WSR 12-05-033
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed February 9, 2012, 8:32 a.m., effective February 9, 2012, 8:32 a.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESHB 2082, Laws of 2011, terminates all components of the disability lifeline (DL) program effective October 31, 2011, and establishes the aged, blind, or disabled (ABD) assistance and the pregnant women assistance (PWA) programs effective November 1, 2011.

Purpose: The department will maintain existing amendments, repeals and new rules filed as WSR 11-21-049 to eliminate reference to the DL program and to establish standards for the ABD assistance and PWA programs to comply with ESHB 2082 while the department completes the regular rule-making process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-400-0025, 388-404-0010, 388-408-0010, 388-418-0025, 388-424-0016, 388-448-0001, 388-448-0010, 388-448-0020, 388-448-0030, 388-448-0035, 388-448-0040, 388-448-0050, 388-448-0060, 388-448-0070, 388-448-0080, 388-448-0090, 388-448-0100, 388-448-0110, 388-448-0120, 388-448-0130, 388-448-0140, 388-448-0150, 388-448-0160, 388-448-0180, 388-448-0200, 388-448-0210, 388-448-0220, 388-448-0250, 388-450-0110, 388-450-0135, 388-450-0175, 388-462-0011 and 388-478-0030; and amending WAC 388-273-0020, 388-406-0005, 388-406-0045, 388-406-0055, 388-408-0005, 388-416-0010, 388-424-0010, 388-424-0015, 388-436-0030, 388-442-0010, 388-450-0040, 388-450-0045, 388-450-0095, 388-450-0100, 388-450-0115, 388-450-0120, 388-450-0130, 388-450-0156, 388-450-0170, 388-460-0020, 388-460-0040, 388-468-0005, 388-470-0055, 388-473-0010, 388-474-0010, 388-474-0020, 388-476-0005, 388-478-0035, and 388-486-0005.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.04.770, 74.08.043, 74.08.335.

Other Authority: ESHB 2082, chapter 36, Laws of 2011.

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: ESHB 2082, Laws of 2011, eliminates DL October 31, 2011, and creates ABD and PWA November 1, 2011. This filing continues the emergency rule filed as WSR 11-21-049 while the department completes the regular rule-making process. The department has filed a preproposal statement of inquiry (WSR 11-15-104) and a proposed rule making (WSR 11-22-032). The hearing was held on December 27, 2011. The department is currently reviewing public comments received and anticipates filing a supplemental notice CR-102 to WSR 11-22-032 mid-February 2012.

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 27, Amended 29, Repealed 33.

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 27, Amended 29, Repealed 33; 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.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-18-106, filed 9/3/02, effective 10/4/02)

WAC 388-273-0020 Who may receive Washington telephone assistance program (WTAP)? (1) To receive WTAP benefits, you must:

(a) Be age eighteen or older or, if under eighteen, be the responsible head of household, and either;

(b) Be receiving one of the following programs from us:

(i) Temporary assistance for needy families (TANF);

(ii) State family assistance (SFA);

(iii) ((~~General assistance~~)) Pregnant women assistance (PWA);

(iv) Aged, blind, or disabled (ABD) cash assistance;

(v) Refugee assistance;

((~~(v)~~)) (vi) Food assistance;

((~~(vi)~~)) (vii) State Supplemental Security Income (SSI);

((~~(vii)~~)) (viii) Medical assistance, including medicare cost sharing programs;

((~~(viii)~~)) (ix) Community options program entry system (COPES);

((~~(ix)~~)) (x) Chore services; or

(c) Have completed using community service voice mail services, and been identified to the department as eligible for WTAP by the community agency that provided your community service voice mail program; and

(2) Apply to a local exchange company for WTAP and request the lowest available flat rate telephone service at the WTAP rate. In exchange areas where wireline service is not available without service extension, you may apply to a wireless carrier:

(a) **"Local exchange company"** means a telephone company that is required by the Washington utilities and transportation commission to offer WTAP benefits and offers local calling, i.e., calling without long distance charges.

(b) **"Flat rate service"** is telephone service with a single monthly payment that allows unlimited local calling for a specified length of time. The local exchange flat rate includes any federal end user access charges and other charges necessary to obtain the service; and

(3) You must have the local telephone service billed in your name.

NEW SECTION

WAC 388-400-0055 Who is eligible for the pregnant women assistance (PWA) program? Effective November 1, 2011:

(1) You can get pregnant women assistance (PWA), if you:

(a) Are pregnant as verified by a medical statement;

(b) Meet the citizenship/alien status requirements of WAC 388-424-0010;

(c) Live in the state of Washington per WAC 388-468-0005;

(d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;

(e) Meet TANF/SFA:

(i) Income requirements under chapter 388-450 WAC;

(ii) Resource requirements under chapter 388-470 WAC; and

(iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Tell us your social security number as required under WAC 388-476-0005;

(g) Report changes of circumstances as required under WAC 388-418-0005; and

(2) If you are an unmarried pregnant minor your living arrangements must meet the requirements of WAC 388-486-0005.

(3) You cannot get PWA if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220; or

(e) Are eligible for supplemental security income (SSI) benefits.

NEW SECTION

WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance? (1) Effective November 1, 2011, you are eligible for aged, blind, or disabled (ABD) cash benefits if you:

(a) Are:

(i) At least sixty-five years old;

(ii) Blind as defined by the Social Security Administration (SSA); or

(iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and

(b) Are at least eighteen years old or, if under eighteen, a member of a married couple;

(c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470 and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0010;

(d) Meet the citizenship/alien status requirements under WAC 388-424-0015;

(e) Provide a social security number as required under WAC 388-476-0005;

(f) Reside in the state of Washington as required under WAC 388-468-0005;

(g) Sign an interim assistance reimbursement authorization to agree to repay the monetary value of general assistance, disability lifeline, or aged blind or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210 and 388-474-0020;

(h) Report changes of circumstances as required under WAC 388-418-0005; and

(i) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) You aren't eligible for aged, blind, or disabled cash benefits if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220;

(e) Refuse of fail to follow through with the SSI application as required in WAC 388-449-0200;

(f) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225;

(g) Are eligible for supplemental security income (SSI) benefits;

(h) Are an ineligible spouse of an SSI recipient; or

(i) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(3) If you reside in a public institution and meet all other requirements, your eligibility for ABD cash depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD cash if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

(4) You aren't eligible for ABD cash when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

(a) In a work release program; or

(b) Outside of the institution including home detention.

AMENDATORY SECTION (Amending WSR 09-19-129, filed 9/22/09, effective 11/1/09)

WAC 388-406-0005 Can I apply for cash, medical, or Basic Food? (1) You can apply for any benefit the department offers, including cash assistance, medical assistance, or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

(i) A dependent child;

(ii) An incapacitated person; or

(iii) Someone who is deceased.

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) If you get Supplemental Security Income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.

(5) A person or agency may apply for ((~~GAU~~)) ABD cash or medical assistance for you if:

(a) You temporarily live out-of-state; and

(b) You are a Washington state resident.

(6) When you are confined or incarcerated in a Washington state public institution, you may apply for cash or medical assistance if you meet the following criteria:

(a) You are confined by or in the following public institutions:

(i) Department of corrections;

(ii) City or county jail; or

(iii) Institution for mental diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

(7) We will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:

(a) Meet the criteria of subsection (6) in this section; and

(b) Were receiving medicaid ((~~or general assistance benefits~~)) immediately before confinement or within the five years prior to confinement.

(8) If you meet the criteria in subsection (6) but did not receive medicaid ((~~or general assistance benefits~~)) within the five years prior to confinement, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.

(9) If you are applying for assistance for a youth leaving incarceration in a juvenile rehabilitation administration or county juvenile detention facility, you may apply for assistance within forty-five days prior to release. We will process your application for medical assistance when we receive it, and if eligible, we will authorize medical benefits upon the youth's release from confinement.

AMENDATORY SECTION (Amending WSR 09-19-129, filed 9/22/09, effective 11/1/09)

WAC 388-406-0045 Is there a good reason my application for cash or medical assistance has not been processed? If your application for cash or medical assistance is not processed within the time limits under WAC 388-406-0035, the department must decide if there is a good reason for the delay. This good reason is also called "good cause."

(1) We do not have a good reason for not processing your application for TANF or SFA within thirty days if:

(a) We did not give or send you a notice of what information we needed to determine your eligibility within twenty days from the date of your application;

(b) We did not give or send you a notice that we needed additional information or action within five calendar days of the date we learned that more information was needed to determine eligibility;

(c) We did not process your application within five calendar days from getting the information needed to decide eligibility; and

(d) We decide good cause exists but do not document our decision in the case record on or before the time limit for processing the application ends.

(2) We do have a good reason for not processing your application timely if:

(a) You do not give us the information or take an action needed for us to determine eligibility;

(b) We have an emergency beyond our control; or

(c) There is no other available verification for us to determine eligibility and the eligibility decision depends on information that has been delayed such as:

(i) Medical documentation;

(ii) For cash assistance, extensive property appraisals; or

(iii) Out-of-state documents or correspondence.

(3) For medical assistance, good cause exists only when the department otherwise acted promptly at all stages of the application process.

(4) For ((~~general assistance (GA)~~)) ABD cash, good cause exists if you apply when you are confined in a Washington State public institution as defined in WAC 388-406-0005 (6)(a).

AMENDATORY SECTION (Amending WSR 10-11-033, filed 5/11/10, effective 7/1/10)

WAC 388-406-0055 When do my benefits start? The date we approve your application affects the amount of benefits you get. If you are eligible for:

(1) Cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the thirtieth day for TANF, SFA, PWA, or RCA; or

(c) No later than the forty-fifth day for ((~~general assistance (GA)~~)) aged, blind, or disabled (ABD) cash assistance unless you are confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a) on the forty-fifth day, in which case your benefits will start on the date you are released from confinement.

(2) Basic Food, your benefits start from the date you applied unless:

(a) You are recertified for Basic Food. If you are recertified for Basic Food, we determine the date your benefits start under WAC 388-434-0010;

(b) You applied for Basic Food while living in an institution. If you apply for Basic Food while living in an institution, the date you are released from the institution determines your start date as follows. If you are expected to leave the institution:

(i) Within thirty days of the date we receive your application, your benefits start on the date you leave the institution; or

(ii) More than thirty days from the date we receive your application, we deny your application for Basic Food. You may apply for Basic Food again when your date of release from the institution is closer.

(c) We were unable to process your application within thirty days because of a delay on your part. If you caused the delay, but submit required verification by the end of the second thirty-day period, we approve your benefits starting the date you provide the required verification. We start your benefits from this date even if we denied your application for Basic Food.

(d) We initially denied your application for Basic Food and your assistance unit (AU) becomes categorically eligible (CE) within sixty days from the date you applied. If your AU becoming CE under WAC 388-414-0001 makes you eligible for Basic Food, the date we approve Basic Food is the date your AU became CE.

(e) You are approved for transitional food assistance under chapter 388-489 WAC. We determine the date transitional benefits start as described under WAC 388-489-0015.

(f) You receive transitional food assistance with people you used to live with, and are now approved to receive Basic Food in a different assistance unit:

(i) We must give the other assistance unit ten days notice as described under WAC 388-458-0025 before we remove you from the transitional food assistance benefits.

(ii) Your Basic Food benefits start the first of the month after we remove you from the transitional benefits. For example, if we remove you from transitional benefits on November 30th, you are eligible for Basic Food on December 1st.

(3) Medical assistance, the date your benefits start is stated in chapter 388-416 WAC.

(4) For long-term care, the date your services start is stated in WAC 388-106-0045.

AMENDATORY SECTION (Amending WSR 03-17-066, filed 8/18/03, effective 9/18/03)

WAC 388-408-0005 What is a cash assistance unit? (1) For all sections of this chapter:

(a) **"We"** means the department of social and health services.

(b) **"You"** means a person that is applying for or getting benefits from the department.

(c) **"Assistance unit"** or **"AU"** is the group of people who live together and whose income or resources we count to decide your eligibility for benefits and the amount of benefits you get.

(2) For ((~~GA-U~~)) ABD cash, we decide who is in the AU under WAC ((~~388-408-0010~~)) 388-408-0060.

(3) For TANF, PWA, or SFA, we decide who is in the AU by taking the following steps:

(a) We start with who must be in the AU under WAC 388-408-0015;

(b) We add those you choose to have in the AU under WAC 388-408-0025; and

(c) We remove those who are not allowed in the AU under WAC 388-408-0020.

NEW SECTION

WAC 388-408-0060 Who is in my assistance unit for aged, blind, or disabled (ABD) cash assistance? (1) If you are an adult that is aged, blind, or likely to be disabled as defined in WAC 388-400-0060, 388-449-0001, you can be in a ABD cash AU;

(2) If you are married and live with your spouse, we decide who to include in the AU based on who is aged, blind, or likely to be disabled:

(a) If you are both aged, blind, or likely to be disabled as defined in WAC 388-400-0060, 388-449-0001, we include both of you in the same AU.

(b) If only one spouse is aged, blind, or likely to be disabled, we include only the aged, blind, or likely to be disabled spouse in the AU. We count some of the income of the spouse that is not in the AU as income to the AU under WAC 388-450-0135.

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

WAC 388-416-0010 Medical certification periods for recipients of cash assistance programs. (1) The certification period for medical services begins on the first day of the month of application when the client is determined eligible for cash assistance for one of the following programs:

(a) Temporary assistance for needy families (TANF);

(b) Aged, blind, or disabled (ABD) cash assistance;

(c) Pregnant women assistance (PWA);

(d) Supplemental Security Income (SSI); or

((~~(c)~~)) (e) Refugee assistance.

(2) The certification period for the medical programs associated with the cash programs in subsection (1) of this section continues as long as eligibility for these programs lasts. When a client's cash assistance is terminated, eligibility for medical assistance is continued until eligibility is redetermined as described in WAC 388-418-0025.

(3) The certification period for medical can begin up to three months prior to the month of application for clients described in subsection (1) of this section if the conditions in WAC 388-416-0015(6) apply.

((~~(4) The certification period for medical care services begins on the date eligibility begins for the following cash assistance programs:~~

~~(a) General assistance for unemployable persons (GA-U); or~~

~~(b) Alcohol and Drug Abuse Treatment and Support Act (ADATSA) programs, when the client is either receiving a grant or waiting for treatment to begin.~~

~~(5) The certification period for medical care services for clients in subsection (4) of this section runs concurrently with the period of eligibility for the client's cash assistance program.~~))

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

WAC 388-424-0010 Citizenship and alien status—Eligibility for TANF, medicaid, and CHIP. (1) To receive temporary assistance for needy families (TANF), medicaid, or children's health insurance program (CHIP) benefits, an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A United States (U.S.) citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; or

(f) A Hmong or Highland Lao.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, medicaid, and CHIP.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, medicaid, or CHIP for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006 (4) or (5) are met.

(4) A lawfully present "nonqualified alien" child or pregnant woman as defined in WAC 388-424-0001 who meet residency requirements as defined in WAC 388-468-0005 may receive medicaid or CHIP.

(5) An alien who is ineligible for TANF, medicaid or CHIP because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (state family assistance (SFA), aged, blind, or disabled (ABD) cash, disability lifeline (DL) and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)), and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits for noncitizen women as described in WAC 388-462-0015(3); or

(d) State-funded apple health for kids as described in WAC 388-505-0210(5).

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ((~~general assistance~~)) ABD cash, PWA, and ADATSA programs. (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); or

(b) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001.

(2) To receive ((~~general assistance (GA)~~)) aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be ((~~ineligible for the TANF, SFA, or SSI program for a reason other than failure to cooperate with program requirements, and belong to one of the following groups as defined in WAC 388-424-0001~~)):

(a) A U.S. citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or

(e) A nonqualified alien ((~~who meets the Washington state residency requirements as listed in WAC 388-468-0005~~)) described in WAC 388-424-0001 who:

(i) Has declared their intent to stay in the United States indefinitely; and

(ii) Provides current documentation that they have petitioned the United States Citizenship and Immigration Services (USCIS) for adjustment of status and USCIS is not taking action to enforce their departure; or

(iii) Are citizens of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau who have a compact or free association with the United States.

(3) To receive ADATSA benefits, you must belong to one of the following groups as defined in WAC 388-424-0001:

(a) A U.S. citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking; or

(e) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.

AMENDATORY SECTION (Amending WSR 11-02-037, filed 12/29/10, effective 2/1/11)

WAC 388-436-0030 How does my eligibility for other possible cash benefits impact my eligibility for CEAP ((~~depends on other possible cash benefits.~~))? (1) You are ineligible for CEAP if you, or a household member, are eligible for any of the following programs:

(a) TANF or SFA, unless the family has had its case grant terminated due to WAC 388-310-1600 within the last six months;

(b) Pregnant women assistance (PWA);

(c) RCA;

((~~(c) Disability lifeline (DL)~~)) (d) Aged, blind, or disabled (ABD) cash;

((~~(d)~~)) (e) Supplemental Security Income (SSI);

((~~(e)~~)) (f) Medical assistance for those applicants requesting help for a medical need;

((~~(f)~~)) (g) Food assistance for those applicants requesting help for a food need;

((~~(g)~~)) (h) Housing assistance from any available source for those applicants requesting help for a housing need;

((~~(h)~~)) (i) Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.

(2) The department may require the applicant, or anyone in the assistance unit, to apply for and take any required

action to receive benefits from programs described in the above subsection (1)(a) through (h).

(3) The department may not authorize CEAP benefits to any household containing a member who is:

(a) Receiving cash benefits from any of the following programs:

(i) TANF/SFA;

(ii) PWA;

(iii) RCA;

((~~(iii)~~)) (iv) DCA; or

((~~(iv) DL~~)) (v) ABD cash.

(b) Receiving reduced cash benefits for failure to comply with program requirements of TANF/SFA, or RCA.((~~.~~))

(4) The department may authorize CEAP to families reapplying for TANF/SFA who are not eligible for TANF cash benefits under WAC 388-310-1600 until they complete the four week participation requirement.

AMENDATORY SECTION (Amending WSR 05-21-100, filed 10/18/05, effective 11/18/05)

WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits? (1) You are a **fleeing felon** if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.

(2) If you are a fleeing felon, or violating a condition of probation or parole as determined by an administrative body or court that has the authority to make this decision, you are not eligible for TANF/SFA, ((~~GA~~)) PWA, ABD cash, or Basic Food benefits.

NEW SECTION

WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program? For the purposes of this chapter, "we" and "us" refer to the department of social and health services.

"You" means the applicant or recipient.

"Disabled" is defined by the Social Security Administration for supplemental security income (SSI) as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

"Physical impairment" means a diagnosable physical illness.

"Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to alcohol or drug abuse or addiction.

(1) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(2) We determine you are likely to be disabled if:

(a) The Social Security Administration (SSA) determined you are eligible for disability benefits;

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS);

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for long-term care services from aging and disability services administration for a medical condition that is expected to last twelve months or more or result in death; or

(e) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(3) If you have a physical or mental impairment and you are impaired by alcohol or drug addiction and do not meet the other disability criteria in subsection (2)(a) through (d) above, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of alcoholism or drug addiction.

(4) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions, (such as reaching, handling, stooping, or crouching) seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervision and coworkers, and tolerating the pressures of a work setting.

(5) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) in the last twelve months unless:

(a) You file a timely appeal with SSA;

(b) SSA decides you have good cause for a late appeal; or

(c) You give us medical evidence of a potentially disabling condition that SSA did not consider or that your condition has deteriorated; and

(i) You give us proof that SSA denied your request to reconsider your claim; or

(ii) You give us proof that you don't meet the nondisability criteria for SSI.

