Idaho. In this situation, the \$200,000 is not excluded from the denominator. The receipts factor is $500,000/1,100,000$ or 45.45%.

(5) **Attribution of income.** Income is attributed to states based on a cascading method. That is, each receipt is attributed to a state based on a series of rules. These rules are:

(a)(i) If a taxpayer can reasonably determine the amount of apportionable receipts related to the benefit of the services received in a state, that amount of apportionable receipts is attributable to that state. This may be shown by application of a reasonable method of proportionally assigning the benefit among states. The result determines the receipts attributed to each state. A taxpayer receives the benefit of a service in this state when:

(A) The service relates to real property that is located in this state;

(B) An apportionable service relates to tangible personal property that is located in this state at the time the service is received; or

(C) The service does not relate to real or tangible personal property, and:

(I) The service is provided to a person not engaged in business who is physically present in this state at the time the service is received; or

(II) The service is provided to a person engaged in business in this state, and the service relates to the person's business activities in this state.

(ii) Examples.

4

(A) Example 4. Director serves on the board of directors of DEF, Inc. DEF, Inc. is commercially domiciled in State Z. DEF, Inc. is Director's customer. DEF is engaged in business in State Z, and the director's services relate to the manage-

ment of DEF, Inc. Therefore, DEF, Inc. receives the benefit of Director's services in State Z.

(B) Example 5. ABC is headquartered outside of Washington and provides retail services to customers in Washington, Oregon, and Idaho. When those customers fail to pay ABC for its services, ABC contracts with Debt Collector located outside of Washington to collect the debt. ABC pays Debt Collector a percentage of the amount collected. ABC is engaged in business in Washington and the activities of Debt Collector relate to that business, therefore the benefit of the service is received by ABC in Washington when Debt Collector obtains payment from debtors located in Washington.

(C) Example 6. The same facts as Example 5, except Debt Collector is paid a fixed amount per month regardless of the total amount collected from debtors, and the debtors are located in Idaho and Washington. If Debt Collector can reasonably determine the proportion of the benefit received by ABC in each state, then that proportion of the fixed amount is the benefit received in each state. Depending on the circumstances, reasonable means to determine the proportion received in each state could be amounts recovered.

(b) If a taxpayer is unable to separately determine the benefit of the services in specific states under (a), and as a result the customer received the benefit of the service in multiple states, the apportionable receipts of the business is attributed to the state in which the benefit of the service was primarily received. Primarily means in this case more than 50%.

(i) Example 7. The same facts as Example 6, except Debt Collector cannot reasonably determine the portion of the benefit received in each state, Debt Collector will have to use the remaining rules in (c) through (g) of this subsection (5) to attribute the income from ABC.

(c) If the taxpayer is unable to attribute gross income of the business under (a) or (b) of this subsection (5), gross income of the business must be attributed to the state from which the customer ordered the service.

(d) If the taxpayer is unable to attribute gross income of the business under (a), (b), or (c) of this subsection (5), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(e) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), or (d) of this subsection (5), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(f) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), or (e) of this subsection (5), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (i) Shown in the taxpayer's business records maintained in the regular course of business; or (ii) obtained during consummation of the sale or the negotiation of the contract for services, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), (e) or (f) of this subsection (5), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(6) Reporting methods.

(a) Taxpayers required to use this rule's apportionment method may report their taxable income based on their apportionable income for the reporting period multiplied by the most recent receipts factor the taxpayer has.

(b) If a taxpayer does not calculate its taxable income using (a) of this subsection, the taxpayer must use actual current tax year information.

(c) Reconciliation. Regardless of how a taxpayer reports its taxable income under subsection (a) or (b) of this subsection, when the taxpayer has the information to determine the receipts factor for an entire calendar year, it must file a reconciliation and either obtain a refund or pay any additional tax due. The reconciliation must be filed on a form approved by the department. In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply to any additional tax that may be due.

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

NEW SECTION

WAC 458-20-19403 Single factor receipts apportionment—Royalties. (1) **Introduction.** Effective June 1, 2010, section 105, chapter 23, Laws of 2010 1st sp. sess. changed Washington's method of apportioning the gross income from royalties. This rule addresses how such gross income must be apportioned when the business receives royalty payments from both within and outside the state.

(a) This rule is limited to the apportionment of gross income from royalties. This rule does not apply to apportionment or allocation of income from any other business activity.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment — Generally. This rule describes the general application of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment — Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions — Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(2) **Definitions for the purposes of this rule.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) "Apportionable activity" means those activities conducted by a person in the business of receiving gross income from royalties.

(b) "Apportionable income" means gross income of the business generated from engaging in apportionable activity, including income received from apportionable activity performed outside Washington if the income would be taxable under the business and occupation tax if received from activities in Washington less any allowable exemptions and deductions under chapter 82.04 RCW.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state by a person. The term includes taxes measured in whole or in part on net income or gross income or receipts. In the case of sole proprietorships and pass-through entities, the term includes personal income taxes if the gross income from royalties is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not referred to as a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

2

(e) "Gross income from royalties" means compensation for the use of intangible property, including charges in the nature of royalties regardless of where the intangible property will be used. "Gross income from royalties" does not include compensation for any natural resources, the licensing of pre-written computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

(f) "Intangible property" includes: copyrights, patents, licenses, franchises, trademarks, trade names and similar items.

(g) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(h) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(iii) "Not Taxable" with respect to a particular state means the taxpayer is not actually subject to a business activities tax by that state on its income received from engaging in apportionable activities and that state does not have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) How does a taxpayer apportion its gross income from royalties? A taxpayer earning gross income from roy-

alties generated on or after June 1, 2010, must apportion such income when the taxpayer is taxable in another state. Gross income is apportioned to Washington by multiplying apportionable income by the receipts factor. The resulting amount of taxable income is then multiplied by the applicable tax rate.

(4) What is the receipts factor? The "receipts factor" is a fraction with the following numerator and denominator:

(a) Numerator: is the total gross income from royalties attributable to Washington during the tax year. Generally, a tax year is the same as a calendar year. For the purposes of this rule, tax years will be referred to as calendar years.

(b) Denominator: is the total gross income from royalties attributable to everywhere in the world during the calendar year, less amounts that are attributed to states where the taxpayer is not taxable if at least some of the apportionable activity is performed in Washington.

(5) How are royalty receipts attributed to Washington? To compute the numerator of the receipts factor, gross income from royalties is attributable to states as follows:

(a) Place of use: where the customer used the taxpayer's intangible property. If a taxpayer can reasonably determine the amount of royalty receipts related to the use in a state, that amount of royalty receipts is attributable to that state. This may be shown by application of a reasonable method of proportionally assigning the use of the intangible property among states.

(b) If a taxpayer is unable to separately determine the use of the intangible property in specific states under (a), and as a result the customer used the intangible property in multiple states, the royalty receipts are attributed to the state in which the intangible property was primarily used. Primarily means in this case more than 50%.

3

(c) Office of negotiation: if the taxpayer is unable to attribute gross income to a location under (a) or (b) of this subsection (5), then gross income must be attributed to the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(d) Billing state: if the taxpayer is unable to attribute gross income to a location under (a), (b), or (c) of this subsection (5), then gross income must be attributed to the state to which the billing statement or invoices are sent to the customer by the taxpayer.

(e) Payment state: if the taxpayer is unable to attribute gross income to a location under (a), (b), (c), or (d) of this subsection (5), then gross income must be attributed to the state from which the customer sends payment to taxpayer.

(f) Customer's address: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), or (e) of this subsection (5), then gross income must be attributed to the state where the customer is located as indicated by customer's address:

(i) As shown in the taxpayer's business records maintained in the regular course of business; or

(ii) Obtained during negotiation of the contract for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) Taxpayer's domicile: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), (e), or (f) of this subsection (5), then gross income must be attributed to the commercial domicile of the taxpayer.

(6) **Examples.** Examples included in this subsection identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(a) **Example 1:** Taxpayer has its domicile in California and runs a national restaurant franchising business. Taxpayer enters into a contract with Company A under which Taxpayer licenses the right to use its trademark to Company A's so that Company A can display that trademark on its restaurant, menus, marketing materials, etc. Company A has a single restaurant that is located in Washington. Company A pays Taxpayer \$500,000 per calendar year for the right to use the trademark at its restaurant in Washington. Pursuant to the first sourcing rule, the intangibles (trademark) are used in Washington. Therefore, Taxpayer would attribute the \$500,000 in receipts from Company A to Washington.

(b) **Example 2:** Same facts as Example 1 except Company A in a single contract receives the right to use Taxpayer's trademark in as many restaurants as it wants in Washington and Idaho and pays \$500,000 for each restaurant when the restaurant opens and each calendar year thereafter. Company A opens two restaurants in Idaho and one in Washington. Taxpayer would attribute \$500,000 it received from Company A to Washington and \$1,000,000 to Idaho.

(c) **Example 3:** Same facts as Example 1 above, except that Company A now has many locations in Idaho but still only one in Washington. Further, Company A enters into a new contract with Taxpayer under which Company A must now pay \$1,500,000 per calendar year for the exclusive and unlimited right to the use of the trademark in Idaho but only a single location in Washington. Because the intangible is used in more than one state, but is primarily used in Idaho, Taxpayer would attribute all receipts received from Company A, (i.e. \$1,500,000) to Idaho pursuant to the second sourcing rule.

(7) **What data can be used for calculating the receipts factor?**

(a) Taxpayers required to use this rule's apportionment method may report their taxable income based on their apportionable income for the reporting period multiplied by the most recent receipts factor the taxpayer has.

(b) If a taxpayer does not calculate its taxable income using (a) of this subsection, the taxpayer must use actual current tax year information.

(c) **Reconciliation.** Regardless of how a taxpayer reports its taxable income under subsection (a) or (b) of this subsection, when the taxpayer has the information to determine the receipts factor for an entire calendar year, it must file a reconciliation and either obtain a refund or pay any additional tax due. The reconciliation must be filed on a form approved by the department. In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply to any additional tax that may be due.

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

NEW SECTION

WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.

(a) Effective June 1, 2010, RCW 82.04.460 was amended to change Washington's method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective after May 31, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment — Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19403 Single factor receipts apportionment — Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the period January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions — Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

(2) Apportionment and allocation.

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must allocate and apportion its income taxable under RCW 82.04.290 as provided in this rule. Any other income from apportionable activities must be apportioned pursuant to WAC 458-20-19402 (Single factor receipts apportionment — Generally) or WAC 458-20-19403 (Single factor receipts apportionment — Royalties). "Apportionable income" means gross income taxable under RCW 82.04.290, including income taxable under RCW 82.04.290 attributed outside this state if the income would be taxable under RCW 82.04.290 if attributed to this state, less the exemptions and deductions allowable under chapter RCW 82.04. All gross income that is not apportioned must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both in this state

and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the receipts factor to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection (2) apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) If the allocation and apportionment provisions of this rule do not fairly represent the extent of its business activity related to this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

3

(c) "Commercial domicile" means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(f) "Department" means the department of revenue.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) Any corporation or other business entity chartered under Titles 30, 31, 32, or 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(i) "Gross income of the business," "gross income," or "income":

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, gains realized from trading in bonds or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. Provided, that for the purposes of this rule, gross income of the business is limited to income taxable under RCW 82.04.290; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of this subsection (3)(i) affiliated means the affiliated person and the financial institution are under common control. Common control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) "Income taxable under RCW 82.04.290" means the gross income of the business taxable under the service and other activities or international investment management services classifications.