NEW SECTION

WAC 388-449-0005 Sequential evaluation process step 1—How does the department determine if you are performing substantial gainful employment? We deny disability if you are engaging in substantial gainful activity (SGA) when you apply for aged, blind, or disabled (ABD) benefits. "Substantial gainful activity" means you are per-

forming, in a regular and predictable manner, an activity usually done for pay or profit.

(1) You must be earning less than the SGA standard as defined by the Social Security Administration (SSA) to be eligible for ABD cash, unless you work:

(a) Under special conditions that go beyond the employer providing reasonable accommodation, such as in a sheltered workshop; or

(b) Occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job as verified by your employer.

NEW SECTION

WAC 388-449-0010 What evidence do we consider to determine disability? To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include:

(1) For a physical impairment, a health professional licensed in Washington State or where the examination was performed:

(a) A physician, which includes:

(i) Medical doctor (M.D.);

(ii) Doctor of osteopathy (D.O.);

(iii) Doctor of optometry (O.D.) for visual disorders;

(iv) Doctor of podiatry (D.P.) for foot disorders; and

(v) Qualified speech-language pathologists, for purposes of establishing speech or language impairments only.

(2) For a mental impairment, professionals licensed in Washington State or where the examination was performed:

(a) A psychiatrist; or

(b) A psychologist.

(3) We accept medical evidence of how your impairment(s) affect your ability to function from treating medical sources once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in (1) and (2) above:

(a) All medical professionals listed in (1) and (2) above;

(b) A physician who is currently treating you for a mental impairment;

(c) A physician's assistant who is currently treating your for a physical impairment; and

(d) An advanced nurse practitioner who is treating you for a condition within their certification.

(4) "Other evidence" means information from other sources not listed in subsection (1), (2), or (3) of this section who can provide supporting documentation of functioning for impairments established by acceptable medical sources in subsections (1) or (2) of this section. Other sources include public and private agencies, nonmedical sources such as schools, parents and caregivers, social workers and employers, and other practitioners such as naturopaths, chiropractors, and audiologists.

NEW SECTION

WAC 388-449-0015 What medical evidence do I need to provide? You must give us medical evidence of your impairment(s) and how they affect your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective, and complete.

(1) Objective evidence for physical impairments means:

(a) Laboratory test results;

(b) Pathology reports;

(c) Radiology findings including results of X rays and computer imaging scans;

(d) Clinical findings, including but not limited to ranges of joint motion, blood pressure, temperature or pulse, and documentation of a physical examination; and

(e) Hospital history and physical reports and admission and discharge summaries; or

(f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

(a) Clinical interview observations, including objective mental status exam results and interpretation.

(b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

(i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for a disability determination must be from a medical professional described in WAC 388-449-0010 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed by an acceptable medical source defined in WAC 388-449-0010 within five years of application;

(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-449-0005;

(c) Documentation of how long a condition has impaired your ability to perform work related activities;

(d) A prognosis, or written statement of how long an impairment will impair your ability to perform work related activities; and

(e) A written statement from a medical professional (defined in WAC 388-449-0010) describing what you are capable of doing despite your impairment (medical source statement) based on an examination performed within ninety days of the date of application or forty-five days before the month of disability review.

(4) We will consider documentation in addition to objective evidence to support the acceptable medical source or treating provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) When making a disability decision, we don't use your report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.

(6) We don't use symptoms related to substance abuse or a diagnosis of addiction or chemical dependency when determining disability if substance use is material to your impairment.

(7) We consider diagnoses that are independent of addiction or chemical dependency when determining disability.

(8) We determine you have a diagnosis that is independent of addiction or chemical dependency if the impairment will persist at least ninety days after you stop using drugs or alcohol.

(9) If you can't obtain medical evidence sufficient for us to determine if you are likely to be disabled without cost to you, and you meet the other eligibility conditions in WAC 388-400-0060, we pay the costs to obtain objective evidence based on our published payment limits and fee schedules.

(10) We determine the likelihood of disability based solely on the objective information we receive. We are not obligated to accept another agency's or person's decision that you are disabled or unemployable.

(11) We can't use a statement from a medical professional to determine that you are disabled unless the statement is supported by objective medical evidence.

NEW SECTION

WAC 388-449-0020 How does the department evaluate functional capacity for mental health impairments? If you have a mental impairment, we evaluate ability to function in a work setting based on objective narrative clinical assessment from a medical professional as described in WAC 388-449-0010. We may also use other evidence as described in WAC 388-449-0010. Functioning means your ability to perform typical tasks that would be required in a routine job setting and your ability to interact effectively while working.

(1) We evaluate cognitive and social functioning by assessing your ability to:

(a) Understand, remember, and persist in tasks by following simple instructions of one or two steps.

(b) Understand, remember, and persist in tasks by following complex instructions of three or more steps.

(c) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.

(d) Learn new tasks.

(e) Perform routine tasks without undue supervision.

(f) Adapt to changes in a routine work setting.

(g) Make simple work-related decisions.

(h) Be aware of normal hazards and take appropriate precautions.

(i) Ask simple questions or request assistance.

(j) Communicate and perform effectively in a work setting with public contact.

(k) Communicate and perform effectively in a work setting with limited public contact.

(l) Complete a normal workday and workweek without interruptions from psychologically based symptoms.

(m) Set realistic goals and plan independently.

NEW SECTION

WAC 388-449-0030 How does the department evaluate functional capacity for physical impairments? If you have a physical impairment we evaluate your ability to work based on objective medical evidence from a medical professional as described in WAC 388-449-0010. We may also use other evidence as described in WAC 388-449-0010.

(1) **"Exertion level"** means having strength, flexibility, and mobility to lift, carry, stand or walk as needed to fulfill job duties in the following work levels. For this section, "occasionally" means less than one-third of the time and "frequently" means one-third to two-thirds of the time.

The following table is used to determine your exertion level. Included in this table is a strength factor, which is your ability to perform physical activities, as defined in Appendix C of the Dictionary of Occupational Titles (DOT), Revised Edition, published by the U.S. Department of Labor as posted on the Occupational Information Network (O*NET).

If you are able to:	Then we assign this exertion level
(a) Lift ten pounds maximum and frequently lift or carry lightweight articles. Walking or standing only for brief periods.	Sedentary
(b) Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday. Sitting and using pushing or pulling arm or leg movements most of the day.	Light
(c) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(d) Lift on hundred pounds maximum and frequently lift or carry up to fifty pounds.	Heavy

(2) **"Exertional limitation"** means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. We consider any exertional limitations when we determine your ability to work.

(3) **"Functional physical capacity"** means the degree of strength, agility, flexibility, and mobility you can apply to work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the physical impairment is assigned an overall severity rating of three or four. We determine functional physical capacity based on your exertional and nonexertional limitations. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(4) **"Nonexertional physical limitation"** means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Environmental restrictions may include, among other things, your inability to work in an area where you would be exposed to chemicals.

(5) **"Functional limitations"** means a restriction on work activities caused by unrelieved pain or the effects of medication prescribed to treat an impairment. We determine your functional limitations based on objective documentation from a medical professional as described in WAC 388-449-0010. We may also use other evidence as described in WAC 388-449-0010. We evaluate functioning by assessing your ability to:

(a) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.

(b) Perform routine tasks without undue supervision.

(c) Make simple work-related decisions.

(d) Be aware of normal hazards and take appropriate precautions.

(e) Ask simple questions or request assistance.

NEW SECTION

WAC 388-449-0035 How does the department assign severity ratings to my impairment? (1) "Severity rating" is a rating of the extent of your impairment and how it impacts your ability to perform the basic work activities. The following chart provides a description of limitations on work activities and the severity ratings that would be assigned to each.

Effect on Work Activities	Degree of Impairment	Numerical Value
(a) There is no effect on your performance of basic work-related activities.	None	1
(b) There is no significant effect on your performance of basic work-related activities.	Mild	2
(c) There are limits on your performance of basic work-related activities.	Moderate	3
(d) There are significant limits on your performance of basic work-related activities.	Marked	4
(e) You are unable to perform basic work-related activities.	Severe	5

(2) We use the description of how your condition impairs your ability to perform work activities given by the acceptable medical source or your treating provider, and review other evidence you provide, to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews your medical evidence and the ratings assigned to your impairment when:

(a) The medical evidence indicates functional limitations consistent with at least a moderate physical or mental health impairment;

(b) Your impairment has lasted, or is expected to last, twelve months or more with medical treatment; and

(c) You were not previously determined likely to be disabled as defined in WAC 388-449-0010 through 388-449-0100.

(4) The contracted doctor reviews your medical evidence, severity ratings, and functional assessment to determine whether:

(a) The Medical evidence is objective and sufficient to support the findings of the provider;

(b) Description of impairments is supported by the medical evidence; and

(c) Severity rating and assessment of functional limitations assigned by DSHS are consistent with the medical evidence.

(5) If the medical provider's description of your impairment(s) is not consistent with the objective evidence, we will assign a severity rating consistent with objective medical evidence, and clearly describe why we rejected the medical evidence provider's opinion.

NEW SECTION

WAC 388-449-0040 How does the department determine the severity of mental impairments? If you are diagnosed with a mental impairment by an acceptable medical source described in WAC 388-449-0010, we use information from medical sources described in WAC 388-449-0010 to determine how the impairment limits work-related activities.

(1) We review the following psychological evidence to determine the severity of your mental impairment:

(a) Psychosocial and treatment history records;

(b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;

(c) Results of psychological tests; and

(d) Symptoms observed by the examining practitioner, and other evidence, that show how your impairment affects your ability to perform basic work-related activities.

(2) We exclude diagnosis and related symptoms of alcohol or substance abuse or addiction.

(3) If you are diagnosed with mental retardation, the diagnosis must be based on the Wechsler Adult Intelligence Scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	None (1)
71 to 84	Moderate (3)
60 to 70	Marked (4)
59 or lower	Severe (5)

(4) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

(a) Short term memory impairment;

(b) Perceptual or thinking disturbances;

(c) Disorientation to time and place; or

(d) Labile, shallow, or coarse affect.

(5) We base the severity of an impairment diagnosed as a mood, thought, memory, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

(a) Affect your ability to perform basic work related activities; and

(b) Are consistent with a diagnosis of a mental impairment as listed in the most recent published edition of the Diagnostic and Statistical Manual of Mental Disorders.

(6) The Global Assessment of Functioning (GAF) is a numeric scale (0 through 100) used to rate the social, occupational, and psychological functioning of adults.

(7) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5)(a) of this section as follows:

Symptom Ratings or Condition	Severity Rating
(a) The objective evidence and global assessment of functional score are consistent with a limitation on performing work activities.	Moderate (3)
(b) You are diagnosed with a functional disorder with psychotic features. (c) You have had two ore more hospitalizations for psychiatric reasons in the past two years. (d) You have had more than six months of continuous psychiatric inpatient or residential treatment in the past two years. (e) The objective evidence and global assessment of functioning score are consistent with significant limitations on ability to perform work activities.	Marked (4)
(f) The objective evidence and global assessment of functioning score are consistent with the absence of ability to perform work activities.	Severe (5)

(8) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with moderate severity (3) ratings; or (b) One or more disorders rated moderate severity (3), and one rated marked severity (4).	Marked (4)
(c) Two or more disorders rated marked severity (4).	Severe (5)

NEW SECTION

WAC 388-449-0045 How does the department determine the severity of physical impairments? We must decide if your physical impairment is serious enough to significantly limit your ability to perform substantial gainful activity. "Severity of a physical impairment" means the degree that an impairment restricts you from performing basic work-related activities (see WAC 388-449-0005). Severity ratings range from none to severe. We will assign severity ratings according to the table in WAC 388-449-0035.

We assign to each physical impairment a severity rating that is supported by medical evidence.

NEW SECTION

WAC 388-449-0050 How does the department determine the severity of multiple impairments? (1) If you have more than one impairment we decide the overall severity rating by determining if your impairments have a combined effect on your ability to be gainfully employed. Each diagnosis is grouped by affected organ or function into one of thirteen "body systems." The thirteen body systems consist of:

(a) Musculo-skeletal;

(b) Special senses and speech;

(c) Respiratory;

(d) Cardiovascular;

(e) Digestive;

(f) Genito-urinary;

(g) Hematological;

(h) Skin;

(i) Endocrine;

(j) Neurological;

(k) Mental disorders;

(l) Malignant neoplastic; and

(m) Immune system.

(2) We follow these rules when there are multiple impairments:

(a) We group each diagnosis by body system.

(b) When you have two or more diagnosed impairments that limit work activities, we assign an overall severity rating as follows:

Your Condition	Severity Rating
(i) All impairments are mild and there is no cumulative effect on basic work activities.	Mild
(ii) All impairments are mild and there is a cumulative effect on basic work activities.	Moderate
(iii) Two or more impairments are of moderate severity and there is a cumulative effect on basic work activities.	Marked
(iv) Two are more impairments are of marked severity.	Severe

NEW SECTION

WAC 388-449-0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits? When we receive your medical evidence, we review it to determine if it is sufficient to decide whether your circumstances meet disability requirements.

(1) We require written medical evidence to determine disability. The medical evidence must:

(a) Contain sufficient information as described under WAC 388-449-0015;

(b) Be written by an acceptable medical source or treating provider described in WAC 388-449-0010;

(c) Document the existence of a potentially disabling condition by an acceptable medical source described in WAC 388-449-0010; and

(d) Document an impairment has lasted, or is expected to last, twelve continuous months or more, or result in death;

(2) If the information received isn't clear, we may require more information before we determine your ability to perform substantial gainful activity. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny disability if:

(a) We don't have evidence that your impairment is of at least marked severity as defined in WAC 388-449-0035, 388-449-0040, 388-449-0045 388-449-0050;

(b) A reported impairment isn't expected to last twelve or more months or result in death; or

(c) Drug or alcohol abuse or addiction is material to your impairments.

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 388-449-0070 Sequential evaluation process step III—How does the department determine if you meet SSA listing of impairments criteria? We approve disability when we determine your impairment(s) meet the listings as described in appendix 1 to Subpart P of Part 404 within Title 20 of the Code of Federal Regulations.

NEW SECTION

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? (1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020, 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005; and

(b) You have performed in the past fifteen years;

(c) You performed long enough to acquire the knowledge and skills to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles.

(b) Your current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work regularly and continuously.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.

NEW SECTION

WAC 388-449-0100 Sequential evaluation process step V—How does the department evaluate if I can perform other work when determining disability? If we decide you cannot do work that you have done before, we then decide if you have the residual functional capacity to perform other work.

(1) We evaluate education in terms of formal schooling or other training to acquire skills that enables you to meet job requirements. We classify education as:

If you	Then your education level is
(a) Can't read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling or vocational training beyond the sixth grade.	Marginal education
(c) Have no formal schooling or vocational training beyond the eleventh grade; or (d) Had participated in special education in basic academic classes of reading, writing or mathematics in high school.	Limited education
(e) Have received a high school diploma or general equivalency degree (GED) and don't meet the special education definition in (d) above; or (f) Have received skills training and were awarded a certificate, degree or license.	High school and above level of education

(2) We approve disability when you have a marked or severe physical health impairments and you meet the criteria below:

Exertional Level	Your age	Your education level	Other vocational factors	Environmental and Functional limitations
Less than sedentary	Any age	Any level	Does not apply	Does not apply

Exertional Level	Your age	Your education level	Other vocational factors	Environmental and Functional limitations
Sedentary	Any age	Any level	Does not apply	You have marked or severe environmental or functional impairments that preclude all sedentary work
Sedentary	Fifty and older	Any level	Does not apply	Does not apply
Sedentary	Forty-five and older	Marginal education or limited English proficiency (LEP)	No transferable skills to work level	Does not apply
Light	Any age	Any level	Does not apply	You have marked or severe environmental or functional impairments that preclude all sedentary work
Light	Fifty and older	Marginal education or limited English proficiency (LEP)	Does not apply	Does not apply

(3) We approve disability when you have mental impairments, with an overall severity of marked or severe, and we have documentation, including a mental status exam (MSE) per WAC 388-449-0040, that demonstrate social or cognitive factors, as described in WAC 388-448-0020 that interfere with working as follows:

Your age	Your education	Work history	Social limitation
Any age	Any level	Any	Markedly impaired in the ability to: (a) Understand, remember, and persist in tasks by following simple instructions of one or two steps; (b) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; (c) Perform routine tasks without undue supervision; (d) Adapt to changes in a routine work setting; (e) Make simple work-related decisions; (f) Be aware of normal hazards and take appropriate precautions; (g) Ask simple questions or request assistance. Communicate and perform effectively in a work setting; or (h) Complete a normal workday and workweek without interruptions from psychologically based symptoms.
Any age	Any level	Unskilled	Markedly impaired in the ability to: (i) Understand, remember, and persist in tasks by following simple instructions of one or two steps; (j) Make simple work-related decisions; (k) Communicate and perform effectively in a work setting; or (l) Adapt to changes in a routine work setting.
Fifty and older	Any level	Skilled	Markedly impaired in the ability to: (m) Understand, remember, and persist in tasks by following complex instructions; (n) Set realistic goals and plan independently; or (o) Learn new tasks.

(4) We approve disability when you have both mental and physical impairments, with an overall severity marked or severe, and we have documentation, including a mental status exam (MSE) per WAC 388-449-0040, that demonstrate social or cognitive factors, as described in WAC 388-448-0020 that interfere with working as follows:

Your age	Your education	Skill or Work Level	Social Restrictions	Past Work
Any age	Any level	Restricted to light work level or less	You are moderately impaired in your ability to communicate and perform effectively in a work setting	No transferable skills to work level
Fifty or older	Limited education or LEP	Restricted to light work level or less	Does not apply	No transferable skills to work level
Any age	Marginal education or LEP	Restricted to medium work level or less	You are moderately impaired in your ability to communicate and perform effectively in a work setting with limited public contact	No transferable skills to work level

(5) If you don't meet the criteria listed above, and there are jobs you can do, we will find you are able to perform other work and we will take the following actions:

(a) Deny disability; and

(b) Give you examples of jobs you can do despite your impairments.

NEW SECTION

WAC 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end? (1) The maximum period of eligibility for ABD cash is twenty-four months before we must review additional medical evidence. If you remain on ABD cash at the end of the twenty-four month period, we determine your eligibility using current medical evidence.

(2) If your application for SSI is denied:

(a) We review your eligibility for the ABD cash program;

(b) We stop your benefits if you do not provide proof you have filed an appeal with SSA within sixty days of a SSI denial for not being disabled.

(3) We stop your benefits after the final decision on your application for SSI/SSA benefits or if you fail to follow through with any part of the SSI/SSA application or appeals process.

NEW SECTION

WAC 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)? (1) You may receive ABD benefits while you are waiting to receive supplemental security income (SSI) benefits only when you:

(a) Have filed your SSI application with the Social Security Administration (SSA), follow through with SSA directions and requirements to process your application including keeping all interview and consultative examination appointments, and do not withdraw your application;

(b) Agree to assign the initial or reinstated SSI payment to us provided under WAC 388-449-0210;

(c) Are otherwise eligible according to WAC 388-400-0060; and

(d) Meet disability criteria listed in WAC 388-449-0001.

(2) To demonstrate your impairments are disabling despite medical treatment, you must participate in medical treatment for the impairments that keep you from working, unless you meet one of the following good cause reasons:

(a) The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk; or

(b) We determine that treatment is not available because you can't obtain it without cost to you.

(3) If you refuse or fail to participate in medical treatment without good cause, your benefits will end until you reapply and provide proof you are pursuing treatment as recommended.

NEW SECTION

WAC 388-449-0210 What is interim assistance and how do I assign it to the department? The ABD and SSI programs both provide cash assistance to meet your basic needs. You cannot receive this assistance for the same time period from both programs. When you are approved for or reinstated on SSI, you may receive a retroactive payment. When we made GA, DL, or ABD payments to you or on your behalf for the same time period, you must assign your interim assistance to repay us.

(1) **"Assign"** means that you sign a written authorization for the Social Security Administration (SSA) to send the SSI retroactive payment to us.

(2) **"Interim assistance"** means the monetary value of benefits we paid to you or on your behalf during:

(a) The time between your SSI application date and the month recurring SSI payments begin; or

(b) The period your SSI payments were suspended or terminated, and later reinstated.

NEW SECTION

WAC 388-449-0220 How does alcohol or drug dependence affect my eligibility for the ABD cash and pregnant women assistance programs? (1) You must complete a chemical dependency assessment when we have information that indicates you may be chemically dependent.

(2) You must accept an assessment referral and participate in drug or alcohol treatment if a certified chemical

dependency counselor indicates a need for treatment, unless you meet one of the following good cause reasons:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment.

(b) The outpatient chemical dependency treatment you need isn't available in the county you live in.

(c) You need inpatient chemical dependency treatment at a location that you can't reasonably access.

(3) If you refuse or fail to complete an assessment or treatment without good cause, your benefits will end until you provide proof you are pursuing an assessment or treatment as required.

NEW SECTION

WAC 388-449-0225 Am I required to participate in vocational rehabilitation services if I receive ABD cash grant? You must participate in vocational rehabilitation services through the division of vocational rehabilitation (DVR) if you are determined to be eligible for DVR services.

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-450-0040 Native American benefits and payments. This section applies to TANF/SFA, RCA, ((~~GA~~)) PWA, ABD cash, medical, and food assistance programs.

(1) The following types of income are not counted when a client's benefits are computed:

(a) Up to two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian judgement funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per individual per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(2) Other Native American payments and benefits that are excluded by federal law are not counted when determining a client's benefits. Examples include but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540;

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503; and

(d) For medical assistance, receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

AMENDATORY SECTION (Amending WSR 06-17-017, filed 8/4/06, effective 9/4/06)

WAC 388-450-0045 How do we count income from employment and training programs? This section applies to cash assistance, Basic Food, and medical programs for families, children, and pregnant women.

(1) We treat payments issued under the Workforce Investment Act (WIA) as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food:

(i) We exclude OJT earnings for children who are eighteen years of age or younger and under parental control as described in WAC 388-408-0035.

(ii) We count OJT earnings as earned income for people who are:

(A) Age nineteen and older; or

(B) Age eighteen or younger and not under parental control.

(iii) We exclude all other payments.

(2) We exclude **all** payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program.

(3) We treat payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps Vista, university year for action, and urban crime prevention program as follows:

(a) For cash assistance and medical programs for families, children, and pregnant women, we exclude all payments.

(b) For Basic Food, we count most payments as earned income. We exclude the payments if you:

(i) Received Basic Food or cash assistance at the time you joined the Title I program; or

(ii) Were participating in the Title I program and received an income disregard at the time of conversion to the Food Stamp Act of 1977. We continue to exclude the payments even if you do not get Basic Food every month.

(4) We exclude **all** payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(a) Retired senior volunteer program (RSVP);

(b) Foster grandparents program; and

(c) Senior companion program.

(5) We count training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

((~~(6) When GAU clients receive training allowances we allow:~~

~~(a) The earned income incentive and work expense deduction specified under WAC 388-450-0175, when applicable; and~~

~~(b) The actual cost of uniforms or special clothing required for the course as a deduction, if enrolled in a remedial education or vocational training course.~~

~~(7) We exclude support service payments received by or made on behalf of WorkFirst participants.~~))

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0095 Allocating income—General. This section applies to TANF/SFA, RCA, ((~~and GA~~)) PWA, and ABD cash assistance programs.

(1) Allocation is the process of determining how much of a financially responsible person's income is considered available to meet the needs of legal dependents within or outside of an assistance unit.

(2) In-bound allocation means income possessed by a financially responsible person outside the assistance unit which is considered available to meet the needs of legal dependents in the assistance unit.

(3) Out-bound allocation means income possessed by a financially responsible assistance unit member which is set aside to meet the needs of a legal dependent outside the assistance unit.

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

WAC 388-450-0100 Allocating income—Definitions. The following definitions apply to the allocation rules for TANF/SFA, RCA, ((~~and GA~~)) PWA, and ABD cash programs:

(1) **"Dependent"** means a person who:

(a) Is or could be claimed for federal income tax purposes by the financially responsible person; or

(b) The financially responsible person is legally obligated to support.

(2) **"Financially responsible person"** means a parent, stepparent, adoptive parent, spouse or caretaker relative.

(3) A **"disqualified assistance unit member"** means a person who is:

(a) An unmarried pregnant or parenting minor under age eighteen who has not completed a high school education or general education development (GED) certification and is not participating in those educational activities which would lead to the attainment of a high school diploma or GED;

(b) An unmarried pregnant or parenting minor under age eighteen who is not living in a department-approved living situation;

(c) The financially responsible person who does not report to the department within five days of the date it becomes reasonably clear that the absence of a child will exceed ninety days;

(d) A person who has been convicted in federal or state court of having made a fraudulent statement or representation about their place of residence in order to receive assistance from two or more states at the same time as defined in WAC 388-446-0010; and

(e) A person who has been convicted of unlawfully receiving public assistance as defined under WAC 388-446-0005.

(4) **"Ineligible assistance unit member"** means an individual who is:

(a) Ineligible for cash assistance due to the citizenship/alien status requirements in WAC 388-424-0010;

(b) Ineligible to receive assistance under WAC 388-442-0010 for having been convicted after August 21, 1996, under federal or state law, of possession, use or distribution of a controlled substance;

(c) Ineligible to receive assistance under WAC 388-442-0010 for fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime;

(d) Ineligible to receive assistance under WAC 388-442-0010 for violating a condition of probation or parole which was imposed under a federal or state law as determined by an administrative body or court of competent jurisdiction;

(e) The spouse of a woman who receives cash benefits from the ((~~GA-S~~)) PWA program; or

(f) The adult parent of a minor parent's child.

NEW SECTION

WAC 388-450-0112 Does the department allocate the income of an ABD cash client to legal dependents? This section applies to the aged, blind, or disabled (ABD) cash assistance program.

(1) The income of an ABD cash client is reduced by the following:

(a) The ABD cash earned income disregard as specified in WAC 388-450-0177; and

(b) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.

(2) When a ABD cash client in a medical institution, alcohol or drug treatment center, congregate care facility or adult family home has income, the income is countable to meet the client's needs after the income is reduced by the following:

(a) The payment standard amount for the nonapplying spouse and legal dependents living in the home; and

(b) The standard of assistance the client is eligible for while in an alternative care facility.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0115 ((~~Allocating~~)) Does the department allocate the income of a financially responsible person who is excluded from the assistance unit((~~.~~))? This sec-

tion applies to TANF/SFA, RCA and ((~~GA-S~~)) PWA programs.

The income of a financially responsible person excluded from the assistance unit is available to meet the needs of the assistance unit after the income is reduced by the following:

(1) A ninety dollar work expense deduction from the financially responsible person(s) excluded from the assistance unit who is employed;

(2) The payment standard amount for the ineligible assistance unit members living in the home; and

(3) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0120 ((~~Allocating~~)) Does the department allocate the income of financially responsible parents to a pregnant or parenting minor((~~.~~))? This section applies to TANF/SFA, RCA and ((~~GA-S~~)) PWA programs.

The income of nonapplying financially responsible parent(s) of a pregnant or parenting minor is countable to meet the needs of the minor and the child(ren) after the income is reduced by the following:

(1) A ninety dollar work expense from the financially responsible parent's gross income from employment;

(2) An amount not to exceed the department's standard of need for:

(a) The financially responsible parent and dependent living in the home who are not applying for or receiving cash benefits and not a disqualified individual; and

(b) Court or administratively ordered current or back support for legal dependents.

(3) Spousal maintenance payments made to meet the needs of individuals not living in the home.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0130 ((~~Allocating~~)) Does the department allocate the income of a nonapplying spouse to a caretaker relative((~~.~~))? This section applies to TANF/SFA, PWA, and RCA programs.

(1) The community income of the nonapplying spouse and applying spouse is combined. See WAC 388-450-0005 to determine what income is available as community income.

(2) Subtract a one person payment standard as specified in WAC 388-478-0020.

(3) The remainder is allocated to the caretaker relative.

NEW SECTION

WAC 388-450-0137 Does the department allocate income of an ineligible spouse to an ABD cash client? This section applies to the aged, blind, or disabled (ABD) cash assistance program.

(1) When an ABD cash client is married and lives with the nonapplying spouse, the following income is available to the client:

(a) The remainder of the client's wages, retirement benefits or separate property after reducing the income by:

(i) The ABD cash work incentive deduction, as specified in WAC 388-450-0177; and

(ii) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.

(b) The remainder of the nonapplying spouse's wages, retirement benefits and separate property after reducing the income by:

(i) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents; and

(ii) The payment standard amount as specified under WAC 388-478-0033 which includes ineligible assistance unit members.

(c) One-half of all other community income, as provided in WAC 388-450-0005.

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

WAC 388-450-0156 When am I exempt from deeming? (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with United States Citizenship and Immigration Services (USCIS):

(i) Refugee;

(ii) Parolee;

(iii) Asylee;

(iv) Cuban/Haitian entrant; or

(v) Special immigrant from Iraq or Afghanistan.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, or nonemergency medicaid benefits. We count a quarter of work by the following people toward your forty qualifying quarters:

(i) Yourself;

(ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and

(iii) Your spouse if you are still married or your spouse is deceased.

(e) You become a United States (U.S.) Citizen;

(f) Your sponsor is dead; or

(g) If USCIS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:

(i) You no longer live with your sponsor; and

(ii) Leaving your sponsor caused your need for benefits.

(2) You are exempt from the deeming process while you are in the same AU as your sponsor;

(3) For children and pregnancy medical programs, you are exempt from sponsor deeming requirements.

(4) For Basic Food, you are exempt from deeming while you are under age eighteen.

(5) For state family assistance, ((~~disability lifeline (DL)~~)) aged, blind, or disabled (ABD) cash, pregnant women assistance (PWA), state-funded Basic Food benefits, and state-funded medical assistance for legal immigrants you are exempt from the deeming process if:

(a) Your sponsor signed the affidavit of support more than five years ago;

(b) Your sponsor becomes permanently incapacitated; or

(c) You are a qualified alien according to WAC 388-424-0001 and you:

(i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;

(ii) Are an honorably discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of an honorably discharged veteran;

(iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.

(6) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:

(a) You no longer live with the person who committed the violence; and

(b) Leaving this person caused your need for benefits.

(7) If your AU has income at or below one hundred thirty percent of the federal poverty level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption." You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:

(a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

(8) If you use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:

(a) The names of the sponsored people in your AU;

(b) That you are exempt from deeming due to your income;

(c) Your sponsor's name; and

(d) The effective date that your twelve-month exemption began.

(9) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

(10) If you choose not to use the indigence exemption:

(a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or

(b) You will be subject to regular deeming rules under WAC 388-450-0160.

AMENDATORY SECTION (Amending WSR 04-03-051, filed 1/15/04, effective 2/15/04)

WAC 388-450-0170 ((~~TANF/SFA earned income incentive and deduction.~~)) Does the department provide an earned income deduction as an incentive for persons who receive TANF/SFA to work? This section applies to TANF/SFA, RCA, PWA, and medical programs for children, pregnant women, and families except as specified under WAC 388-450-0210.

(1) If a client works, the department only counts some of the income to determine eligibility and benefit level.

(2) We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

(3) If you pay for care before we approve your benefits, we subtract the amount you pay for those dependent children or incapacitated adults who get cash assistance with you.

(a) The amount we subtract is:

(i) Prorated according to the date you are eligible for benefits;

(ii) Cannot be more than your gross monthly income; and

(iii) Cannot exceed the following for each dependent child or incapacitated adult:

Dependent Care Maximum Deductions

Hours Worked Per Month	Child Two Years of Age & Under	Child Over Two Years of Age or Incapacitated Adult
0 - 40	$ 50.00	$ 43.75
41 - 80	$ 100.00	$ 87.50
81 - 120	$ 150.00	$ 131.25
121 or More	$ 200.00	$ 175.00

(b) In order to get this deduction:

(i) The person providing the care must be someone other than the parent or stepparent of the child or incapacitated adult; and

(ii) You must verify the expense.

NEW SECTION

WAC 388-450-0177 Does the department offer an income deduction for the ABD cash program as an incentive for clients to work? The department gives a deduction to people who receive income from work while receiving aged, blind, or disabled cash assistance. The deduction applies to aged, blind, or disabled cash benefits only. We allow the following income deduction when we determine the amount of your benefits:

We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

AMENDATORY SECTION (Amending WSR 06-10-034, filed 4/27/06, effective 6/1/06)

WAC 388-460-0020 Who is a protective payee? (1) A protective payee is a person or an employee of an agency who manages client cash benefits to provide for basic needs - housing, utilities, clothing, child care, and food. They may also provide services such as training clients how to manage money.

(2) Clients are assigned to protective payees for the following reasons:

(a) Emergency or temporary situations where a child is left without a caretaker (TANF/SFA) per WAC 388-460-0030;

(b) Mismanagement of money (TANF/SFA, ((~~GA~~)) PWA, ABD cash, or WCCC) per WAC 388-460-0035; or

(c) Pregnant or parenting minors per WAC 388-460-0040.

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

WAC 388-460-0040 When ((~~is~~)) does the department assign a protective payee assigned to TANF/SFA or PWA pregnant or parenting minors? Pregnant or parenting minors who are not emancipated under court order must be assigned to protective payees if the clients are:

(1) Head of a household;

(2) Under age eighteen;

(3) Unmarried; and

(4) Pregnant or have a dependent child.

AMENDATORY SECTION (Amending WSR 03-20-060, filed 9/26/03, effective 10/27/03)

WAC 388-468-0005 Residency. Subsections (1) through (4) applies to cash, the Basic Food program, and medical programs.

(1) A resident is a person who:

(a) Currently lives in Washington and intends to continue living here permanently or for an indefinite period of time; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(2) A person does not need to live in the state for a specific period of time to be considered a resident.

(3) A child under age eighteen is a resident of the state where the child's primary custodian lives.

(4) With the exception of subsection (5) of this section, a client can temporarily be out of the state for more than one month. If so, the client must supply the department with adequate information to demonstrate the intent to continue to reside in the state of Washington.

(5) Basic Food program assistance units who are not categorically eligible do not meet residency requirements if they stay out of the state more than one calendar month.

(6) A client may not receive comparable benefits from another state for the cash and Basic Food programs.

(7) A former resident of the state can apply for the ((~~GA-U~~)) ABD cash program while living in another state if:

(a) The person:

(i) Plans to return to this state;

(ii) Intends to maintain a residence in this state; and

(iii) Lives in the United States at the time of the application.

(b) In addition to the conditions in subsection (7)(a)(i)(ii), and (iii) being met, the absence must be:

(i) Enforced and beyond the person's control; or

(ii) Essential to the person's welfare and is due to physical or social needs.

(c) See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.

(8) Residency is not a requirement for detoxification services.

(9) A person is not a resident when the person enters Washington state only for medical care. This person is not eligible for any medical program. The only exception is described in subsection (10) of this section.

(10) It is not necessary for a person moving from another state directly to a nursing facility in Washington state to establish residency before entering the facility. The person is considered a resident if they intend to remain permanently or for an indefinite period unless placed in the nursing facility by another state.

(11) For purposes of medical programs, a client's residence is the state:

(a) Paying a state Supplemental Security Income (SSI) payment; or

(b) Paying federal payments for foster or adoption assistance; or

(c) Where the noninstitutionalized individual lives when medicaid eligibility is based on blindness or disability; or

(d) Where the parent or legal guardian, if appointed, for an institutionalized:

(i) Minor child; or

(ii) Client twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one.

(e) Where a client is residing if the person becomes incapable of determining residential intent after reaching twenty-one years of age; or

(f) Making a placement in an out-of-state institution; or

(g) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period.

(12) In a dispute between states as to which is a person's state of residence, the state of residence is the state in which the person is physically located.

AMENDATORY SECTION (Amending WSR 05-19-059, filed 9/16/05, effective 10/17/05)

WAC 388-473-0010 What are ongoing additional requirements and how do I qualify? "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

(a) Temporary assistance for needy families (TANF), or tribal TANF;

(b) State family assistance (SFA);

(c) Pregnant women assistance (PWA);

(d) Refugee cash;

((~~(d) General assistance cash~~)) (e) Aged, blind, or disabled (ABD); or

((~~(e)~~)) (f) Supplemental Security Income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your cash or medical assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

(a) The circumstances that create the need; and

(b) How the need affects your health, safety and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by increasing your monthly cash assistance benefit.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

REVIEW CYCLE	
Program	Frequency (Months)
TANF/RCA	6 Months
((~~GA~~)) ABD	12 Months
SSI	24 Months
All	Any time need or circumstances are expected to change
All	Any time need or circumstances are expected to change.

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.

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 02-11-033, filed 5/7/02, effective 6/7/02)

WAC 388-474-0010 How does being a Supplemental Security Income (SSI) client affect your cash assistance eligibility? (1) If you are married to an SSI recipient but do not get SSI in your own right, you are called an "ineligible spouse."

(2) If you are an ineligible spouse you cannot get the SSI state supplement when you are:

(a) The caretaker relative of a child who receives TANF or SFA; and

(b) Required to be included in the TANF or SFA assistance unit with the child (see WAC 388-408-0015); or

(c) Receiving refugee assistance.

(3) If you are an ineligible spouse and get an SSI state supplement (WAC 388-474-0012), you cannot get ((~~general assistance (GA)~~)) aged, blind, or disabled (ABD) cash assistance.

AMENDATORY SECTION (Amending WSR 02-11-033, filed 5/7/02, effective 6/7/02)

WAC 388-474-0020 What can ((~~a general assistance-unemployable (GA-U)~~)) an aged, blind, or disabled (ABD) cash assistance client expect when Supplemental Security Income (SSI) benefits begin? You ((~~can only get~~)) may only receive assistance to meet your basic needs from one government source at a time (WAC ((~~388-448-0210~~)) 388-449-0210). If you are ((~~a GA-U~~)) an ABD cash client who begins ((~~setting~~)) getting SSI, you should know that:

(1) If you got advance, emergency or retroactive SSI cash assistance for any period where you ((~~got GA-U~~)) received general assistance (GA), disability lifeline (DL), or aged, blind, or disabled (ABD) cash assistance, you must repay the department the amount of ((~~GA-U~~)) cash assistance paid to you for the matching time period.

(2) When you apply for ((~~GA-U~~)) ABD cash you must sign DSHS 18-235(X), interim assistance reimbursement agreement (IARA) to ((~~get GA-U~~)) receive ABD cash assistance.

(3) You cannot use your ((~~GA-U~~)) ABD money to replace money deducted from your SSI check to repay an SSI overpayment.

AMENDATORY SECTION (Amending WSR 10-17-101, filed 8/17/10, effective 9/17/10)

WAC 388-476-0005 Social Security number requirements. (1) With certain exceptions, each person who applies for or receives cash, medical or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued. For SSN requirements for immigrants, see WAC 388-424-0009.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

(a) Apply for the SSN;

(b) Provide proof that the SSN has been applied for; and

(c) Provide the SSN when it is received.