(k) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(l) "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(m) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(n) "Participation" means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan

and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(o) "Person" has the meaning given in RCW 82.04.030.

(p) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(r) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(s) "Taxable in another state" means either:

(i) The taxpayer is subject to business activities tax by another state on its income taxable under RCW 82.04.290; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income taxable under RCW 82.04.290, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

For purposes of this subsection (3)(s), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a retail sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) "Taxable period" means the calendar year during which tax liability is incurred.

(4) Receipts factor.

(a) General. The receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. Separate receipts factors must be determined for business and occupation tax under the service and other activities and the international investment management services classifications.

(b) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state. Interest and fees on loans secured by commercial aircraft that qualifies for the exemption from business and occupation tax under RCW 82.04.43391 are not included in either numerator or the denominator of the receipts factor.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(e) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(g) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transac-

tion fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(i) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection (4), the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets

and activities described in (k)(i) of this subsection (4) that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(i)(A) and (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this subsection (4)(k)(ii), the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection (4), the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of

this subsection (4) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(ii)(A) or (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection (4), it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010.

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 12-04-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-08—Filed January 20, 2012, 12:44 p.m., effective January 20, 2012, 12:44 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial crab rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000I and 220-52-04600Q; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair start provisions. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 20, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04000K Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts.

(1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean through February 15, 2012, from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel.

(b) Vessel hold inspection certificates dated from December 14, 2011, to January 13, 2012, are only valid for the area south of 46°28.00.

(c) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through February 15, 2012.

(2) Notwithstanding the provisions of WAC 220-52-040, it is permissible for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery between Klipsan Beach (46°28.00) and the U.S./Canada Border. The primary operator of the vessel associated with the pots being transported must be aboard the vessel while the pots are being deployed. All other provisions of the permanent rule remain in effect.

NEW SECTION

WAC 220-52-04600S Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay: Open.

(2) Temporary Pot limits in place in the area between Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay are lifted and fishers may use their entire permanent pot limit starting at 8:00 am on January 21, 2012.

(3) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(4) Dungeness crab license holders, or any vessel or vessel operator designated on the license that participated in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from:

a. Fishing in the area between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 A.M., February 3, 2012.

b. Fishing in the area between Oysterville (46°33.00) and the U.S./Canada border until 8:00 A.M., February 28, 2012.

(5) Crab gear may be set in the area between Klipsan Beach (46°28.00) and the U.S./Canada Border, including Grays Harbor, beginning at 8:00 a.m. January 21, 2012.

(6) It is permissible to pull crab gear in the area between Klipsan Beach and the U.S./Canada Border, including Grays Harbor, beginning at 12:01 a.m. January 24, 2012.

(7) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

Northeast Corner 47°28.00 N. Lat. 124°20.70 W. Lon.
 (Raft River):
 Northwest Corner: 47°28.00 N. Lat. 124°34.00 W. Lon.
 Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.
 Southeast Corner 47°08.00 N. Lat. 124°11.20 W. Lon.
 (Copalis River):

(8) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- Northeast Corner 47°58.00' N. Lat. 124°40.40' W. Lon.
 (Cape Johnson):
- Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- Southeast Corner 47°40.50' N. Lat. 124°24.43' W. Lon.
 (Destruction Island):

(9) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- Northeast Corner (Tatoosh Island)
- Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.
- Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.
- Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(10) All other provisions of the permanent rule remain in effect.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-52-04000I Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (11-311)
- WAC 220-52-04600Q Coastal crab seasons (11-311)

**WSR 12-04-013
 EMERGENCY RULES
 DEPARTMENT OF
 FISH AND WILDLIFE**

[Order 12-10—Filed January 24, 2012, 8:55 a.m., effective January 24, 2012, 8:55 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000K; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The period allowing vessels not designated on a Dungeness crab coastal fishery license to transport or deploy up to two hundred fifty pots is extended to provide for a safe and orderly fishery in light of extreme ocean conditions during the preseason gear-setting period. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 24, 2012.

Philip Anderson
 Director

NEW SECTION

WAC 220-52-04000L Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean through February 15, 2012, from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel.

(b) Vessel hold inspection certificates dated from December 14, 2011, to January 13, 2012, are only valid for the area south of 46°28.00.

(c) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through February 15, 2012.

(2) Notwithstanding the provisions of WAC 220-52-040, it is permissible for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery between Klipsan Beach (46°28.00) and the U.S./Canada Border. The primary or alternate operator of the crab pot gear named on the license associated with the gear must be on

board the vessel when the gear is being deployed. All other provisions of the permanent rule remain in effect.

a. Such a vessel may deploy crab pot gear only during the 64-hour period immediately preceding the season opening date and until 11:59 p.m. January 31, 2012.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000K	Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (12-08)
-------------------	---

WSR 12-04-019

EMERGENCY RULES

LIQUOR CONTROL BOARD

[Filed January 25, 2012, 10:46 a.m., effective January 25, 2012, 10:46 a.m.]

Effective Date of Rule: Immediately.

Purpose: New rules are needed to create a responsible vendor program as directed by Initiative 1183 that passed on November 8, 2011. Emergency rules are needed to implement section 103 of I-1183.

Statutory Authority for Adoption: Section 103 created new laws directing the board to establish rules for a responsible vendor program.

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

Reasons for this Finding: Initiative 1183 passed on November 8, 2011. The emergency rules are needed to create a responsible vendor program for licensees selling spirits for off-premises consumption to ensure the public health, and safety of the citizens of Washington. Permanent rule making will also begin immediately for these rules.

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

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

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

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

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

Date Adopted: January 25, 2012.