(3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.

(4) For cash, medical, and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.

(5) For food assistance programs:

(a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.

(b) If a person is unable to provide proof of application for a SSN for a newborn:

(i) The newborn can receive Basic Food with the household while effort is being made to get the SSN.

(ii) For the newborn to continue receiving Basic Food benefits; the household must provide proof of application for SSN or the SSN for the newborn, at the next recertification, or within six months following the month the baby is born, whichever is later.

(6) For medical programs, a newborn as described in WAC 388-505-0210(1) is eligible for categorically needy (CN) medical without meeting the SSN requirement until the baby's first birthday.

(7) There is no SSN requirement for the following programs:

(a) The consolidated emergency assistance program;

(b) The refugee cash and medical assistance program;

(c) The alien emergency medical program; and

(d) ((~~The state-funded pregnant woman program; and~~ ~~(e)~~)) Detoxification services.

NEW SECTION

WAC 388-478-0027 What are the payment standards for pregnant women assistance (PWA)? (1) The payment standards for PWA cash assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard
1	$197

(2) The payment standards for PWA cash assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	$120

NEW SECTION

WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance? (1) The payment standards for aged, blind, or disabled (ABD) cash assistance program assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment standard
1	$197
2	$248

(2) The payment standards for aged, blind, or disabled (ABD) cash assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	$120
2	$152

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-486-0005 Unmarried pregnant or parenting minors—Required living arrangement. (1) This rule affects only the minor's eligibility for cash assistance. It does not affect the eligibility of the minor parent's child for a cash grant.

(2) The following definitions apply to terms used in this section:

(a) "Unmarried" means a person who have never been married or whose marriage has been annulled. It does not include a person who has been divorced or widowed.

(b) "Minor" means a person younger than eighteen years of age.

(c) "Legal guardian" means a court-appointed legal guardian or court-appointed permanent custodian.

(d) "Relative" is a person who related to the pregnant or parenting minor as defined under RCW 74.15.020(4).

(3) An unmarried pregnant or parenting minor is not eligible for TANF, SFA or ((~~GA-S~~)) PWA unless the person:

(a) Has been emancipated by a court; or

(b) Lives in a home approved by the department and has a protective payee.

(4) The home of a minor's parent, legal guardian, or adult relative may be approved unless:

(a) The minor has no living parent, legal guardian, or adult relative that can be located or those persons do not want the minor to live with them;

(b) The minor or the minor's child is being or has been seriously harmed either physically, emotionally or sexually in the home of the parent, legal guardian, or adult relative;

(c) Substantial evidence exists of an act or failure to act by the parent, legal guardian, or adult relative that presents imminent or serious harm to the minor or the minor's child if they lived there; or

(d) The department determines that it is in the best interest of the minor or the minor's child to waive the requirement of living in the home of a parent, legal guardian, or adult relative.

(5) If the home of a minor's parent, legal guardian, or adult relative is not available or suitable, one of the following alternatives may be approved:

(a) A facility or home licensed under chapter 74.15 RCW that provides a supportive and supervised living arrangement requiring residents to learn parenting skills;

(b) A maternity home;

(c) Other adult-supervised living arrangement; or

(d) The minor's current or proposed living arrangement, if the department determines it is appropriate.

(6) A home that includes the other natural parent of the minor's child or unborn child is never approved if:

(a) The minor is under age sixteen; and

(b) The other parent is eighteen or older and meets the age criteria for rape of a child as set forth in RCW 9A.44.073, 9A.44.076, and 9A.44.079.

(7) The income of a minor parent found ineligible under this section is treated according to WAC 388-450-0100 and 388-450-0115 when determining the eligibility and benefit level of the minor parent's child.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-400-0025 Who is eligible for disability lifeline benefits?

WAC 388-404-0010 Age requirement for GA-U and ADATSA.

WAC 388-408-0010 Who is in my assistance unit for general assistance?

WAC 388-418-0025 Effect of changes on medical program eligibility.

WAC 388-424-0016 Citizenship and alien status—Immigrant eligibility restrictions for state medical benefits.

WAC 388-448-0001 What are the incapacity requirements for general assistance?

WAC 388-448-0010 How do we decide if you are incapacitated?

WAC 388-448-0020 Which health professionals can I go to for medical evidence?

WAC 388-448-0030 What medical evidence do I need to provide?

WAC 388-448-0035 How we assign severity ratings to your impairment.

WAC 388-448-0040 PEP step I—Review of medical evidence required for eligibility determination.

WAC 388-448-0050 PEP step II—How we determine the severity of mental impairments.

WAC 388-448-0060 PEP step III—How we determine the severity of physical impairments.

WAC 388-448-0070 PEP step IV—How we determine the severity of multiple impairments.

WAC 388-448-0080 PEP step V—How we determine your ability to function in a work environment if you have a mental impairment.

WAC 388-448-0090 PEP step V—How we determine your ability to function in a work environment if you have a physical impairment.

WAC 388-448-0100 PEP step VI—How we evaluate capacity to perform relevant past work.

WAC 388-448-0110 PEP step VII—How we evaluate your capacity to perform other work.

WAC 388-448-0120 How we decide how long you are incapacitated.

WAC 388-448-0130 Treatment and referral requirements.

WAC 388-448-0140 When does a person have good cause for refusing or failing to participate in medical treatment or referrals to other agencies?

WAC 388-448-0150 Penalty for refusing or failure to participate in medical treatment or other agency referrals.

WAC 388-448-0160 When do my disability lifeline benefits end?

WAC 388-448-0180 How do we redetermine your eligibility when we decide you are eligible for general assistance expedited medicaid (GAX)?

WAC 388-448-0200 Can I get general assistance while waiting for Supplemental Security Income (SSI)?

WAC 388-448-0210 What is interim assistance and how do I assign it to you?

WAC 388-448-0220 How does alcohol or drug dependence affect my eligibility for disability lifeline?

WAC 388-448-0250 Are there limits on the number of months I may receive disability lifeline benefits?

WAC 388-450-0110 Allocating the income of a GA-U client to legal dependents.

WAC 388-450-0135 Allocating income of an ineligible spouse to a GA-U client.

WAC 388-450-0175 Does the department offer an income deduction for the general assistance program as an incentive for clients to work?

WAC 388-462-0011 Post adoption cash benefit.

AMENDATORY SECTION (Amending WSR 11-16-029, filed 7/27/11, effective 8/27/11)

WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA((~~.~~))? To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), ((~~or~~)) refugee cash assistance (RCA), or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of Family Members	Maximum Earned Income Level	Number of Family Members	Maximum Monthly Earned Income Level
1	$610	6	$1,472
2	770	7	1,700
3	955	8	1,882
4	1,124	9	2,066
5	1,295	10 or more	2,246

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-478-0030 Payment standards for disability lifeline and ADATSA.

WSR 12-05-037
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
[Filed February 10, 2012, 9:43 a.m., effective February 13, 2012]

Effective Date of Rule: February 13, 2012.

Purpose: To establish hearing rules related to medicaid funded services to implement the requirements of 2E2SBH [2E2SHB] 1738, section 53, effective July 1, 2011, for the transition of the single state medicaid agency to the Washington health care authority.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-526-2610.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 2E2SHB 1738, section 53.

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

Reasons for this Finding: 2E2SHB 1738, section 53(10) states that the authority "shall adopt any rules it deems necessary to implement this section" dealing with hearing rights. Further, in section 130, the bill states that "this act is necessary for the immediate preservation of the public peace, health, or safety of the state government and its existing public institution, and takes effect July 1, 2011.["] Delaying this adoption could jeopardize the agency's ability to provide general hearing rules and procedures that apply to the resolution of disputes between medical assistance clients and the various medical services programs established under chapter 74.09 RCW. This emergency rule is necessary to continue the current emergency rule adopted under WSR 11-22-028 while the permanent rule-making process is completed. This emergency rule differs from the current emergency rule in that the subsidized Basic Health program can now operate under these rules in compliance with federal law. The agency filed a CR-101 Preproposal statement of inquiry under WSR 11-19-004 on September 7, 2011, and continues to meet and work with stakeholders in drafting the permanent rules. The agency anticipates filing a CR-102 proposal sometime in May 2012.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 137, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 137, Amended 0, Repealed 1.

Date Adopted: February 7, 2012.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-526 WAC

((~~MEDICAL FAIR HEARINGS~~)) ADMINISTRATIVE HEARING RULES FOR MEDICAL SERVICES PROGRAMS

NEW SECTION

WAC 388-526-0005 What is the purpose and scope of this chapter? This chapter describes the general hearing rules and procedures that apply to the resolution of disputes between you and the various medical services programs established under chapter 74.09 RCW and for subsidized basic health under chapter 70.47 RCW. The rules of this chapter are intended to supplement both the administrative procedure act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(1) This chapter:

(a) Establishes rules encouraging informal dispute resolution between the health care authority (HCA) or its authorized agents, and persons or entities who disagree with its actions; and

(b) Regulates all hearings involving medical services programs established under chapter 74.09 RCW and for subsidized basic health under chapter 70.47 RCW.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if you have a hearing right, including the APA and program rules or laws.

(3) Specific program hearing rules prevail over the rules in this chapter.

(4) The hearing rules in this chapter do not apply to the following programs:

(a) Public employees benefits program (see chapter 182-16 WAC); and

(b) The Washington health program (see chapter 182-22 WAC).

NEW SECTION

WAC 388-526-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrative law judge (ALJ)" means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not department or health care authority employees or representatives.

"Authorized agent" means a person or agency which may act on behalf of HCA pursuant to the agreement authorized by RCW 41.05.021. The authorized agent(s) may include employees of the department or its contractors.

"BOA" means the board of appeals which is physically located within the department of social and health services.

"Business days" means all days except Saturdays, Sundays, and legal holidays.

"Calendar days" means all days including Saturdays, Sundays, and legal holidays.

"Deliver" means giving a document to someone in person.

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

"Documents" means papers, letters, writings, or other printed or written items.

"Final order" means an order that is the final agency decision.

"HCA" means the health care authority.

"Health care authority (HCA) hearing representative" means an employee of HCA, an authorized agent of HCA, HCA contractor or a contractor of HCA's authorized agent, or an assistant attorney general authorized to represent HCA in an administrative hearing.

"Hearing" means a proceeding before an ALJ or review judge that gives a party an opportunity to be heard in disputes about medical services programs set forth in RCW 74.09. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the administrative procedure act, Title 182 WAC except as specifically excluded by WAC 388-526-0005(4), and Title 388 WAC, chapter 10-08 WAC, or other law.

"Initial order" is a hearing decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

"Judicial review" means a superior court's review of a final order.

"Mail" means placing a document in the mail with the proper postage.

"OAH" means the office of administrative hearings, a separate state agency from HCA or the department.

"Party" means:

(1) The health care authority (HCA); or

(2) A person or entity:

(a) Named in the action;

(b) To whom the action is directed; or

(c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

"Prehearing conference" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

"Prehearing meeting" means an informal voluntary meeting that may be held before any prehearing conference or hearing.

"Program" means an organizational unit and the services that it provides, including services provided by HCA staff, its authorized agents, and through contracts with providers.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Review" means a review judge evaluating initial orders entered by an ALJ and making the final agency decision as provided by RCW 34.05.464, or issuing final orders.

"Review judge" means a decision-maker with expertise in program rules who is an attorney and serves as the reviewing officer under RCW 34.05.464. In some cases, review judges conduct hearings and enter final orders. In other cases, they review initial orders and may make changes to correct any errors in an ALJ's initial order. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are physically located at the DSHS board of appeals (BOA) and are not part of the program involved in the initial agency action.

"Rule" means a state regulation. Rules are found in the Washington Administrative Code (WAC).

"Should" means that an action is recommended but not required.

"Stay" means an order temporarily halting the HCA decision or action.

"You" means any individual or entity that has a right to be involved with the hearing process, which includes a party or a party's representative. "You" does not include HCA or HCA's representatives, or HCA's authorized agents.

NEW SECTION

WAC 388-526-0015 How do the terms in the administrative procedure act compare to this chapter? To improve clarity and understanding, the rules in this chapter may use different words than the administrative procedures act (APA) or the model rules. Following is a list of terms used in those laws and the terms as used in these rules:

Chapter 34.05 RCW Chapter 10-08 WAC	Chapter 388-526 WAC
Adjudicative proceeding	Different terms are used to refer to different stages of the hearing process and may include prehearing meeting, prehearing conference, hearing, review, reconsideration, and the entire hearing process
Application for adjudicative proceeding	Request a hearing
Enter	Make, send
Presiding officer	Administrative law judge or review judge
Reviewing officer	Review judge

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 388-526-0020 What does good cause mean? (1) Good cause is a substantial reason or legal justification for failing to appear, to act, or respond to an action. To show good cause, the administrative law judge must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

(2) Good cause may include, but is not limited to, the following examples.

(a) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(b) You could not respond to the notice because it was written in a language that you did not understand.

NEW SECTION

WAC 388-526-0025 Where is the office of administrative hearings located? (1)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings
2420 Bristol Court SW
PO Box 42488
Olympia, WA 98504-2488
(360) 664-8717
(360) 664-8721 (fax)

(b) The headquarters office is open from 8:00 a.m. to 5:00 p.m. Mondays through Friday, except legal holidays.

(2) OAH field offices are at the following locations:

Olympia

Office of Administrative Hearings
2420 Bristol Court SW
P.O. Box 42489
Olympia, WA 98504-2489
(360) 407-2768
1-800-583-8271
fax: (360) 586-6563

Seattle

Office of Administrative Hearings
One Union Square
600 University Street, Suite 1500
Mailstop: TS-07
Seattle, WA 98101-1129
(206) 389-3400
1-800-845-8830
fax: (206) 587-5135

Vancouver

Office of Administrative Hearings
5300 MacArthur Blvd., Suite 100
Vancouver, WA 98661
(360) 690-7189
1-800-243-3451
fax: (360) 696-6255

Spokane

Office of Administrative Hearings
Old City Hall Building, 5th Floor
221 N. Wall Street, Suite 540
Spokane, WA 99201
(509) 456-3975
1-800-366-0955
fax: (509) 456-3997

Yakima

Office of Administrative Hearings
32 N. 3rd Street, Suite 320
Yakima, WA 98901-2730
(509) 249-6090
1-800-843-3491
fax: (509) 454-7281

(3) You should contact the Olympia field office, under subsection (2), if you do not know the correct field office.

(4) You can obtain further hearing information at the OAH web site: www.oah.wa.gov.

NEW SECTION

WAC 388-526-0030 How do I contact the board of appeals? The information included in this section is current at this time of rule adoption, but may change. Current information and additional contact information are available on the department's internet site, in person at the board of appeals (BOA) office, or by a telephone call to the BOA's main public number.

Department of Social and Health Services Board of Appeals	
Location	Office Building 2 (OB-2) 2nd Floor 1115 Washington Street Olympia, Washington
Mailing address	P.O. Box 45803 Olympia, WA 98504-5803

Telephone	(360) 664-6100
Fax	(360) 664-6187
Toll free	1-877-351-0002
Internet web site	www.dshs.wa.gov/boa

NEW SECTION

WAC 388-526-0035 How are days counted when calculating deadlines for the hearing process? (1) When counting days to find out when a hearing deadline ends under program rules or statutes:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and you have twenty-one days to request a review, start counting the days with Wednesday.

(b) If the last day of the period ends on a Saturday, Sunday, or legal holiday, the deadline is the next business day.

(c) For periods of seven days or less, count only business days. For example, if you have seven days to respond to a review request that was mailed to you on Friday, May 10, the response period ends on Tuesday, May 21.

(d) For periods over seven days, count every day, including Saturdays, Sundays, and legal holidays.

(2) The deadline ends at 5:00 p.m. on the last day.

(3) If you miss a deadline, you may lose your right to a hearing or appeal of a decision.

NEW SECTION

WAC 388-526-0037 When must the office of administrative hearings reschedule a proceeding based on the amount of notice required? Any party may request that the proceeding be rescheduled and the office of administrative hearings (OAH) must reschedule if:

(1) A rule requires the OAH to provide notice of a proceeding; and

(2) The OAH does not provide the amount of notice required.

NEW SECTION

WAC 388-526-0038 When may the office of administrative hearings shorten the amount of notice required to the parties of a proceeding? The administrative law judge and the parties may agree to shorten the amount of notice required by any rule.

NEW SECTION

WAC 388-526-0040 How do parties send documents? (1) When the rules in this chapter or in other law ask a party to send copies of documents to other parties, the party must mail or deliver copies to the health care authority (HCA) hearing representative and to all other parties or their representatives.

(2) When sending documents to the office of administrative hearings (OAH) or the board of appeals (BOA), you must mail or deliver the documents to one of the locations listed in WAC 388-526-0025(2) for OAH or in WAC 388-526-0030 for BOA.

(3) When sending documents to your assigned field office, you may use the address listed at the top of your notice of hearing. If a field office has not been assigned, all written communication about your hearing must be sent to the OAH Olympia field office which sends the communication to the correct office.

(4) Documents may be sent by giving them to someone in person, placing them in the mail with proper postage, or by fax or e-mail if the party mails a copy on the same day.

NEW SECTION

WAC 388-526-0045 What is service? Service gives the party notice. When a document is given to the party, the party is considered served with official notice of the contents of the document.

NEW SECTION

WAC 388-526-0050 How does a party serve someone? Unless otherwise stated in law, a party may serve someone by:

(1) Personal service (hand delivery);

(2) First class, registered, or certified mail;

(3) Fax if the party mails a copy of the document the same day;

(4) Commercial delivery service; or

(5) Legal messenger service.

NEW SECTION

WAC 388-526-0055 When must a party serve someone? A party must serve all other parties and their representatives whenever the party files a pleading, brief or other document with the office of administrative hearings or the board of appeals, or when required by law.

NEW SECTION

WAC 388-526-0060 When is service complete? Service is complete when:

(1) Personal service is made;

(2) Mail is properly stamped, addressed, and deposited in the United States mail;

(3) Fax produces proof of transmission;

(4) A parcel is delivered to a commercial delivery service with charges prepaid; or

(5) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-526-0065 How does a party prove service? A party may prove service by providing any of the following:

(1) A sworn statement;

(2) The certified mail receipt signed by the recipient;

(3) An affidavit or certificate of mailing;

(4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or

(5) Proof of fax transmission.

NEW SECTION

WAC 388-526-0070 What is filing? (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or BOA.

(3) Filing is complete when the documents are received by OAH or BOA during office hours.

NEW SECTION

WAC 388-526-0075 How does a party file documents? (1) A party may file documents by delivering them to the office of administrative hearings or the board of appeals by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission if the party mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(2) A party cannot file documents by e-mail.

NEW SECTION

WAC 388-526-0080 What are your options for resolving a dispute with the health care authority? (1) If you disagree with a decision or action of the health care authority, or one of its authorized agents, you have several options for resolving your dispute, which may include the following:

(a) Any special prehearing alternative or administrative process offered by the program;

(b) Prehearing meeting;

(c) Prehearing conference; and

(d) Hearing.

(2) Because you have a limited time to request a hearing, you must request a hearing within the deadline on the notice of the agency action to preserve your hearing right.

NEW SECTION

WAC 388-526-0085 Do you have a right to a hearing? (1) You have a right to a hearing only if a law or program rule gives you that right. If you are not sure, you should request a hearing to protect your right.