Sharon Foster
Chairman

NEW SECTION

WAC 314-02-108 Responsible vendor program. (1) What is the purpose of this chapter? The purpose of this section is to establish standards and procedures for a responsible vendor program for spirits retail licensees.

(2) **What is the responsible vendor program?** This program is free, voluntary, and self-monitoring. Spirits retail licensees who hold a responsible vendor certificate and maintain all requirements are eligible for reduced sanctions on their first public safety violation within any period of twelve calendar months.

(3) **How do you become a responsible vendor?** Any spirits retail licensee who meets the program standards may participate. To apply for a responsible vendor certificate, the licensee must have no public safety violations within the last two years and must complete and submit a board-provided application form. Board staff will review the application for completeness, and will:

(a) Certify the completed application clearly indicates the licensee has all program standards in place and send a certificate to the licensee; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will notify the licensee of the reason(s) the application is being returned.

(4) **To qualify as a responsible vendor, a licensee must:**

(a) Train each employee supervising or selling alcohol in responsible liquor sales. Licensees may require employees to obtain a mandatory alcohol server training permit from a board certified provider or train employees themselves using the training criteria specified in subsection (5) of this section; and

(b) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(i) A list of acceptable forms of identification which are accepted at the premises;

(ii) Directions for checking identification for customers; and

(iii) The consequences for selling spirits to a minor or apparently intoxicated person.

(c) Have an on-going training plan for employees, to include annual training at a minimum. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be done individually or in a group. At a minimum, training must cover the topics listed in subsection (5) of this section; and

(d) Retain employee training records and signed house policies for three years and must be able to present employee training records upon request.

(5) **What are the program standards, program content, and other requirements for the responsible vendor**

program? All training must include, at a minimum, the following:

- (a) Guidelines for recognizing minors and apparently intoxicated persons;
- (b) Forms of identification for purchasing alcohol;
- (c) How to check identification and how to recognize false or altered identification;
- (d) A requirement to check identification in accordance with house policies;
- (e) Recommended actions for refusing sales of alcohol to minors or apparently intoxicated persons;
- (f) A review of the consequences for selling to minors, and the importance of not selling alcohol to minors or apparently intoxicated persons;
- (g) A review of house policies on alcohol sales. Each licensee must ensure that his/her employees receive training that covers the licensee's own house policies; and
- (h) The standards and requirements for the mandatory alcohol server training stipulated in WAC 314-17-060 are deemed sufficient for employee's initial training for the responsible vendor training.

(6) What are the sanctions when a licensee violates liquor laws or regulations? For public safety violation, as outlined in WAC 314-29-020, involving the sales of spirits, the prescribed penalty is doubled. If a licensee has a certified responsible vendor program having all program standards in place, the board will impose the standard penalty detailed in WAC 314-29-020 for that violation. Any subsequent public safety violation involving spirits within any period of twelve calendar months will be double the standard penalties. Regardless of the type of alcohol sold; beer, wine, or spirits, WAC 314-29-020 is applicable.

**WSR 12-04-038
EMERGENCY RULES**

PUBLIC DISCLOSURE COMMISSION

[Filed January 27, 2012, 1:17 p.m., effective January 27, 2012, 1:17 p.m.]

Effective Date of Rule: Immediately.

Purpose: Insert city council and mayoral candidates' contribution limits in WAC 390-05-400, the public disclosure commission's vehicle for adjusting contribution limits.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-400.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.125.

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

Reasons for this Finding: Limits were placed on campaign contributions given to mayor and city council candidates, effective June 2010. These limits were aligned with existing limits on contributions given to legislative and certain local office candidates. These new limits were not inserted in WAC 390-05-400 when it was next amended on January 13, 2012, resulting in a disparity in contribution limit for different types of candidates.

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

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

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

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

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

Date Adopted: January 26, 2012.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-01-032, filed 12/13/11, effective 1/13/12)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
.005	Definition of "Independent Expenditure"	\$800	\$900
.445(3)	Reimbursement of candidate for loan to own campaign	\$4,700	\$5,000
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$16,000 \$800	\$18,000 \$900

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
(.405(2))	Contribution Limits—		
<u>.405(1)</u>			
	Candidates for state leg. office	\$800	\$900
	Candidates for county office	\$800	\$900
	Candidates for other state office	\$1,600	\$1,800
	Candidates for special purpose districts	\$1,600	\$1,800
	<u>Candidates for city council office</u>	<u>\$800</u>	<u>\$900</u>
	<u>Candidates for mayoral office</u>	<u>\$800</u>	<u>\$900</u>
.405(3)	Contribution Limits—		
	State official up for recall or pol comm. supporting recall—		
	State Legislative Office	\$800	\$900
	Other State Office	\$1,600	\$1,800
.405(4)	Contribution Limits—		
	Contributions made by political parties and caucus committees		
	State parties and caucus committees	.80 per voter	.90 per registered voter
	County and leg. district parties	.40 per voter	.45 per registered voter
	Limit for all county and leg. district parties to a candidate	.40 per voter	.45 per registered voter
.405(5)	Contribution Limits—		
	Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	.80 per voter	.90 per registered voter
	County and leg. district parties	.40 per voter	.45 per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.40 per voter	.45 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$800	\$900
	To political party	\$4,000	\$4,500
.410(1)	Candidates for judicial office	\$1,600	\$1,800
.475	Contribution must be made by written instrument	\$80	\$90

WSR 12-04-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-12—Filed January 27, 2012, 4:25 p.m., effective January 30, 2012, 6:00 p.m.]