(2) Some programs may require you to go through an informal administrative process before you can request or have a hearing. The notice of the action sent to you should include information about this requirement if it applies.

(3) You have a limited time to request a hearing. The deadline for your request varies by the program involved. You should submit your request right away to protect your right to a hearing, even if you are also trying to resolve your dispute informally.

(4) If you request a hearing, one is scheduled.

(5) If the health care authority hearing representative or the administrative law judge (ALJ) questions your right to a hearing, the ALJ decides whether you have that right.

(6) If the ALJ decides you do not have a right to a hearing, your request is dismissed.

(7) If the ALJ decides you do have a right to a hearing, the hearing proceeds.

NEW SECTION

WAC 388-526-0090 Who may request a hearing? Either you or your representative may request a hearing.

NEW SECTION

WAC 388-526-0095 What if you have questions about requesting a hearing? If you have questions about how, when, and where to request a hearing, you should:

(1) Contact the specific program involved, the office of administrative hearings, or the board of appeals;

(2) Review the notice sent to you of the action or decision; or

(3) Review the applicable law or program rule.

NEW SECTION

WAC 388-526-0100 How do you request a hearing? (1) You may request a hearing in writing or orally, depending upon which program is involved. The notice and applicable laws and rules should tell you whether the request must be in writing or may be made orally.

(2) If you are allowed to make an oral request, you may do so to a health care authority (HCA) employee, HCA's authorized agent, or to an office of administrative hearings (OAH) employee in person, by telephone, or by voice mail.

(3) You may send a written request by mail, delivery service, personal service, or by fax if you mail a copy the same day. You should send written requests to the location on the notice or to OAH at the location specified in WAC 388-526-0025(2).

NEW SECTION

WAC 388-526-0105 What information do you give when requesting a hearing? (1) Your hearing request must contain enough information to identify you and the agency action. You should include:

(a) Your name, address, and telephone number;

(b) A brief explanation of why you disagree with the agency action;

(c) Your client identification or case number, contract number, or any other information that identifies your case or the program involved; and

(d) Any assistance you need, including a foreign or sign language interpreter or any other accommodation for a disability.

(2) You should also refer to a program's specific rules or the notice to see if additional information is required in your request.

(3) The office of administrative hearings (OAH) may not be able to process your hearing request if it cannot identify or locate you and determine the agency action involved.

NEW SECTION

WAC 388-526-0110 What happens after you request a hearing? (1) After you request a hearing, the office of administrative hearings sends the parties a notice containing the hearing date, time, and place. This document is called the notice of hearing. The parties may also receive a written notice of a prehearing conference. You may receive a notice of a prehearing conference either before or after receiving the notice of the hearing.

(2) Before your hearing is held:

(a) The health care authority (HCA) hearing representative may contact you and try to resolve your dispute; and

(b) You are encouraged to contact the HCA hearing representative and try to resolve your dispute.

(3) If you do not appear for your hearing, an administrative law judge may enter an order of default or an order dismissing your hearing according to WAC 388-526-0285.

NEW SECTION

WAC 388-526-0115 May you withdraw your hearing request? (1) You may withdraw your hearing request for any reason and at any time by contacting the health care authority hearing representative or the office of administrative hearings (OAH) in writing or orally with the administrative law judge and the other parties. After your request for withdrawal is received, your hearing is cancelled and OAH sends an order dismissing the hearing. If you withdraw your request you may not be able to request another hearing on the same action.

(2) If you withdraw your hearing request, you may only set aside the dismissal according to WAC 388-526-0290.

NEW SECTION

WAC 388-526-0120 Do you have the right to an interpreter in the hearing process? If you need an interpreter because you or any of your witnesses are a person with limited English proficiency, the office of administrative hearings will provide an interpreter at no cost to you.

NEW SECTION

WAC 388-526-0125 What definitions apply to limited English proficient parties? The following definitions apply to LEP parties:

"Hearing impaired person" means a person who, because of a hearing or speech impairment, cannot readily speak, understand, or communicate in spoken language.

"Intermediary interpreter" means an interpreter who:

(1) Is a certified deaf interpreter (CDI); and

(2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter.

"Limited English proficient (LEP)" includes limited English speaking persons or other persons unable to communicate in spoken English because of a hearing impairment.

"Limited English-speaking (LES) person" means a person who, because of non-English speaking cultural background or disability, cannot readily speak or understand the English language.

"Qualified interpreter" includes qualified interpreters for a limited English-speaking person or a person with a hearing impairment.

"Qualified interpreter for a limited English-speaking person" means a person who is readily able to interpret or translate spoken and written English communications to and from a limited English-speaking person. If an interpreter is court certified, the interpreter is considered qualified.

"Qualified interpreter for a person with a hearing impairment" means a visual language interpreter who is certified by the registry of interpreters for the deaf or National Association of the Deaf and is readily able to interpret or translate spoken communications to and from a hearing impaired person.

NEW SECTION

WAC 388-526-0130 What requirements apply to notices for limited English-speaking parties? If the office of administrative hearings is notified that you are a limited English-speaking person, all hearing notices, decisions and orders for you must:

(1) Be written in your primary language; or

(2) Include a statement in your primary language:

(a) Indicating the importance of the notice; and

(b) Telling you how to get help in understanding the notice and responding to it.

NEW SECTION

WAC 388-526-0135 What requirements apply to interpreters? (1) The office of administrative hearings (OAH) must provide a qualified interpreter to assist any person who:

(a) Has limited English proficiency; and

(b) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) The following persons may not be used as interpreters:

(a) A relative of any party;

(b) Health care authority (HCA) employees; or

(c) HCA authorized agents.

(4) The administrative law judge (ALJ) must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service. To do so, the ALJ considers the interpreter's:

(a) Ability to meet the needs of the hearing impaired person or limited English speaking person;

(b) Education, certification, and experience;

(c) Understanding of the basic vocabulary and procedures involved in the hearing; and

(d) Ability to be impartial.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, the ALJ must provide another interpreter.

NEW SECTION

WAC 388-526-0140 May you waive interpreter services? (1) If you are limited English proficient, you may ask to waive interpreter services.

(2) You must make your request in writing or through a qualified interpreter on the record.

(3) The administrative law judge must determine if your waiver has been knowingly and voluntarily made.

(4) You may withdraw your waiver at any time before or during the hearing.

NEW SECTION

WAC 388-526-0145 What requirements apply to the use of interpreters? (1) Interpreters must:

(a) Use the interpretive mode that the parties, the hearing impaired person, the interpreter, and the administrative law judge (ALJ) consider the most accurate and effective;

(b) Interpret statements made by the parties and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may video tape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

NEW SECTION

WAC 388-526-0150 What requirements apply to hearing decisions involving limited English-speaking parties? (1) When an interpreter is used at a hearing, the administrative law judge must explain that the decision is written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost to you.

(2) Interpreters must provide a telephone number where they can be reached. This number must be attached to any decision or order mailed to the parties.

(3) The office of administrative hearings or the board of appeals must mail a copy of a decision or order to the interpreter for use in oral translation.

NEW SECTION

WAC 388-526-0155 Who represents you during the hearing process? (1) You may represent yourself or have anyone represent you, except health care authority (HCA) employees, HCA's authorized agents, and DSHS employees.

(2) Your representative may be a friend, relative, community advocate, attorney, or paralegal.

(3) You should inform the HCA hearing representative or the office of administrative hearings of your representative's name, address, and telephone number.

NEW SECTION

WAC 388-526-0157 How does a party appear? (1) If you are going to represent yourself, you should provide the administrative law judge (ALJ) and other parties with your name, address, and telephone number.

(2) If you are represented, your representative should provide the ALJ and other parties with the representative's name, address, and telephone number.

(3) The presiding officer may require your representative to file a written notice of appearance or to provide documentation that you have authorized the representative to appear on your behalf. In cases involving confidential information, your representative must file a legally sufficient signed written consent or release of information document.

(4) If your representative is an attorney admitted to practice in Washington state, your attorney must file a written notice of appearance, and must file a notice of withdrawal upon withdrawal of representation.

(5) If you or your representative put in a written notice of appearance, the ALJ should call the telephone number on the notice of appearance if you, or your representative, do not appear by calling in with a telephone number before a hearing (including a prehearing).

NEW SECTION

WAC 388-526-0160 If a health care authority employee, a health care authority's authorized agent, and DSHS employee cannot represent you, can they assist you during the hearing process? Although a health care authority (HCA) employee, HCA authorized agent, and DSHS employee cannot represent you during the hearing process, they may assist you by:

(1) Acting as a witness;

(2) Referring you to community legal resources;

(3) Helping you get nonconfidential information; or

(4) Informing you about or providing copies of the relevant laws or rules.

NEW SECTION

WAC 388-526-0165 What if you would like to be represented by an attorney but you cannot afford one? (1) Neither the health care authority (HCA), HCA's authorized agents, or the office of administrative hearings (OAH) will pay for an attorney for you.

(2) If you want an attorney to represent you and cannot afford one, community resources may be available to assist you. These legal services may be free or available at a reduced cost. HCA, HCA's authorized agent, or OAH can tell you who to contact for legal assistance.

(3) Information about legal assistance can also be found at www.oah.wa.gov.

NEW SECTION

WAC 388-526-0170 Who represents the health care authority during the hearing? (1) The health care authority (HCA) hearing representative as defined in WAC 388-526-0010 represents HCA during the hearing. The HCA hearing representative may or may not be an attorney.

(2) An administrative law judge (ALJ) is independent and does not represent HCA or any other party.

NEW SECTION

WAC 388-526-0175 What is a prehearing meeting? (1) A prehearing meeting is an informal meeting with a health care authority (HCA) hearing representative that may be held before any prehearing conference or hearing.

(2) An HCA hearing representative may contact you before the scheduled hearing to arrange a prehearing meeting. You may also contact the HCA hearing representative to request a prehearing meeting.

(3) A prehearing meeting is voluntary. You are not required to request one, and you are not required to participate in one.

(4) The prehearing meeting includes you and/or your representative, the HCA hearing representative, and any other party. An administrative law judge (ALJ) does not attend a prehearing meeting.

(5) The prehearing meeting gives the parties an opportunity to:

(a) Clarify issues;

(b) Exchange documents and witness statements;

(c) Resolve issues through agreement or withdrawal; and

(d) Ask questions about the hearing process and the laws and rules that apply.

(6) A prehearing meeting may be held or information exchanged:

(a) In person;

(b) By telephone conference call;

(c) Through correspondence; or

(d) Any combination of the above that is agreeable to the parties.

(7) If a prehearing conference is required by the program or rule, a prehearing meeting may not be an option available to you.

NEW SECTION

WAC 388-526-0180 What happens during a prehearing meeting? During a prehearing meeting:

(1) A health care authority (HCA) hearing representative:

(a) Explains the role of the HCA hearing representative in the hearing process;

(b) Explains how a hearing is conducted and the relevant laws and rules that apply;

(c) Explains your right to representation during the hearing;

(d) Responds to your questions about the hearing process;

(e) Identifies accommodation and safety issues;

(f) Distributes copies of the documents to be presented during the hearing;

(g) Provides, upon request, copies of relevant laws and rules;

(h) Identifies additional documents or evidence you may want or be required to present during the hearing;

(i) Tells you how to obtain documents from your file;

(j) Clarifies the issues; and

(k) Attempts to settle the dispute, if possible.

(2) You should explain your position and provide documents that relate to your case. You also have the right to consult legal resources.

(3) You and the HCA hearing representative may enter into written agreements or stipulations, including agreements that settle your dispute.

NEW SECTION

WAC 388-526-0185 What happens after a prehearing meeting? (1) If you and the health care authority (HCA) hearing representative resolve the dispute during the prehearing meeting and put it in writing or present the agreement to an administrative law judge (ALJ), your agreement may be legally enforceable.

(2) Any agreements or stipulations made at the prehearing meeting must be presented to an ALJ before or during the hearing, if you want the ALJ to consider the agreement.

(3) If all of your issues are not resolved in the prehearing meeting, you may request a prehearing conference before an ALJ or go to your scheduled hearing. The ALJ may also order a prehearing conference.

(4) You may withdraw your hearing request at any time if the HCA hearing representative agrees to some action that resolves your dispute, or for any other reason. If you withdraw your hearing request, the hearing is not held and the ALJ sends a written order of dismissal.

NEW SECTION

WAC 388-526-0190 What happens if you do not participate in a prehearing meeting? You are not required to participate in a prehearing meeting. If you do not participate, it does not affect your right to a hearing.

NEW SECTION

WAC 388-526-0195 What is a prehearing conference? (1) A prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to prepare for a hearing. The ALJ must record the prehearing conference using audio recording equipment (such as a digital recorder or tape recorder).

(2) An ALJ may conduct the prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties. Your attendance is mandatory.

(3) You may lose the right to participate during the hearing if you do not attend the prehearing conference.

NEW SECTION

WAC 388-526-0197 When is a prehearing conference scheduled? (1) The administrative law judge (ALJ) may require a prehearing conference. Any party may request a prehearing conference.

(2) The ALJ must grant the first request for a prehearing conference if it is received by the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(3) The ALJ may grant untimely or additional requests for prehearing conferences.

(4) If the parties do not agree to a continuance, the OAH and/or the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance.

(5) The OAH must schedule prehearing conferences for all cases which concern:

(a) The department's division of residential care services under Title XIX of the federal social security act; and

(b) Provider and vendor overpayment hearings.

NEW SECTION

WAC 388-526-0200 What happens during a prehearing conference? During a prehearing conference the parties and the administrative law judge may:

(1) Simplify or clarify the issues to be decided during the hearing;

(2) Agree to the date, time, and place of the hearing;

(3) Identify accommodation and safety issues;

(4) Agree to postpone the hearing;

(5) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(6) Agree to facts and documents to be entered during the hearing;

(7) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(8) Schedule additional prehearing conferences;

(9) Resolve the dispute;

(10) Consider granting a stay if authorized by law or program rule; or

(11) Determine any other procedural issues raised by the parties.

NEW SECTION

WAC 388-526-0205 What happens after a prehearing conference? (1) After the prehearing conference ends, the administrative law judge (ALJ) must enter a written prehearing order describing:

(a) The actions taken;

(b) Any changes to the documents;

(c) Any agreements reached; and

(d) Any ruling of the ALJ.

(2) The ALJ must send the prehearing order to the parties at least fourteen calendar days before the scheduled hearing, except a hearing may still occur as allowed under WAC 388-526-0280(5). The parties and the ALJ may agree to a shorter time period.

(3) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(4) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(5) The ALJ may take further appropriate actions to address other concerns.

NEW SECTION

WAC 388-526-0210 What happens if a party does not attend a prehearing conference? (1) All parties are required to attend a prehearing conference.

(2) If you do not attend, you may not be allowed to participate in the hearing. The administrative law judge may dismiss your hearing request or enter an order of default against you.

NEW SECTION

WAC 388-526-0215 What is the authority of the administrative law judge? (1) The administrative law judge (ALJ) must hear and decide the issues de novo (anew) based on what is presented during the hearing.

(2) As needed, the ALJ may:

(a) Determine the order for presenting evidence;

(b) Issue subpoenas or orders directing witnesses to appear or bring documents;

(c) Rule on objections, motions, and other procedural matters;

(d) Rule on an offer of proof made to admit evidence;

(e) Admit relevant evidence;

(f) Impartially question witnesses to develop the record;

(g) Call additional witnesses and request exhibits to complete the record;

(h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;

(i) Keep order during the hearing;

(j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;

(k) Permit others to attend, photograph, or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;

(l) Allow a party to waive rights given by chapters 34.05 RCW or 388-526 WAC, unless another law prevents it;

(m) Decide whether a party has a right to a hearing;

(n) Issue protective orders;

(o) Consider granting a stay if authorized by law or agency rule; and

(p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) The ALJ enters initial orders. Initial orders may become final orders pursuant to WAC 388-526-0525.

NEW SECTION

WAC 388-526-0216 Is the authority of the administrative law judge and the review judge limited? The authority of the administrative law judge and the review judge is limited to those powers conferred (granted) by statute or rule. The ALJ and the review judge do not have any inherent or common law powers.

NEW SECTION

WAC 388-526-0218 When do review judges conduct the hearing and enter final orders? (1) Review judges conduct the hearing and enter the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5). Any party dissatisfied with a decision or an order of dismissal of a review judge may request reconsideration from the review judge as provided by this chapter and WAC 388-96-904(12).

(2) The review judge enters final agency decisions on all cases in the form of a final order.

(3) Following a review judge's decision, you, but not the health care authority or any of its authorized agents, may file a petition for judicial review as provided by this chapter.

(4) A review judge has the same authority as an administrative law judge, as described in WAC 388-526-0215, when conducting a hearing.

NEW SECTION

WAC 388-526-0220 What rules and laws must an administrative law judge and review judge apply when conducting a hearing or making a decision? (1) Administrative law judges (ALJs) and review judges must first apply the applicable program rules adopted in the Washington Administrative Code (WAC).

(2) If no program rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules that were in effect on the date the agency notice was sent, unless otherwise required by other rule or law. If the health care authority (HCA) or HCA's authorized agents amends the notice, the ALJ and review judge must apply the rules that were in effect on the date the initial notice was sent, unless otherwise required by other rule or law.

(4) When applying program rules regarding the procedural rights and responsibilities of the parties, the ALJ and review judge must apply the rules that are in effect on the date the procedure is followed.

(5) Program rules determine the amount of time HCA or HCA's authorized agent has to process your application for services, benefits, or a license.

(6) The ALJ and review judge must apply the rules in this chapter beginning on the date each rule is effective.

NEW SECTION

WAC 388-526-0221 How is the index of significant decisions used? (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the index of significant decisions.

(2) The index of significant decisions is available to the public at www.dshs.wa.gov/boa. For information on how to obtain a copy of the index, see WAC 388-01-190.

(3) If a precedential published decision entered by the Court of Appeals or the Supreme Court reverses an indexed board of appeals final order, that order will be removed from the index of significant decisions.

NEW SECTION

WAC 388-526-0225 May an administrative law judge or review judge decide that a rule is invalid? (1) Neither an administrative law judge or a review judge may decide that a rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a rule is raised during the hearing, the ALJ or review judge may allow argument for court review.

NEW SECTION

WAC 388-526-0230 When is the administrative law judge assigned to the hearing? The office of administrative hearings (OAH) assigns an administrative law judge (ALJ) at least five business days before the hearing. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing. If requested by a party, the OAH must send the name of the assigned ALJ to the party by e-mail or in writing at least five business days before the party's scheduled hearing date.

NEW SECTION

WAC 388-526-0235 May a party request a different judge? A party may file a motion of prejudice against an administrative law judge (ALJ) under RCW 34.12.050. A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425.

NEW SECTION

WAC 388-526-0240 How does a party file a motion of prejudice? (1) A party may request a different administrative law judge (ALJ) by sending a written motion of prejudice to the office of administrative hearings (OAH) before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. A motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include but are not limited to those:

(a) Granting or denying a request for a continuance; and

(b) Granting or denying a request for a prehearing conference.

(3) A party must send the written motion of prejudice to the chief ALJ at the OAH headquarters identified in WAC 388-526-0025(1) and must send a copy to the OAH field office where the ALJ is assigned.

(4) A party may make an oral motion of prejudice at the beginning of the hearing before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

(a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or

(b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

(5) The first request for a different ALJ is automatically granted. The chief ALJ or a designee grants or denies any later requests.

NEW SECTION

WAC 388-526-0245 May an administrative law judge or review judge be disqualified? (1) An administrative law judge (ALJ) or review judge may be disqualified for bias, prejudice, or conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge.

(2) Ex parte contact means a written or oral communication with the ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(3) To ask to disqualify an ALJ or review judge, a party must send a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest, or an ex parte contact.

(4) A party must send or deliver the petition to the ALJ or review judge assigned to the case. That ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

NEW SECTION

WAC 388-526-0250 What happens after you request a hearing, and when must the office of administrative hearings provide notice of the hearing and prehearing conferences? (1) The office of administrative hearings (OAH) must send a copy of your hearing request to the health care authority (HCA) or HCA's authorized agent who made the decision on HCA's behalf, unless OAH received your hearing request from HCA or HCA's authorized agent. The OAH should send it to HCA or HCA's authorized agent within four business days of the OAH receiving your request.

(2) The OAH must send a notice of hearing to all parties and their representatives at least fourteen calendar days before the hearing date.

(3) If the OAH schedules a prehearing conference, the OAH must send a notice of prehearing conference to the parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) The OAH and/or an administrative law judge (ALJ) may convert a scheduled hearing into a prehearing conference and provide less than seven business days notice of the prehearing conference; and

(b) The OAH may give less than seven business days notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 388-526-0280 (3)(b).

(4) The OAH and/or the ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(5) If the ALJ denies a continuance after a prehearing conference, the hearing may proceed on the scheduled hearing date, but the ALJ must still issue a written order regarding the denial of the continuance.

(6) You may ask for a prehearing meeting even after you have requested a hearing.

NEW SECTION

WAC 388-526-0255 What information must the office of administrative hearings include in the notice of hearing? (1) A notice of hearing is a written notice that must include:

(a) The names of all parties who receive the notice and, if known, the names and addresses of their representatives;

(b) The name, mailing address, and telephone number of the administrative law judge (ALJ), if known;

(c) The date, time, place, and nature of the hearing;

(d) The legal authority and jurisdiction for the hearing; and

(e) The date of the hearing request.

(2) The office of administrative hearings (OAH) also sends you information with your notice of hearing telling you the following:

(a) If you fail to attend or participate in a prehearing conference or a hearing, you may lose your right to a hearing. Then the ALJ may send:

(i) An order of default against you; or

(ii) An order dismissing the hearing.

(b) If you need a qualified interpreter because you or any of your witnesses are persons with limited English proficiency, OAH will provide an interpreter at no cost to you.

(c) If the hearing is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for yourself or your witnesses, including the need for an interpreter in a primary language or for sensory impairments.

(e) How to contact OAH if a party has a safety concern.

NEW SECTION

WAC 388-526-0260 May the health care authority or the health care authority's authorized agent amend a notice? (1) The administrative law judge (ALJ) must allow the health care authority (HCA) or HCA's authorized agent to amend (change) the notice of an action before or during the hearing to match the evidence and facts.

(2) HCA or HCA's authorized agent must put the change in writing and give a copy to the ALJ and all parties.

(3) The ALJ must offer to continue (postpone) the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier agency notice.

(4) If the ALJ grants a continuance, the office of administrative hearings must send a new hearing notice at least fourteen calendar days before the hearing date.

NEW SECTION

WAC 388-526-0265 May you amend your hearing request? (1) The administrative law judge (ALJ) may allow you to amend your hearing request before or during the hearing.

(2) The ALJ must offer to continue (postpone) the hearing to give the other parties more time to prepare or present evidence or argument if there is a significant change in the hearing request.

(3) If the ALJ grants a continuance, the office of administrative hearings must send a new hearing notice at least fourteen calendar days before the hearing date.

NEW SECTION

WAC 388-526-0270 Must you tell the health care authority hearing representative and the office of administrative hearings when your mailing address changes? (1) You must tell the health care authority (HCA) hearing representative and the office of administrative hearings (OAH), as soon as possible, when your mailing address changes.

(2) If you do not notify the HCA hearing representative and OAH of a change in your mailing address and they continue to send notices and other important papers to your last known mailing address, the administrative law judge (ALJ) may assume that you received the documents.

NEW SECTION

WAC 388-526-0275 What is a continuance? A continuance is a change in the date or time of a prehearing conference, hearing or the deadline for other action.

NEW SECTION

WAC 388-526-0280 Who may request a continuance? (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the administrative law judge (ALJ) to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance. If you are unable to contact the parties, the office of administrative hearings (OAH) or the health care authority hearing representative must assist you in contacting them.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.

(a) If the parties agree to a continuance, the ALJ must grant it unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance. The prehearing conference will be scheduled as required by WAC 388-526-0197 and 388-526-0250.

(4) If the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the new hearing date.

(5) If the ALJ denies the continuance, the ALJ will proceed with the hearing on the date the hearing is scheduled, but must still issue a written order regarding the denial of the continuance.

NEW SECTION

WAC 388-526-0285 What is an order of dismissal? (1) An order of dismissal is an order sent by the administrative law judge to end the hearing. The order is made because the party who requested the hearing withdrew the request, failed to appear, or refused to participate, resulting in a default.

(2) If your hearing is dismissed because you did not appear or refused to participate, the agency action stands.

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

NEW SECTION

WAC 388-526-0290 If your hearing is dismissed, may you request another hearing? (1) If the administrative law judge (ALJ) sends an order dismissing your hearing, you may ask that the ALJ vacate (set aside) the order of dismissal.

(2) If the order of dismissal is vacated, your hearing is reinstated, which means you get another opportunity to have a hearing on your initial request for hearing.

NEW SECTION

WAC 388-526-0295 Where do you send a request to vacate an order of dismissal? You must send your request to vacate an order of dismissal to the board of appeals (BOA) or the office of administrative hearings (OAH). You should specify in your request why the order of dismissal should be vacated. BOA forwards any request received to OAH to schedule a hearing. OAH sends you a notice of the hearing on the request to vacate the order of dismissal.

NEW SECTION

WAC 388-526-0300 What is the deadline for vacating an order of dismissal? (1) You must send your request to vacate an order of dismissal to the office of administrative hearings (OAH) or the board of appeals (BOA) within twenty-one calendar days after the date the order of dismissal was mailed to you. If no request is received within that deadline, the dismissal order becomes a final order.

(2) You may make a late request to vacate the order of dismissal for up to one year after it was mailed but you must show good cause according to WAC 388-526-0020 for the late request to be accepted and the dismissal to be vacated.

(3) If you ask to vacate more than one year after the order was mailed, the administrative law judge may vacate the order of dismissal if the health care authority hearing representative and any other party agrees to waive (excuse) the deadline.

NEW SECTION

WAC 388-526-0305 How does an administrative law judge vacate an order of dismissal? (1) If your request was received more than twenty-one days, but less than one year after the dismissal order was mailed, the administrative law judge (ALJ) first must decide if you have good cause according to WAC 388-526-0020.

(2) If your request was timely or you show good cause for missing the deadline, the ALJ will receive evidence and argument at a hearing from the parties on whether the order of dismissal should be vacated.

(3) The ALJ vacates an order of dismissal and reinstates the hearing if you show good cause or if the health care authority hearing representative agrees to waive the deadline. You will then be allowed to present your case about your original request for hearing, either at the same time or at a later date if a continuance is granted.

NEW SECTION

WAC 388-526-0310 May a party request a stay of the agency action? A party may request that an administrative law judge (ALJ) or review judge stay (stop) an agency action until there is a decision entered by the ALJ or review judge. An ALJ or review judge decides whether to grant the stay.

NEW SECTION

WAC 388-526-0315 May a party require witnesses to testify or provide documents? A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

NEW SECTION

WAC 388-526-0320 Who may prepare a subpoena? (1) Administrative law judges (ALJs), the health care authority hearing representative, and attorneys for the parties may prepare subpoenas. If an attorney does not represent you, you may ask the ALJ to prepare a subpoena on your behalf. The ALJ may schedule a hearing to decide whether to issue a subpoena.

(2) An ALJ may deny a request for a subpoena. For example, an ALJ may deny a request for a subpoena when the ALJ determines that a witness has no actual knowledge regarding the facts or that the documents are not relevant.

NEW SECTION

WAC 388-526-0325 How is a subpoena served? (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

WAC 388-526-0330 May the administrative law judge quash a subpoena? (1) A party may request that an administrative law judge (ALJ) quash (set aside) or change the subpoena request at any time before the deadline given in the subpoena.

(2) An ALJ may set aside or change a subpoena if it is unreasonable.

(3) Witnesses with safety or accommodation concerns should contact the office of administrative hearings (OAH).

NEW SECTION

WAC 388-526-0335 Do you have to pay for a subpoena? There is no cost to prepare a subpoena, but you may have to pay for:

(1) Serving a subpoena;

(2) Complying with a subpoena; and

(3) Witness fees according to RCW 34.05.446(7).

NEW SECTION

WAC 388-526-0340 How is your hearing held? (1) Hearings may be held in person or by telephone conference.

(2) A telephone conference hearing is where all parties appear by telephone.

(3) An in-person hearing is where you appear face-to-face with the administrative law judge (ALJ) and the other parties appear either in person or by telephone.

(4) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(5) If a hearing is originally scheduled as an in-person hearing, you may request that the ALJ convert it to a telephone hearing. Once a telephone conference hearing begins, the ALJ may stop, reschedule, and convert the hearing to an in-person hearing if any party makes such a request.

NEW SECTION

WAC 388-526-0345 Is an administrative law judge present at your hearing? (1) If your hearing is scheduled as an in-person hearing, an administrative law judge (ALJ) is physically or visually present.

(2) If your hearing is scheduled as a telephone conference, an ALJ is present by telephone.

NEW SECTION

WAC 388-526-0350 Is your hearing recorded? The administrative law judge must record the entire hearing using

audio recording equipment (such as a digital recorder or a tape recorder).

NEW SECTION

WAC 388-526-0355 Who may attend your hearing? (1) All parties and their representatives may attend the hearing.

(2) Witnesses may be excluded from the hearing if the administrative law judge (ALJ) finds good cause.

(3) The ALJ may also exclude other persons from all or part of the hearing.

NEW SECTION

WAC 388-526-0360 May a party convert how a hearing is held or how a witness appears at a hearing? (1) The parties have the right to request that:

(a) A hearing format be converted (changed) from an in-person hearing to a telephone conference or from a telephone conference to an in-person hearing; or

(b) A witness appear in person or by telephone conference. The office of administrative hearings (OAH) must advise you of the right to request a change in how a witness appears.

(2) A party must show a compelling reason to change the way a witness appears (in-person or by telephone conference). Some examples of compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible, and wants the administrative law judge (ALJ) to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects their ability to present their case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(3) A compelling reason to convert the way a witness appears at a hearing can be overcome by a compelling reason not to convert how a witness appears for a hearing.

NEW SECTION

WAC 388-526-0365 How does a party convert how a hearing is held or how the witnesses or parties appear? (1) If a party wants to convert the hearing or change how their witnesses or other parties appear, the party must contact the office of administrative hearings (OAH) to request the change.

(2) The administrative law judge (ALJ) may schedule a prehearing conference to determine if the request should be granted.

(3) If the ALJ grants the request, the ALJ reschedules the hearing or changes how the witness or party appears.

(4) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

NEW SECTION

WAC 388-526-0370 How are documents submitted for a telephone conference? (1) When a hearing is conducted by telephone, an administrative law judge (ALJ) may order the parties to provide the hearing documents at least five days before the hearing, so all parties have an opportunity to view them during the hearing.

(2) The health care authority hearing representative may be able to help you copy and send your documents to the ALJ and any other parties.

NEW SECTION

WAC 388-526-0375 What happens at your hearing? At your hearing:

(1) The administrative law judge (ALJ):

(a) Explains your rights;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

(d) Explains that a decision is mailed after the hearing;

(e) Notifies the parties of appeal rights;

(f) May keep the record open for a time after the hearing if needed to receive more evidence or argument; and

(g) May take actions as authorized according to WAC 388-526-0215.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

NEW SECTION

WAC 388-526-0380 What is a group hearing? (1) A group hearing may be held when two or more parties request a hearing about similar issues.

(2) Hearings may be combined at the request of the parties or the administrative law judge.

(3) All parties participating in a group hearing may have their own representative.

NEW SECTION

WAC 388-526-0385 May a party withdraw from a group hearing? (1) A party may withdraw from a group hearing by asking the administrative law judge (ALJ) for a separate hearing.

(2) If a party asks to withdraw from a group hearing before the ALJ makes a discretionary ruling or the hearing begins, the ALJ must give the party a separate hearing.

(3) If a party later shows good cause, the ALJ may give the party a separate hearing at any time during the hearing process.

NEW SECTION

WAC 388-526-0387 How may you request that a hearing be consolidated or severed when multiple agencies are parties to the proceeding? The following requirements apply only to adjudicative proceedings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW seeks review of decisions made by more than one agency.

(1) When you file a single application for an adjudicative proceeding seeking review of decisions by more than one agency, this review shall be conducted initially in one adjudicative proceeding. The administrative law judge (ALJ) may sever the proceeding into multiple proceedings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Either party requests severance without another party's consent, and the ALJ finds there is good cause for severing the matter and that the proposed severance is not likely to prejudice the rights of an appellant who is a party to any of the severed proceedings.

(2) If there are multiple adjudicative proceedings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon his or her own motion, the ALJ may consolidate the proceedings if he or she finds that the consolidation is not likely to prejudice the rights of the appellant who is a party to any of the consolidated proceedings.

(3) If the ALJ grants the motion to sever the hearing into multiple proceedings or consolidate multiple proceedings into a single proceeding, the ALJ will send out an order and a new notice of hearing to the appropriate parties in accordance with WAC 388-526-0250.

NEW SECTION

WAC 388-526-0390 What is evidence? (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the administrative law judge.

NEW SECTION

WAC 388-526-0395 When may the parties bring in evidence? (1) The parties may bring evidence to any prehearing meeting, prehearing conference, or hearing, or may send in evidence before these events.

(2) The administrative law judge (ALJ) may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

(a) They have good cause for missing the deadline; or

(b) That the other parties agree.

(3) If the ALJ gives the parties more time to submit evidence, the parties may send it in after the hearing. The ALJ may allow more time for the other parties to respond to the new evidence.

NEW SECTION

WAC 388-526-0400 What evidence may the parties present during the hearing? The parties may bring any documents and witnesses to the hearing to support their position. However, the following provisions apply:

(1) The other parties may object to the evidence and question the witnesses;

(2) The administrative law judge (ALJ) determines whether the evidence is admitted and what weight (importance) to give it;

(3) If the ALJ does not admit the evidence the parties may make an offer of proof to show why the ALJ should admit it;

(4) To make an offer of proof a party presents evidence and argument on the record to show why the ALJ should consider the evidence; and

(5) The offer of proof preserves the argument for appeal.

NEW SECTION

WAC 388-526-0405 What is a stipulation? (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

(2) If an administrative law judge (ALJ) accepts a stipulation, the ALJ must enter it into the record.

(3) A stipulation may be made before or during the hearing.

NEW SECTION

WAC 388-526-0410 After the parties agree to a stipulation, may they change or reject it? (1) A party may change or reject a stipulation after it has been made.

(2) To change or reject a stipulation, a party must show the administrative law judge that:

(a) The party did not intend to make the stipulation or was mistaken when making it; and

(b) Changing or rejecting the stipulation does not harm the other parties.

NEW SECTION

WAC 388-526-0415 What are proposed exhibits? Proposed exhibits are documents or other objects that a party wants the administrative law judge (ALJ) to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

NEW SECTION

WAC 388-526-0420 Do the parties mark and number their proposed exhibits? (1) The health care authority (HCA) hearing representatives must mark and number their

proposed exhibits and provide copies to the other parties as far ahead of the hearing as possible.

(2) The administrative law judge (ALJ) may request that you mark and number your proposed exhibits before the hearing. You should bring enough copies of your proposed exhibits for all parties. If you do not bring enough copies, you must make your proposed exhibits available for copying.

(3) If you cannot afford to pay for copies of proposed exhibits, either the HCA hearing representative or the office of administrative hearings must make the copies for you.

(4) The ALJ may require proof that you are unable to pay.

NEW SECTION

WAC 388-526-0425 Who decides whether to admit proposed exhibits into the record? (1) The administrative law judge (ALJ) decides whether or not to admit a proposed exhibit into the record and also determines the weight (importance) of the evidence.

(2) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(3) The ALJ may also exclude proposed exhibits from the record.

(4) The ALJ must make rulings on the record to admit or exclude exhibits.

NEW SECTION

WAC 388-526-0430 What may a party do if they disagree with an exhibit? (1) A party may object to the authenticity or admissibility of any exhibit, or offer argument about how much weight the ALJ should give the exhibit.

(2) Even if a party agrees that a proposed exhibit is a true and authentic copy of a document, the agreement does not mean that a party agrees with:

(a) Everything in the exhibit or agrees that it should apply to the hearing;

(b) What the exhibit says; or

(c) How the administrative law judge should use the exhibit to make a decision.

NEW SECTION

WAC 388-526-0435 When should an administrative law judge receive proposed exhibits for a telephone hearing? (1) Parties should send their proposed exhibits to the administrative law judge (ALJ) and the other parties at least five days before the telephone hearing. In some cases, the ALJ may require that the parties send them earlier.

(2) Sending the proposed exhibits to the ALJ before the telephone hearing allows all parties to use them during the hearing.

(3) For a telephone hearing, the health care authority hearing representative may help you send copies of your proposed exhibits to the ALJ and the other parties if you cannot afford to do so.

NEW SECTION

WAC 388-526-0440 What is judicial notice? (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations.

(2) For example, an administrative law judge may take judicial notice of a calendar, a building code or a standard or practice.

NEW SECTION

WAC 388-526-0445 How does the administrative law judge respond to requests to take judicial notice? (1) The administrative law judge (ALJ) may consider and admit evidence by taking judicial notice.

(2) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(3) If judicial notice has been requested, or if the ALJ intends to take judicial notice, the ALJ must tell the parties before or during the hearing.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

WAC 388-526-0450 What is a witness? (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

NEW SECTION

WAC 388-526-0455 Who may be a witness? (1) A witness may be:

(a) You or the health care authority (HCA) hearing representative; or

(b) Anyone you, the administrative law judge (ALJ), or the HCA hearing representative asks to be a witness.

(2) The ALJ decides who may testify as a witness.

(3) An expert witness may not be a former HCA employee, a former HCA authorized agent, or a former employee of the department in the proceeding against HCA or the department if that employee was actively involved in the agency action while working for HCA or the department, unless the HCA hearing representative agrees.

NEW SECTION

WAC 388-526-0460 How do witnesses testify? All witnesses:

(1) Must affirm or take an oath to testify truthfully during the hearing.

(2) May testify in person or by telephone.

(3) May request interpreters from OAH at no cost to you.

(4) May be subpoenaed and ordered to appear according to WAC 388-526-0315.

NEW SECTION

WAC 388-526-0465 May the parties cross-examine a witness? (1) The parties have the right to cross-examine (question) each witness.

(2) If a party has a representative, only the representative, and not the party, may question the witness.

(3) The administrative law judge may also question witnesses.

NEW SECTION

WAC 388-526-0470 May witnesses refuse to answer questions? Witnesses may refuse to answer questions. However, if a witness refuses to answer, the administrative law judge may reject all of the related testimony of that witness.

NEW SECTION

WAC 388-526-0475 What evidence does an administrative law judge consider? (1) The administrative law judge (ALJ) may only consider admitted evidence to decide the case.

(2) Admission of evidence is based upon the reasonable person standard. This standard means evidence that a reasonable person would rely on in making a decision.

(3) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. The ALJ may only base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.