Effective Date of Rule: January 30, 2012, 6:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered

under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000I and 220-33-01000J; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the 2012 winter season sturgeon fishery. Season is based on a catch guideline of two hundred eighty fish for the winter season. Regulation is consistent with compact action of January 26, 2012. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly, *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D.Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon Management Agreement*. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: January 27, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000J Columbia River season below Bonneville. Notwithstanding the provision of WAC 220-33-010 and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections:

1) AREA: SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5)

2) SEASON: 6 PM Monday January 30 - 6 PM Tuesday January 31, 2012

6 PM Wednesday February 1 - 6 PM Thursday February 2, 2012;

6 PM Monday February 6 - 6 PM Tuesday February 7, 2012

3) GEAR: Drift gillnet only. 9-inch minimum mesh. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

4) ALLOWABLE SALES: White Sturgeon and adipose fin-clipped salmon. A maximum of ten white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. Green sturgeon retention prohibited. Sturgeon sales limited to sturgeon 43-54 inches in fork length (as measured from nose to the fork in the tail).

5) SANCTUARIES: Sandy River

6) QUICK REPORT: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-33-01000I Columbia River season below Bonneville. (11-281)

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. February 8, 2011:

WAC 220-33-01000R Columbia River season below Bonneville.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-33-01000R is probably intended to be WAC 220-33-01000J.

WSR 12-04-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-13—Filed January 27, 2012, 4:50 p.m., effective February 1, 2012, 12:00 p.m.]

Effective Date of Rule: February 1, 2012, 12:00 p.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100L and 220-32-05100M; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the 2012 treaty Indian winter gillnet season. Allows sales of fish caught with platform and hook-and-line gear above and below Bonneville Dam. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on January 26, 2012. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some

salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: January 27, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Areas: SMCRA 1F, 1G, 1H:

a. Season: 12:00 p.m. February 1 through 6:00 p.m. March 21, 2012.

b. Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

c. Allowable sale: Salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and Sturgeon between 43-54 inches in fork length in The

Dalles and John Day pools may be sold or retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required. Fish caught from platforms or hook-and-line fisheries during the open commercial periods.

d. River mouth sanctuaries (WAC 220-32-058) remain in effect except the Spring Creek Hatchery sanctuary (subsection 5) of WAC 220-32-058.

2. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

a. Participants: Tribal members may participate under the conditions described in the appropriate MOA or MOU specific to each tribe. Tribal members must carry an official tribal enrollment card.

b. Season: 12:00 p.m. February 1, 2012 until further notice

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook-and-line, or as defined by each tribe's MOU or MOA.

d. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sales may not occur on USACE property.

e. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:00 p.m. February 1, 2012:

WAC 220-32-051001 Columbia River salmon seasons above Bonneville Dam. (10-268)

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. March 22, 2012:

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam.

**WSR 12-04-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-14—Filed January 27, 2012, 5:14 p.m., effective February 1, 2012]

Effective Date of Rule: February 1, 2012.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's

relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the 2012 spring recreational salmon season in the Columbia River during March and April, in the area from Buoy 10 upstream to the Oregon/Washington border. Adjusts the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. Prohibits full removal of nonlegal fish from the water. Imposes an angling closure in the area of Sand Island Slough. Regulation is consistent with guidance from Washington fish and wildlife commission guidance and director, and compact/joint state action of January 26, 2012. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively

by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 27, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Columbia River:

i. Effective March 1 through April 6, 2012, except closed March 20, March 27 and April 3. Open for fishing for salmonids and shad. From a true north-south line through Buoy 10 upstream to Beacon Rock (defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse 1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.). Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than one may be an adult Chinook. Release all wild Chinook. Salmon minimum size is 12 inches.

ii. Effective March 1 through April 6, 2012, except closed March 20, March 27 and April 3. Open to fishing for salmonids and shad from the bank only, and closed to fishing from boats for salmonids and shad from Beacon Rock (see boundary description in section 1i) upstream to 600 feet below the fish ladder at the new Bonneville Dam powerhouse. Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than one may be an adult Chinook. Release all wild Chinook. Salmon minimum size is 12 inches.

iii. From Tower Island power lines in Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent

regulations): Effective March 16 through May 2, 2012: daily salmonid limit is 6 fish, (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook salmon or hatchery steelhead or one of each. Release all wild Chinook. Salmon minimum size is 12 inches.

iv. Effective February 15, 2012, until further notice: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to Oregon/Washington border, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

v. Effective February 1 through April 30, 2012, all angling is prohibited from a line between the upstream end of Sand Island, located east of Rooster Rock State Park on the Columbia River, to a marker on the Oregon shore, downstream to a line between the lower end of Sand Island and a marker on the Oregon shore.

2. Deep River (Wahkiakum Co.): Effective March 1, 2012, until further notice: the hatchery adult Chinook daily limit will be the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit will revert to permanent rules for Deep River.

WSR 12-04-053

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 30, 2012, 9:58 a.m., effective February 1, 2012]

Effective Date of Rule: February 1, 2012.

Purpose: The department is eliminating add-on hours for off-site laundry service and add-on hours for clients who live more than forty-five minutes from essential services. The department is also incorporating revisions filed by CR-103E (WSR 11-23-082) that were filed on November 16, 2011, into this CR-103E.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-106-0126 and 388-106-0213; and amending WAC 388-106-0075 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The department is amending rules to revise the assessment process for allocating personal care hours to eligible children effective December 15, 2011.

Effective February 1, 2012, the department is eliminating the add-on hours for off-site laundry and add-on hours to those clients living more than forty-five minutes from essential services as a result of the department's need to stay within budget appropriations.

This filing replaces and supersedes the CR-103E filed as WSR 11-23-082 on November 16, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 2; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 27, 2012.