(4) The ALJ may reject evidence, if it:

(a) Is not relevant;

(b) Repeats evidence already admitted; or

(c) Is from a privileged communication protected by law.

(5) The ALJ must reject evidence if required by law.

(6) The ALJ decides:

(a) What evidence is more credible if evidence conflicts; and

(b) The weight given to the evidence.

NEW SECTION

WAC 388-526-0480 What does burden of proof mean? (1) Burden of proof is a party's responsibility to:

(a) Provide evidence regarding disputed facts; and

(b) Persuade the administrative law judge (ALJ) that a position is correct.

(2) To persuade the ALJ, the party who has the burden of proof must provide the amount of evidence required by WAC 388-526-0485.

NEW SECTION

WAC 388-526-0485 What is the standard of proof? Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

NEW SECTION

WAC 388-526-0490 How is a position proven at hearing? The administrative law judge (ALJ) decides if a party has met the burden of proof. The ALJ writes a decision based on the evidence presented during the hearing and consistent with the law.

NEW SECTION

WAC 388-526-0495 What is equitable estoppel? (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent the agency from taking some action against you, such as collecting an overpayment. Equitable estoppel may not be used to require the agency to continue to provide something, such as benefits, or to require the agency to take action contrary to a statute.

(2) There are five elements of equitable estoppel. The standard of proof is clear and convincing evidence. You must prove all of the following:

(a) The agency made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by the agency. For example, the agency or one of its authorized agents gave you money based on your application, then later tells you that you received an overpayment and wants you to pay the money back based on the same information.

(b) You reasonably relied on the agency's original statement, action or failure to act. For example, you believed the agency acted correctly when you received money.

(c) You will be injured to your detriment if the agency is allowed to contradict the original statement, action or failure to act. For example, you did not seek nongovernmental assistance because you were receiving benefits from the agency, and you would have been eligible for these other benefits.

(d) Equitable estoppel is needed to prevent a manifest injustice. Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

(i) You cannot afford to repay the money to the agency;

(ii) You gave the agency timely and accurate information when required;

(iii) You did not know that the agency made a mistake;

(iv) You are free from fault; and

(v) The overpayment was caused solely by an agency mistake.

(e) The exercise of government functions is not impaired. For example, the use of equitable estoppel in your case will not result in circumstances that will impair agency functions.

(3) If the ALJ concludes that you have proven all of the elements of equitable estoppel in subsection (2) of this section with clear and convincing evidence, the agency is stopped or prevented from taking action or enforcing a claim against you.

NEW SECTION

WAC 388-526-0500 What may an administrative law judge do before the record is closed? Before the record is closed, the administrative law judge may:

(1) Set another hearing date;

(2) Enter orders to address limited issues if needed before writing and mailing a hearing decision to resolve all issues in the proceeding; or

(3) Give the parties more time to send in exhibits or written argument.

NEW SECTION

WAC 388-526-0505 When is the record closed? The record is closed:

(1) At the end of the hearing if the administrative law judge does not allow more time to send in evidence or argument; or

(2) After the deadline for sending in evidence or argument is over.

NEW SECTION

WAC 388-526-0510 What happens when the record is closed? No more evidence may be taken without good cause after the record is closed.

NEW SECTION

WAC 388-526-0512 What is included in the hearing record? (1) The administrative law judge must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

NEW SECTION

WAC 388-526-0515 What happens after the record is closed? (1) After the record is closed, the administrative law judge (ALJ) must enter an initial or final order and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed, but many programs have earlier deadlines. Specific program rules may set the deadlines.

(3) The office of administrative hearings must send the official record of the proceedings to the board of appeals. The record must be complete when it is sent, and include all parts required by WAC 388-526-0512.

NEW SECTION

WAC 388-526-0520 What information must the administrative law judge include in the decision? The administrative law judge (ALJ) must include the following information in the decision:

(1) Identify the hearing decision as a health care authority case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the facts used to resolve the dispute based on the hearing record;

(4) Explain why evidence is credible when the facts or conduct of a witness is in question;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result and remedy ordered;

(9) Explain how to request changes in the decision and the deadlines for requesting them;

(10) State the date the decision becomes final according to WAC 388-526-0525; and

(11) Include any other information required by law or program rules.

NEW SECTION

WAC 388-526-0525 When do initial orders become final? If no one requests review of the initial order or if a review request is dismissed, the initial order is final twenty-one calendar days after it is mailed.

NEW SECTION

WAC 388-526-0530 What if a party disagrees with the administrative law judge's decision? (1) If a party disagrees with an administrative law judge's (ALJ) initial or final order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 388-526-0540 through 388-526-0555.

(2) If a party disagrees with an initial order and wants it changed, the party must request review by a review judge as provided in WAC 388-526-0560 through 388-526-0595.

If a party wants to stay the agency action until review of the initial order is completed, the party must request a stay from a review judge.

(3) Final orders entered by ALJs may not be reviewed by a review judge.

(4) If a party disagrees with an ALJ's final order, the party may request reconsideration as provided in WAC 388-526-0605 through 388-526-0635. You may also petition for judicial review of the final order as stated in WAC 388-526-0640 through 388-526-0650. You do not need to file a request for reconsideration of the final order before petitioning for judicial review. The health care authority may not request judicial review of an ALJ's or review judge's final order.

NEW SECTION

WAC 388-526-0540 How are clerical errors in the administrative law judge's decision corrected? (1) A clerical error is a mistake that does not change the intent of the decision.

(2) The administrative law judge corrects clerical errors in hearing decisions by issuing a second decision referred to as a corrected decision or corrected order. Corrections may be made to initial orders and final orders.

(3) Some examples of clerical error are:

(a) Missing or incorrect words or numbers;

(b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or

(c) Math errors when adding the total of an overpayment.

NEW SECTION

WAC 388-526-0545 How does a party ask for a corrected administrative law judge decision? (1) A party may ask for a corrected administrative law judge (ALJ) decision by calling or writing the office of administrative hearings office that held the hearing.

(2) When asking for a corrected decision, please identify the clerical error you found.

NEW SECTION

WAC 388-526-0550 How much time do the parties have to ask for a corrected administrative law judge decision? (1) The parties must ask the administrative law judge (ALJ) for a corrected decision on or before the tenth calendar day after the order was mailed.

(2) If you ask the ALJ to correct a decision, the time period provided by this section for requesting a corrected decision of an initial order, and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline, if any, for a review judge to enter a final order.

NEW SECTION

WAC 388-526-0555 What happens when a party requests a corrected administrative law judge decision? (1) When a party requests a corrected initial or final order, the administrative law judge (ALJ) must either:

(a) Send all parties a corrected order; or

(b) Deny the request within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(3) If the ALJ denies a request for a corrected initial order and the party still wants the hearing decision changed, the party must request review by a review judge.

(4) Requesting an ALJ to correct the initial order does not automatically extend the deadline to request review of the initial order by a review judge. When a party needs more time to request review of an initial order, the party must ask for more time to request review as permitted by WAC 388-526-0580(2).

(5) If the ALJ denies a request for a corrected final order and you still want the hearing decision changed, you must request judicial review.

NEW SECTION

WAC 388-526-0560 What is review of an initial order by a review judge? (1) Review by a review judge is available to a party who disagrees with the administrative law judge's (ALJ) initial order.

(2) If a party wants the initial order changed, the party must request that a review judge review the initial order.

(3) If a request is made for a review judge to review an initial order, it does not mean there is another hearing conducted by a review judge.

(4) The review judge considers the request, the initial order, and the record, and may hear oral argument, before deciding if the initial order should be changed.

(5) Review judges may not review ALJ final orders.

NEW SECTION

WAC 388-526-0565 What evidence does the review judge consider in reviewing an initial order? (1) The review judge, in most cases, only considers evidence given at the original hearing before the administrative law judge.

(2) The review judge may allow the parties to make oral argument when reviewing initial orders.

NEW SECTION

WAC 388-526-0570 Who may request review of an initial order? (1) Any party may request a review judge to review the initial order.

(2) If more than one party requests review, each request must meet the deadlines in WAC 388-526-0580.

NEW SECTION

WAC 388-526-0575 What must a party include in the review request? A party must make the review request in writing and send it to the board of appeals. The party should identify the:

(1) Parts of the initial order with which the party disagrees; and

(2) Evidence supporting the party's position.

NEW SECTION

WAC 388-526-0580 What is the deadline for requesting review by a review judge? (1) The board of appeals (BOA) must receive the written review request on or before 5:00 p.m. on the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) If you ask a review judge to review an administrative law judge decision, the time period provided by this section for requesting review of an initial order, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

NEW SECTION

WAC 388-526-0585 Where does a party send the request for review by a review judge? (1) A party must send the request for review of the initial order to the board of appeals (BOA) at the address given in WAC 388-526-0030. A party should also send a copy of the review request to the other parties.

(2) After receiving a party's review request, BOA sends a copy to the other parties, their representatives, and the office of administrative hearings. The other parties and their representatives may respond as described in WAC 388-526-0590.

NEW SECTION

WAC 388-526-0590 How does the party that is not requesting review respond to the review request? (1) A party does not have to respond to the review request. A response is optional.

(2) If a party decides to respond, that party must send the response so that the board of appeals (BOA) receives it on or before the seventh business day after the date the other party's review request was mailed to the party by the BOA.

(3) The party should send a copy of the response to all other parties or their representatives.

(4) A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) If you ask for more time to respond, the time period provided by this section for responding to the review request, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order. A review judge may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

WAC 388-526-0595 What happens after the review response deadline? (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to review the initial order after the record is closed. To find out which judge is assigned, call the board of appeals.

(3) After the record is closed, the assigned review judge:

(a) Reviews the initial order; and

(b) Enters a final order that affirms, changes, dismisses or reverses the initial order; or

(c) Returns the case to the office of administrative hearings for further action.

NEW SECTION

WAC 388-526-0600 What is the authority of the review judge? (1) Review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the administrative law judge (ALJ). The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may return (remand) cases to the office of administrative hearings for further action.

(3) In cases where there is a consolidated hearing pursuant to WAC 388-526-0387, any party may request review of the initial order in accordance with the requirements contained in this chapter.

(4) A review judge conducts the hearing and enters the final order in cases covered by WAC 388-526-0218.

NEW SECTION

WAC 388-526-0605 What if a party does not agree with a final order entered by the office of administrative hearings or the board of appeals? (1) If a party does not agree with the final order and wants it reconsidered, the party must:

(a) Ask the administrative law judge (ALJ) to reconsider the decision, if the final order was entered by an ALJ; or

(b) Ask the review judge to reconsider the decision, if the final order was entered by a review judge.

(2) The final order or the reconsideration decision is the final agency decision. If you disagree with that decision, you must petition for judicial review to change it.

(3) You may ask the court to stay or stop the agency action after filing the petition for judicial review.

NEW SECTION

WAC 388-526-0610 What is reconsideration? (1) Reconsideration is:

(a) Asking an administrative law judge (ALJ) to reconsider a final order entered by the ALJ because the party believes the ALJ made a mistake; or

(b) Asking a review judge to reconsider a final order entered by a review judge because the party believes the review judge made a mistake.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before you request judicial review. However, you do not need to request reconsideration of a final order before you request judicial review.

NEW SECTION

WAC 388-526-0615 What must a party include in the reconsideration request? The party must make the request in writing and clearly state why the party wants the final order reconsidered.

NEW SECTION

WAC 388-526-0620 What is the deadline for requesting reconsideration? (1) If the office of administrative hearings (OAH) entered the final order, OAH must receive a written reconsideration request on or before the tenth calendar day after the final order was mailed.

(2) If the board of appeals (BOA) entered the final order, BOA must receive a written reconsideration request on or before the tenth calendar day after the final order was mailed.

(3) If a reconsideration request is received after the deadline, the final order will not be reconsidered and the deadline to ask for superior court review continues to run.

(4) OAH or BOA may extend its deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for the extension.

(5) If a party does not request reconsideration or ask for an extension within the deadline, the final order may not be reconsidered and it becomes the final agency decision.

NEW SECTION

WAC 388-526-0625 Where does a party send a reconsideration request? (1) A party must send a written reconsideration request to the office of administrative hearings (OAH) if OAH entered the final order, or to the board of appeals (BOA) if BOA entered the final order.

(2) After receiving a reconsideration request, OAH or BOA sends a copy to the other parties and representatives and gives them time to respond.

NEW SECTION

WAC 388-526-0630 How does a party respond to a reconsideration request? (1) A party does not have to respond to a request. A response is optional.

(2) If a party responds, that party must send a response to the office of administrative hearings (OAH) if OAH entered the final order, or to the board of appeals (BOA) if BOA entered the final order, by or before the seventh business day after the date OAH or BOA mailed the request to the party.

(3) A party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, OAH or BOA may extend its deadline if the party gives a good reason within the deadline in subsection (2) of this section.

NEW SECTION

WAC 388-526-0635 What happens after a party requests reconsideration? (1) After the office of administrative hearings (OAH) or the board of appeals (BOA) receives a reconsideration request, an administrative law judge (ALJ) or review judge has twenty calendar days to send a reconsideration decision unless OAH or BOA sends notice allowing more time.

(2) After OAH or BOA receives a reconsideration request, the ALJ or review judge must either:

(a) Write a reconsideration decision; or

(b) Send all parties an order denying the request.

(3) If the ALJ or review judge does not send an order or notice granting more time within twenty days of receipt of the reconsideration request, the request is denied.

NEW SECTION

WAC 388-526-0640 What is judicial review? (1) Judicial review is the process of appealing a final order to a court.

(2) You may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. HCA may not request judicial review.

(3) You must consult RCW 34.05.510 to 34.05.598 for further details of the judicial review process.

NEW SECTION

WAC 388-526-0645 When must you ask for judicial review? (1) You must file your petition for judicial review with the superior court within thirty calendar days after the office of administrative hearings or the board of appeals mails its final order.

(2) Generally, you may file a petition for judicial review only after you have completed the administrative hearing process. However, you do not need to file a request for reconsideration of a final order before requesting judicial review.

NEW SECTION

WAC 388-526-0650 How do you serve your petition for judicial review? (1) You must file and serve the petition for judicial review of a final order within thirty days after the date it was mailed. You must file your petition for judicial review with the court. You must serve copies of your petition on health care authority (HCA), the office of the attorney general, and all other parties.

(2) To serve HCA, you must deliver a copy of the petition to the director of HCA or to the board of appeals (BOA). You may hand deliver the petition or send it by mail that gives proof of receipt. The physical location of the director is:

Director
Health Care Authority
626 8th Avenue SE
Olympia, WA 98501

The mailing address of the director is:

Director
Health Care Authority
P.O. Box 45502
Olympia, WA 98504-5502

The physical and mailing addresses for BOA are in WAC 388-526-0030.

(3) To serve the office of the attorney general and other parties, you may send a copy of the petition for judicial review by regular mail. You may send a petition to the address for the attorney of record to serve a party. You may serve the office of the attorney general by hand delivery to:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, Washington 98501

The mailing address of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-526-2610	Prehearing reviews for clients who request a fair hearing.

WSR 12-05-100
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed February 21, 2012, 10:46 a.m., effective February 21, 2012, 10:46 a.m.]

Effective Date of Rule: Immediately.

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 RCW 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). Emergency rules were filed to implement the effective dates as WSR 12-02-049. This emergency rule filing supersedes the emergency rule filed as WSR 12-02-049 in order to (1) add requirements for the filing of administrative hearings that are available under I-1163; and (2) change dates in the original filing that are not consistent with I-1163. A CR-101 has been filed successively to begin the permanent rule process.

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 74, Amended 66, Repealed 82; 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 74, Amended 66, Repealed 82.

Date Adopted: February 17, 2012.

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 noncompliance 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:

((~~(1)~~)) (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 fair~~)) (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 and how can a hearing be requested? (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.

(4) To request an administrative hearing, an individual provider must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the department's notice letter is served upon the individual provider.

(5) The individual provider should keep a copy of the request.

(6) Chapters 34.05 and 74.39A RCW, chapter 388-02 WAC, and the provisions of this chapter govern any administrative hearing under this section. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

NEW SECTION

WAC 388-71-0562 When does a medicaid contracted home care agency have the right to an administrative hearing and how can a hearing be requested? (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.

(3) To request an administrative hearing, a home care agency must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the department's notice letter is served upon the home care agency.

(4) The home care agency should keep a copy of the request.

(5) Chapters 34.05 and 74.39A RCW, chapter 388-02 WAC, and the provisions of this chapter govern any administrative hearing under this section. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

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 TRAINING

NEW 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.

NEW SECTION

WAC 388-71-0901 What long-term care workers are exempt from the basic training requirement? The following 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 privacy 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 time-frame. 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 2012.

(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 APPROVAL

NEW 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 or training 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 388-71-05705	Is there an alternative to the basic training for some health care workers?
WAC 388-71-05710	What core knowledge and skills must be taught in basic training?
WAC 388-71-05715	Is competency testing required for basic training?
WAC 388-71-05720	Is there a challenge test for basic training?
WAC 388-71-05725	What documentation is required for successful completion of basic training?
WAC 388-71-05730	Who is required to complete basic training, and when?
WAC 388-71-05735	What is modified basic training?
WAC 388-71-05740	What knowledge and skills must be included in modified basic training?
WAC 388-71-05745	Is competency testing required for modified basic training?
WAC 388-71-05750	Is there a challenge test for modified basic training?
WAC 388-71-05755	What documentation is required for successful completion of modified basic training?
WAC 388-71-05760	Who may take modified basic training instead of the full basic training?
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 388-71-05770	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 388-71-05775	What is continuing education?
WAC 388-71-05780	How many hours of continuing education are required each year?
WAC 388-71-05785	What kinds of training topics are required for continuing education?
WAC 388-71-05790	Is competency testing required for continuing education?
WAC 388-71-05795	May basic or modified basic training be completed a second time and used to meet the continuing education requirement?
WAC 388-71-05799	What are the documentation requirements for continuing education?
WAC 388-71-05805	What is nurse delegation core training?
WAC 388-71-05810	What knowledge and skills must nurse delegation core training include?
WAC 388-71-05815	Is competency testing required for nurse delegation core training?
WAC 388-71-05820	Is there a challenge test for nurse delegation core training?

WAC 388-71-05825	What documentation is required for successful completion of nurse delegation core training?
WAC 388-71-05830	Who is required to complete nurse delegation core training, and when?
WAC 388-71-05832	What is safety training?
WAC 388-71-05835	What is competency testing?
WAC 388-71-05840	What components must competency testing include?
WAC 388-71-05845	What experience or training must individuals have to be able to perform competency testing?
WAC 388-71-05850	What training must include the DSHS-developed competency test?
WAC 388-71-05855	How must competency test administration be standardized?
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?
WAC 388-71-05870	What are an instructor's or training entity's responsibilities?
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?
WAC 388-71-05885	What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training?
WAC 388-71-05890	What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core and specialized diabetes training?
WAC 388-71-05895	What additional qualifications are required for instructors of nurse delegation core training and specialized diabetes nurse delegation training?
WAC 388-71-05899	What must be included in a class on adult education?
WAC 388-71-05905	What physical resources are required for basic, modified basic, or nurse delegation core classroom training and testing?
WAC 388-71-05909	What standard training practices must be maintained for basic, modified basic, or nurse delegation core classroom training and testing?
WAC 388-71-0801	What is specialized diabetes nurse delegation training?
WAC 388-71-0806	What knowledge and skills must specialized diabetes nurse delegation training include?
WAC 388-71-0811	Is competency testing required for the specialized diabetes nurse delegation training?
WAC 388-71-0816	Is there a challenge test for specialized diabetes nurse delegation training?
WAC 388-71-0821	What documentation is required for successful completion of specialized diabetes nurse delegation training?
WAC 388-71-0826	Who is required to complete the specialized diabetes nurse delegation training, and when?