Katherine I. Vasquez
Rules Coordinator

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

WAC 388-106-0075 How is my need for personal care services assessed in CARE? ~~((To assess your need for personal care services,))~~ The department gathers information from you, your caregivers, family members~~((;))~~ and other sources ~~to assess your abilities to perform personal care tasks.~~ The department will also consider developmental milestones

for children as defined in WAC 388-106-0130 when individually assessing your abilities and needs for assistance. The department will assess your ability to perform:

(1) Activities of daily living (ADL) using self performance~~((;))~~ support provided, status and assistance available, as defined in WAC 388-106-0010. Also, the department determines your need for "assistance with body care" and "assistance with medication management," as defined in WAC 388-106-0010; and

(2) Instrumental activities of daily living (IADL) using self performance~~((;))~~ difficulty, status and assistance available, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 11-11-024, filed 5/10/11, effective 6/10/11)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will ~~((deduct from the))~~ adjust base hours to account for informal supports, shared benefit, and age appropriate functioning (as those terms are defined in WAC 388-106-0010), ~~((or))~~ and other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for informal supports ~~((by determining))~~, shared benefit, and age appropriate functioning; determines the amount of assistance available ~~((to meet your needs,))~~; assigns ~~((#))~~ a numeric ~~((percentage,))~~ value to those assessed indicators; and ~~((reduces))~~ adjusts the base hours assigned to the classification group by the numeric ~~((percentage))~~ value. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self ((Performance)) Administration	Status	Assistance Available	Value ((Percentage))
((Self administration of medications)) <u>Medication Management</u>	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.9
	1/4 to 1/2 time	.7		
	1/2 to 3/4 time	.5		
	>3/4 time	.3		
Unscheduled ADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>

Scheduled ADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
			<1/4 time	.9
		Partially met	1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
Scheduled ADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
			1/2 to 3/4 time	.35
			>3/4 time	.15
IADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Meal preparation, Ordinary housework, Essential shopping	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met or Shared benefit	<1/4 time	.3
			1/4 to 1/2 time	.2
			1/2 to 3/4 time	.1
			>3/4 time	.05
IADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3

Key:
 > means greater than
 < means less than

(b) To determine the amount ((of reduction)) adjusted for informal support, shared benefit and/or age appropriate functioning, the ((value percentages)) numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours ((reduced for informal supports)).

~~(3) ((Also, the department will adjust in-home base hours when:~~

~~(a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:~~

- ~~(i) Meal preparation;~~
- ~~(ii) Housekeeping;~~
- ~~(iii) Shopping; and~~
- ~~(iv) Wood supply.~~

~~(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.~~

~~((subsections (2) and (3))) subsection (2), the department may add on hours ((based on your living environment)) only if you use wood as your sole source of heat:~~

~~(4)) Effective February 1, 2012, after ((deductions)) adjustments are made to your base hours, as described in~~

Condition	Status	Assistance Available	Add On Hours
((Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	N/A	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time		2))	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Age appropriate	N/A	0
	Partially met <u>or</u> <u>Shared benefit</u>	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

~~((5)) (4) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC 388-106-1445.~~

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

~~((6)) (5) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to ((meet)) address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.~~

(f) The purchase of New Freedom consumer directed services (NFCDS).

~~((7)) (6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:~~

(7) If you are a child applying for personal care services:

(a) Personal care services from a home care agency provider and/or an individual provider.

(a) The department will complete a CARE assessment and use the developmental milestones table below when assessing your ability to perform personal care tasks.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).

(b) Your status will be coded as age appropriate when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table, unless the circumstances in subpart (c) apply.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).

(c) The department may code status as other than age appropriate for an ADL or IADL, despite your self performance falling within the expected developmental milestones for your age, if the department determines during your assessment that your level of functioning is not primarily due to your age.

(d) A home health aide if you are eligible per WAC 388-106-0300 or 388-106-0500.

<u>Developmental Milestones for Activities of Daily Living (ADLS)</u>		
<u>ADL</u>	<u>Self-Performance</u>	<u>Assessed Age Range</u>
Medication Management	Independent Self-Directed Assistance Required Must Be Administered	Birth through the 17th year

<u>Developmental Milestones for Activities of Daily Living (ADLS)</u>		
<u>ADL</u>	<u>Self-Performance</u>	<u>Assessed Age Range</u>
<u>Locomotion in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Locomotion Outside Room</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 5th year</u>
	<u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Walk in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Bed Mobility</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 2nd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Transfers</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 2nd year</u>
<u>Toilet Use</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 3rd year</u>
<u>Eating</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 2nd year</u>
<u>Bathing</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Physical help/Transfer only</u> <u>Physical help/part of bathing</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>
<u>Dressing</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Limited</u> <u>Extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>
<u>Personal Hygiene</u>	<u>Independent</u> <u>Supervision</u>	<u>Birth through the 11th year</u>
	<u>Limited or extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>

Developmental Milestones for Instrumental Activities of Daily Living		
<u>IADL</u>	<u>Self Performance</u>	<u>Assessed Age</u>
<u>Telephone</u> <u>Transportation</u> <u>Essential</u> <u>Shopping</u> <u>Wood Supply</u> <u>Housework</u> <u>Finances</u> <u>Meal Preparation</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 17th year</u>

Additional Developmental Milestones coding		
<u>CARE panel</u>	<u>Selection</u>	<u>Assessed Age</u>
<u>Speech/Hearing: Comprehension</u>	<u>By others client is = Age Appropriate</u>	<u>Birth through the 2nd year</u>
<u>Psych Social: MMSE</u>	<u>Can MMSE be administered? = No</u>	<u>Birth through the 17th year</u>
<u>Psych Social: Memory/Short Term</u>	<u>Recent memory = Age appropriate</u>	<u>Birth through the 11th year</u>
<u>Psych Social: Memory/Long Term</u>	<u>Long Term memory = Age appropriate</u>	<u>Birth through the 11th year</u>
<u>Psych Social: Depression</u>	<u>Interview = unable to obtain</u>	<u>Birth through the 11th year</u>
<u>Psych Social: Decision Making</u>	<u>Rate how client makes decision = ge appropriate</u>	<u>Birth through the 11th year</u>
<u>Bladder/Bowel:</u>	<u>Bladder/Bowel Control:</u> <u>Continent</u> <u>Usually Continent</u> <u>Occasionally Incontinent</u> <u>Frequently Incontinent</u>	<u>Birth through the 11th year</u>
<u>Bladder/Bowel:</u>	<u>Bladder/Bowel Control:</u> <u>Incontinent all or most of the time</u>	<u>Birth through the 5th year</u>
<u>Bladder/Bowel:</u>	<u>Appliance and programs = Potty Training</u>	<u>Birth through the 3rd year</u>

(8) If you are a child applying for personal care services and your self performance is not age appropriate as determined under subsection (7), the department will assess for any informal supports or shared benefit available to assist you with each ADL and IADL.

(a) When you are living with your legally responsible parent(s), the department will take into account their legal obligation to care for you when determining the availability of informal supports. Legally responsible parents include natural parents, step-parents, and adoptive parents. Legally responsible parents generally do not include other relative caregivers or foster parents. A legally responsible parent will not be considered unavailable to meet your needs due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities.

(b) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(c) The department will presume that you have informal supports available to assist you with your ADLs and IADLs over three-fourths but not all of the time. The department will code your informal support as greater or less than the presumed amount if your assessment shows that your need for assistance with personal care tasks is fully met by informal supports or shared benefit, or if you provide specific information during your assessment to indicate why you do not have support available three-fourths or more of the time to assist you with a particular ADL or IADL.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-106-0126

If I am under age twenty-one, how does CARE use criteria

to place me in a classification group for in-home care?

WAC 388-106-0213 How are my needs assessed if I am a child applying for MPC services?

WSR 12-04-055
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 30, 2012, 10:25 a.m., effective January 30, 2012, 10:25 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health (ADH) changes as required under 2ESHB 1087 (2011-2013 operating budget).

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0300 and 388-106-0305.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 2ESHB 1087.

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

Reasons for this Finding: The department added the ADH service and eligibility into the community options program entry system (COPES) waiver effective September 1, 2011, as a result of the legislative action under 2ESHB 1087. The department is directed to eliminate the ADH service under the state plan 1915(i) option and to reestablish it under the COPES waiver. Also, as part of the governor's proposed 2012 supplemental budget the ADH program is being eliminated, so the department filed a CR-101 as WSR 12-01-119 on December 21, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 27, 2012.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of medicare reimbursed home health services as described in WAC 388-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 388-551-2100.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 388-500-0005;

(b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services, when the service:

(a) Provides access to community services and resources to meet your therapeutic goal;

(b) Is not diverting in nature; and

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(14) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility;

or

(F) Are not capable of participating safely in a group care setting.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0305 What services may I receive under COPES if I live in a residential facility? If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined under WAC 388-106-0010.

(2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:

(a) Medically necessary under WAC 388-500-0005; and
 (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

(3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(4) Transportation services, when the service:

(a) Provides access to community services and resources to meet a therapeutic goal;

(b) Is not diverting in nature;

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by DSHS contract in residential facilities.

(5) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 388-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

(6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(8) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility;

or

(F) Are not capable of participating safely in a group care setting.

WSR 12-04-081

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-16—Filed January 31, 2012, 11:37 a.m., effective January 31, 2012, 11:37 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-52-07300X; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. By harvest management agreement, the legal size limits for red sea urchins have changed for the 2011-2012 harvest management period. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 31, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07300Y Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1, 2, 3, and 4 are open seven days-per-week.

(2) Red sea urchins: Sea Urchin Districts 1, 2 and 4 are open seven days per week. In Sea Urchin Districts 1, 2 and 4, it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300X Sea urchins.

WSR 12-04-096 EMERGENCY RULES DEPARTMENT OF EARLY LEARNING

[Filed February 1, 2012, 10:21 a.m., effective February 1, 2012, 10:21 a.m.]

Effective Date of Rule: Immediately.

Purpose: To amend sections of chapter 170-290 WAC, Working connections (WCCC) and seasonal child care (SCC) subsidy programs, to comply with section 11 of ESSB 5921, enrolled as chapter 42, Laws of 2011 1st sp. sess., that took effect on July 1, 2011. Rules for the SCC programs are revised to:

- Require individuals who apply for or receive SCC subsidies to seek department of social and health services (DSHS) child support enforcement services, unless the individual has good cause not to cooperate, as a condition of receiving department of early learning (DEL) child care subsidy benefits; and
- Provide a six-month eligibility period before a family receiving SCC benefits must recertify his or her income eligibility, although families must continue to report changes provided in the rules. The six-month provision will apply so long as enrollment in SCC is capped.

This third emergency rule continues the same provisions as the second emergency rule on the same subject in WSR 11-21-005 for the SCC program, while DEL takes further steps toward permanent adoption. A new CR-102 was filed on January 4, 2012, under WSR 12-02-077 that would make these rules permanent. Comparable emergency rules for the WCCC program were made permanent under WSR 11-18-001.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-3565, 170-290-3610, and 170-290-3660.

Statutory Authority for Adoption: RCW 43.215.060; chapter 43.215 RCW; section 501, chapter 265, Laws of 2006 (uncodified).

Other Authority: ESSB 5921 (chapter 42, Laws of 2011 1st sp. sess.); 2ESHB 1087 (chapter 50, Laws of 2011 1st sp. sess.); EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The legislature enacted ESSB 5921 to maintain compliance with and accountability for the federal temporary assistance for needy families (TANF) block grant requirements under the Personal Responsibility and Work Opportunity Act of 1996, and to further reduce costs for the state's WorkFirst program. (WorkFirst is the state's "welfare-to-work" program encompassing several state agencies and programs, including certain DEL child care programs.)

ESSB 5921 was adopted as a WorkFirst "redesign" measure to restructure the program for better efficiency, to reduce

fraud and to lower overall costs. According to the legislature's 2011-13 Operating Budget Overview - 2ESHB 1087: "*During fiscal year 2012 (July 1, 2011 through June 30, 2012) the WorkFirst programs are to be restructured and become performance based ... The budget also increases the number and visibility of fraud detection in public assistance programs through more staff and increased technology.*"

The overview document further describes savings estimated at \$62.9 million through TANF, WorkFirst and child care subsidy changes contained in ESSB 5921 and 2ESHB 1087:

"TANF REDUCTIONS - \$62.9 MILLION SAVINGS

The proposed budget makes several changes to the cash benefits program including: (1) implementing an income eligibility test for a care giver who is providing for a child outside of the child's home; and (2) applying the sixty-month time limit to any family where the parent is in the home. Major child care reductions include: (1) reduced child care for those whose WorkFirst participation is suspended; (2) moving to six-month certifications; and (3) requiring child support for Working Connections Child Care participants. WorkFirst savings is found through suspension of services and moving to performance based contracts. The budget estimates an \$11.8 million ending fund reserve to pay for any unforeseen costs."

Section 11 of ESSB 5921 enacted two of the provisions noted in the budget overview document, by adding the following new subsections (2) and (3) to DEL's RCW 43.215.135:

"(2) As a condition of receiving a child care subsidy or a working connections child care subsidy, the applicant or recipient must seek child support enforcement services from the department of social and health services, division of child support, unless the department finds that the applicant or recipient has good cause not to cooperate.

(3) Except as provided in subsection (4) of this section, an applicant or recipient of a child care subsidy or a working connections child care subsidy is eligible to receive that subsidy for six months before having to recertify his or her income eligibility. The six-month certification provisions applies only if enrollment in the child care subsidy or working connections child care program are capped."

The legislature appropriated funding and adopted provisions specifically for implementation of ESSB 5921 in the 2011-2013 Operating Budget Act, 2ESHB 1087. Also, under EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.), the legislature extended the authority for agencies to adopt emergency rules to "... implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013..."

This rule meets the requirements of office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are "required by state or federal law or required to maintain federally delegated or authorized programs;" and "necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities."

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

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

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

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

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

Date Adopted: February 1, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3565 Consumers' responsibilities.

When a ((consumer)) person applies for or receives SCC program subsidies, ((he or she)) the applicant or consumer must, as a condition of receiving those benefits:

(1) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(2) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities outside of the consumer's home;

(4) Pay the provider for child care services when the consumer requests additional child care for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS;

(5) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

(6) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;

(7) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

(8) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; ((and))

(9) Provide the information requested by the DSHS fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her SCC program subsidies. If DSHS determines a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC program subsidies. The consumer may become eligible

again when he or she meets SCC program requirements in part III of this chapter(-); and

(10) Seek child support enforcement services from the DSHS division of child support, unless DSHS finds that the applicant or consumer has good cause not to cooperate as defined under WAC 388-422-0020 or as provided in (a) of this subsection.

(a) For the purposes of this subsection, "good cause" also includes the following:

(i) The applicant or consumer has a current court order showing the child support amount ordered on behalf of the child who will receive the child care subsidy benefits;

(ii) The applicant or consumer already complies with child support enforcement services, either voluntarily or to meet other public assistance benefits requirements;

(iii) The applicants or consumers are married parents, or unmarried two-parent families with a child in common needing child care living in the same household;

(iv) The applicant or consumer is a single-parent family when the other parent is deceased;

(v) The applicant or consumer is a single-parent family when the other parent is incarcerated for one year or longer;

(vi) The applicants or consumers are both minor parents;

or
(vii) The DSHS division of child support does not have jurisdiction over the child support case, such as for tribal child support cases or cases outside of the United States.

(b) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3610 Countable income. DSHS counts income as money a consumer earns or receives from:

- (1) Wages and commissions earned from employment;
- (2) Unemployment compensation;
- (3) A TANF or other welfare grant;
- (4) The following child support ((payments received)) payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services because they are exempt for good cause under WAC 170-290-3565 (10)(a)(i), the amount as shown on a current court order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

- (5) Supplemental Security Income (SSI);
- (6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);
- (7) Refugee assistance payments;
- (8) Payments from the Veterans' Administration;
- (9) Pensions or retirement income;
- (10) Payments from labor and industries (L&I), or disability payments;

(11) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;

(12) Other types of income not listed in WAC 170-290-3630; and

(13) Gross wages from employment or self-employment income as defined in WAC 170-290-0003. Gross wages include any wages that are taxable.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3660 Eligibility period. (1) A consumer who meets all of the requirements of part III of this chapter is eligible ~~((for))~~ to receive SCC subsidies for six months before having to redetermine his or her income eligibility. The six-month eligibility period applies only if enrollments in the SCC program are capped as provided in WAC 170-290-0001(1) and 170-290-3501. Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-3570.

(2) A consumer's eligibility may be for less than six months if requested by the consumer.

(3) A consumer's eligibility may end sooner than six months if:

(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

WSR 12-04-097

RESCISSION OF EMERGENCY RULES DEPARTMENT OF EARLY LEARNING

[Filed February 1, 2012, 10:58 a.m.]

Effective immediately upon this filing, the department of early learning rescinds emergency rules filed on October 6, 2011, as WSR 11-21-005, revising rules in chapter 170-290 WAC, to implement section 11 of ESSB 5921, enrolled as chapter 42, Laws of 2011 1st sp. sess. The department has filed subsequent emergency rules on this date to replace and supersede the rules filed as WSR 11-21-005.

Elizabeth M. Hyde
Director