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

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.

This chapter also describes the long-term care worker training requirements ((~~under this chapter apply to:~~

~~(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.

NEW SECTION

WAC 388-112-0002 To whom do the training requirements apply? (1) The residential long-term care training requirements under this chapter apply to:

(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:

(a) All direct care workers in boarding homes licensed under chapter 18.20 RCW and chapter 388-78A WAC;

(b) Boarding home administrators (or their designees) in accordance with chapter 388-78A WAC;

(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.

(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.

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 require-

ments. 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 following 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) 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.

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 02-15-065, 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 typogrphical 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.

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 02-15-065, 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? ((~~(1)~~)) 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.~~))

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((~~,~~)) (including the manager and caregiver or long-term care worker specialty trainings)? There is a

challenge test for ((~~all~~)) 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((~~,~~)) 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~~

~~(c) 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 2012.

(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 worker career development. Topics may include but are not limited to:

(1) Resident rights, such as freedom from abuse, neglect, abandonment and financial exploitation;

(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 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**:

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 or training 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

(((3))) (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 dis-

abilities, 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) 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)~~)) 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) 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 12-06-017
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed February 28, 2012, 9:12 a.m., effective March 1, 2012]

Effective Date of Rule: March 1, 2012.

Purpose: Under section 6014 of the Deficit Reduction Act of 2005 (DRA), medicaid will not pay for long-term care services for individuals whose equity interest in their home exceeds $500,000. Effective January 1, 2011, these limits are to be increased each year by the percentage increase in the consumer price index urban (CPIU). Effective January 1, 2011, the excess home equity limits is $506,000. The standard utility allowance (SUA) reference has changed effective October 1, 2011, this emergency adoption corrects the reference. Eliminating reference to general assistance and/or disability lifeline and referencing to the correct aged, blind or disabled (ABD) cash program or medical care services (MCS) program. This emergency adoption is coordinated with community services division's (CSD) emergency adoption in eliminating disability lifeline, this is to ensure that expenditures do not exceed funds appropriated under the 2011-2013 operating budget (2ESHB 1087) signed by Governor Gregoire on June 15, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1305, 388-513-1315, 388-513-1350, 388-513-1380, 388-515-1505, 388-515-1506, 388-515-1507, 388-515-1509, 388-515-1512, and 388-515-1514.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530.

Other Authority: Deficit Reduction Act (DRA) of 2005.

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: Federal standard change of the excess home equity provisions effective January 1, 2011, based on the CPIU. This CR-103E continues emergency rules filed under WSR 11-22-072 while the department completes the process for permanent adoption. The initial public notice (CR-101) was filed December 29, 2010, under WSR 11-02-032. The SUA changed effective October 1, 2011. The department is coordinating with the health care authority (HCA) regarding current recodifying and emergency WACs HCA and CSD has filed which affect WAC references in chapters 388-513 and 388-515 WAC regarding changes to ABD cash, and MCS. Also, the department filed a CR-101 on January 4, 2012, under WSR 12-02-082 for consolidating the medically needy in-home (MNI) and medically needy residential (MNR) waivers into the community options program entry system (COPES) waiver. This consolidation will require the department to repeal WAC pertaining to MNI and MNR.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 10, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: February 27, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1305 Determining eligibility for noninstitutional medical assistance in an alternate living facility (ALF). This section describes how the department defines the monthly income standard and uses it to determine eligibility for noninstitutional medical assistance for a client who lives in a department-contracted ALF. Refer to WAC 388-478-0045 for the personal needs allowance (PNA) amount that applies in this rule.

(1) Alternate living facilities include the following:

(a) An adult family home (AFH);

(b) An adult residential care facility (ARC);

(c) An adult residential rehabilitation center (ARRC);

(d) An adult residential treatment facility (ARTF);

(e) An assisted living facility (AL);

(f) A division of developmental disabilities (DDD) group home (GH); and

(g) An enhanced adult residential care facility (EARC).

(2) The monthly income standard for noninstitutional medical assistance under the categorically needy (CN) program that cannot exceed the special income level (SIL) equals the following amounts. For a client who lives in:

(a) An ARC, an ARRC, an ARTF, an AL, a DDD GH, or an EARC, the department-contracted rate based on a thirty-one day month plus the PNA; or

(b) An AFH, the department-contracted rate based on a thirty-one day month plus the PNA plus the cost of any add-on hours authorized by the department.

(3) The monthly income standard for noninstitutional medical assistance under the medically needy (MN) program equals the private facility rate based on a thirty-one-day month plus the PNA.

(4) ((~~The monthly income standard for noninstitutional medical assistance under the general assistance (GA) program equals the GA grant standard described in WAC 388-478-0045.~~

~~(5)~~)) The department determines a client's nonexcluded resources for noninstitutional medical assistance under the((~~:~~

~~(a) General assistance (GA) and temporary assistance for needy families (TANF) programs as described in chapter 388-470 WAC; and~~

~~(b) SSI-related medical program as described in chapter 388-475 WAC.~~

~~(6)~~)) SSI related program as described in chapter 388-475 WAC.

(5) The department determines a client's nonexcluded income for noninstitutional medical assistance under the SSI related program as described in((~~:~~

~~(a) Chapter 388-450 WAC for GA and TANF programs; and~~

~~(b) Chapter 388-475 WAC and WAC 388-506-0620 for SSI-related medical programs~~)) chapter 388-475 WAC.

((~~(7)~~)) (6) The department approves CN noninstitutional medical assistance for a period of up to twelve months for a client who receives Supplemental Security Income (SSI) or who is SSI-related as described in WAC 388-475-0050, if:

(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and

(b) The client's nonexcluded income described in subsection (6) does not exceed the CN standard described in subsection (2).

((~~(8)~~)) (7) The department approves MN noninstitutional medical assistance for a period of months described in chapter 388-416 WAC for an SSI-related client, if:

(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and

(b) The client satisfies any spenddown liability as described in chapter 388-519 WAC.

(9) ((~~The department approves GA and TANF noninstitutional medical assistance for a period of months described in chapter 388-416 WAC.~~

~~(10)~~)) The client described in subsections (7) and (9) keeps the PNA amount and pays remaining income to the facility for board and room.

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

AMENDATORY SECTION (Amending WSR 10-01-158, filed 12/22/09, effective 1/22/10)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the ((~~general assistance (GA) program in subsection (12)~~)) aged, blind, or disabled (ABD) cash assistance, medical care services (MCS) and the state funded ((~~nursing facility~~)) long-term care services program described in subsection (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a) through (f);

(b) Attain institutional status as described in WAC 388-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for waiver and nursing facility coverage;

(d) Not have a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 or 388-513-1366;

(e) Not have equity interest greater than five hundred thousand dollars in their primary residence as described in WAC 388-513-1350; and

(f) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC:

(i) This is required for all institutional or waiver services and includes those individuals receiving Supplemental Security Income (SSI).

(ii) A signed and completed eligibility review for long term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350; or

(b) Be approved and receiving ((~~the general assistance expedited medicaid disability (GA-X) or general assistance aged (GA-A) or general assistance disabled (GA-D) described in WAC 388-505-0110(6)~~)) aged, blind, or disabled cash assistance described in WAC 388-400-0060 and meet citizenship requirements for federally funded medicaid described in WAC 388-424-0010; or

(c) Be eligible for CN apple health for kids described in WAC 388-505-0210; or CN family medical described in WAC 388-505-0220; or family and children's institutional medical described in WAC 388-505-0230 through 388-505-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services. Nursing facility services require prior approval for the state funded nursing facility program described in WAC 388-438-0125 for noncitizen children; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC 388-400-0005. Clients not meeting disability or blind criteria described in WAC 388-475-0050 are not eligible for waiver services.

(3) The department allows a client to reduce countable resources in excess of the standard. This is described in WAC 388-513-1350.

(4) To be eligible for waiver services, a client must meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPES, New Freedom, PACE, and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers; or

(c) WAC 388-515-1540 for the medically needy residential waiver (MNRW); or

(d) WAC 388-515-1550 for the medically needy in-home waiver (MNIW).

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 388-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN-P) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI related clients with income over the MNIL and at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC 388-505-0210, 388-505-0255, or 388-505-0260; or

(b) Related to the SSI program as described in WAC 388-475-0050 and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI related program described in WAC 388-475-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC 388-513-1395.

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource eligibility and standards described in WAC 388-513-1350; and

(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 or 388-513-1366.

(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months.

(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395(6) for:

(a) Institutional services in a medical institution; or

(b) Hospice services in a medical institution.

(11) The department determines eligibility for ((~~the~~)) state funded ((~~nursing facility program described in WAC 388-438-0110 and 388-438-0125. Nursing facility services under the state funded nursing facility program must be pre-approved by aging and disability services administration (ADSA).~~

~~(12) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (9) through (11).~~

~~(13)~~)) programs under the following rules:

(a) A client who is eligible for ABD cash assistance program described in WAC 388-400-0060 but is not eligible for federally funded medicaid due to citizenship requirements receives MCS medical described in WAC 182-508-0005. A client who is eligible for MCS may receive institutional services but is not eligible for hospice or HCB waiver services.

(b) A client who is not eligible for ABD cash assistance but is eligible for MCS coverage only described in WAC 182-508-0005 may receive institutional services but is not eligible for hospice or HCB waiver services.

(c) A noncitizen client who is not eligible under subsections (11)(a) or (b) and needs long-term care services may be eligible under WAC 388-438-0110 and WAC 388-438-0125. This program must be pre-approved by aging and disability services administration (ADSA).

(12) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is under the age of twenty-one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

((~~(14)~~)) (13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

((~~(15)~~)) (14) If an individual under age twenty one is not eligible for medicaid under SSI related in WAC 388-475-0050 or ((~~general assistance (GA) described in WAC 388-448-0001 and 388-505-0110(6)~~)) ABD cash assistance described in WAC 388-400-0060 or MCS described in 182-508-0005, consider eligibility under WAC 388-505-0255 or 388-505-0260.

((~~(16)~~)) (15) Noncitizen individuals under age nineteen can be considered for the apple health for kids program described in WAC 388-505-0210 if they are admitted to a medical institution for less than thirty days. Once an individual resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 388-505-0260 and must be preapproved for coverage by ADSA as described in WAC 388-438-0125.

(16) Noncitizen clients not eligible under subsection (15) of this section can be considered for LTC services under WAC 388-438-0125. These clients must be pre-approved by ADSA.

(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380;

(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;

(c) For clients receiving DDD CN waiver services see WAC 388-515-1514;

(d) For clients receiving HCS MN waiver services see WAC 388-515-1540 or 388-515-1550; or

(e) For TANF related clients residing in a medical institution see WAC 388-505-0265.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN-P medicaid. These groups are described in WAC 388-475-0880.

AMENDATORY SECTION (Amending WSR 09-12-058, filed 5/28/09, effective 7/1/09)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

(7) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index-urban (CPIU). For current excess home equity standard starting January 1, 2011 and each year thereafter, see http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (2), (5) and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.

(ii) As long as the incurred medical expenses:

(A) Are not subject to third-party payment or reimbursement;

(B) Have not been used to satisfy a previous spend down liability;

(C) Have not previously been used to reduce excess resources;

(D) Have not been used to reduce client responsibility toward cost of care;

(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(F) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or boarding home is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to nonexcluded income, the combined total is less than the:

(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or

(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard increases annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long-term care standards at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of forty-five thousand one hundred four dollars effective July 1, 2007 through June 30, 2009. Effective July 1, 2009 this standard increases to forty-eight thousand six hundred thirty-nine dollars (this standard increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long-term care standards at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the

month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsection (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

AMENDATORY SECTION (Amending WSR 09-07-037, filed 3/10/09, effective 4/10/09)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another noninstitutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of (4)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) Seventy dollars for the following clients who live in a state veteran's home and receive a needs based veteran's pension in excess of ninety dollars:

(A) A veteran without a spouse or dependent child.

(B) A veteran's surviving spouse with no dependent children.

(ii) The difference between one hundred sixty dollars and the needs based veteran's pension amount for persons specified in subsection (4)(a)(i) of this section who receive a veteran's pension less than ninety dollars.

(iii) One hundred sixty dollars for a client living in a state veterans' home who does not receive a needs based veteran's pension;

(iv) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving ((~~general assistance~~)) ABD cash assistance.

(v) Effective July 1, 2007 through June 30, 2008 fifty-five dollars and forty-five cents for all other clients in a medical institution. Effective July 1, 2008 this PNA increases to fifty-seven dollars and twenty-eight cents.

(vi) Current PNA and long-term care standards can be found at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) in the following order:

(a) Income garnished for child support or withheld according to a child support order in the month of garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, http://www.bls.gov/cpi/). Starting January 1, 2008 and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty/); and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) In an amount equal to one-third of one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty/).

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty/); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance ((~~for four persons~~)) described in WAC 388-450-0195, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1505 Long-term care home and community based services and hospice. (1) This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) services administered by home and community services (HCS) and hospice services administered by ((~~health and recovery services administration (HRSA)~~)) the health care authority (HCA).

(2) The HCB service programs are:

(a) Community options program entry system (COPES);

(b) Program of all-inclusive care for the elderly (PACE);

(c) Washington medicaid integration partnership (WMIP); or

(d) New Freedom consumer directed services (New Freedom).

(3) Roads to community living (RCL) services. For RCL services this chapter is used only to determine your cost of care. Medicaid eligibility is guaranteed for three hundred sixty-five days upon discharge from a medical institution.

(4) Hospice services if you don't reside in a medical institution and:

(a) Have gross income at or below the special income level (SIL); and

(b) Aren't eligible for another CN or medically needy (MN) medicaid program.

(5) WAC 388-515-1506 describes the general eligibility requirements for HCS CN waivers.

(6) WAC 388-515-1507 describes eligibility for waiver services when you are eligible for medicaid using noninstitutional CN rules.

(7) WAC 388-515-1508 describes the initial financial eligibility requirements for waiver services when you are not eligible for noninstitutional CN medicaid described in WAC 388-515-1507(1).

(8) WAC 388-515-1509 describes the rules used to determine your responsibility in the cost of care for waiver services if you are not eligible for medicaid under a CN program listed in WAC 388-515-1507(1). This is also called client participation or post eligibility.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1506 What are the general eligibility requirements for home and community based (HCB) services and hospice? (1) To be eligible for home and community based (HCB) services and hospice you must:

(a) Meet the program and age requirements for the specific program:

(i) COPES, per WAC 388-106-0310;

(ii) PACE, per WAC 388-106-0705;

(iii) WMIP waiver services, per WAC 388-106-0750;

(iv) New Freedom, per WAC 388-106-1410;

(v) Hospice, per chapter ((~~388-551~~)) 182-551 WAC; or

(vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260.

(b) Meet the disability criteria for the Supplemental Security Income (SSI) program as described in WAC 388-475-0050;

(c) Require the level of care provided in a nursing facility described in WAC 388-106-0355;

(d) Be residing in a medical institution as defined in WAC ((~~388-500-0005~~)) 182-500-0050, or likely to be placed in one within the next thirty days without HCB services provided under one of the programs listed in subsection (1)(a);

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of services and be approved for a plan of care as described in subsection (1)(a);

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1366;

(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

(3) Current income and resource standard charts are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.html.

AMENDATORY SECTION (Amending WSR 09-14-043, filed 6/24/09, effective 7/25/09)

WAC 388-515-1507 What are the financial requirements for home and community based (HCB) services when you are eligible for a noninstitutional categorically needy (CN) medicaid program? (1) You are eligible for medicaid under one of the following programs:

(a) Supplemental Security Income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;

(b) SSI-related CN medicaid described in WAC 388-475-0100 (2)(a) and (b);

(c) SSI-related healthcare for workers with disabilities program (HWD) described in WAC 388-475-1000. If you are receiving HWD, you are responsible to pay your HWD premium as described in WAC 388-475-1250. This change is effective April 1, 2009;

(d) ((~~General assistance expedited medicaid disability (GAX) or general assistance based on aged/blind/disabled criteria~~)) Aged, blind, or disabled (ABD) cash assistance described in WAC ((~~388-505-0110(6)~~)) 388-400-0060 and are receiving CN medicaid.

(2) You do not have a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1366. This does not apply to PACE or hospice services.

(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).

(5) You do not pay (participate) toward the cost of your personal care services.

(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.

(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.

(b) If subsection (6)(a) applies and you are receiving HWD described in WAC 388-475-1000, you are responsible to pay your HWD premium as described in WAC 388-475-1250, in addition to the room and board standard.

(7) If you are eligible for ((~~general assistance expedited medicaid disability (GAX) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6),~~)) aged, blind or disabled (ABD) cash assistance program described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under ((~~the general assistance program~~)) WAC 388-478-0033;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ((~~general assistance~~)) ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard; or

(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive a ABD cash grant of thirty-eight dollars and eighty-four cents, which you keep for your PNA.

(8) Current resource and income standards are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(9) Current PNA and ADSA room and board standards are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltcstandardsPNAchartsubfile.shtml.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1509 How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508? If you are only eligible for medicaid under WAC 388-515-1508, the department determines how much you must pay based upon the following:

(1) If you are single and living at home as defined in WAC 388-106-0010, you keep all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA).

(2) If you are married living at home as defined in WAC 388-106-0010, you keep all your income up to the medically needy income level (MNIL) for your PNA.

(3) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

(a) Keep a PNA from your gross nonexluded income. The PNA is sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pay for your room and board up to the ADSA room and board standard.

(4) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction is reduced by allowable deductions in the following order:

(a) If you are working, the department allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income.

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If the department allows this as deduction from your income, the department will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that you make your income available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1 (http://aspe.os.dhhs.gov/poverty/); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative, minus;

(V) The food assistance standard utility allowance (SUA) ((~~(for long-term care services this is set at the standard utility allowance for a four-person household),~~)) described in WAC 388-450-0195 provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1 (http://aspe.os.dhhs.gov/poverty).

(e) Is reduced by your community spouse's gross countable income.

(f) The amount allocated to the community spouse may be greater than the amount in subsection (d)(ii) only when:

(i) There is a court order approving the higher amount for the support of your community spouse; or

(ii) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(g) A monthly maintenance needs amount for each minor or dependent child, dependent parent, or dependent sibling of your community or institutional spouse. The amount the department allows is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(h) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(i) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowance in subsections (1), (2) and (3)(a) and (b); and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4)(a); and

(iii) Guardianship fees and administrative costs in subsection (4)(b).

(5) You must pay your provider the combination of the room and board amount and the cost of personal care services after all allowable deductions.

(6) You may have to pay third party resources described in WAC 388-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.

(7) Current income and resource standards for long-term care (including SIL, MNIL, FPL, FBR) are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(8) If you are in multiple living arrangements in a month (an example is a move from an adult family home to a home setting on HCB services), the department allows you the highest PNA available based on all the living arrangements and services you have in a month.

(9) Current PNA and ADSA room and board standards are located at: http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltcstandardsPNAchartsubfile.shtml.

AMENDATORY SECTION (Amending WSR 08-24-069, filed 12/1/08, effective 1/1/09)

WAC 388-515-1512 What are the financial requirements if I am eligible for medicaid under the noninstitutional categorically needy program (CN-P)? (1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for medicaid under a categorically needy program (CN-P) under one of the following programs:

(a) Supplemental Security Income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have medicaid eligibility determined and maintained by the Social Security Administration;

(b) Healthcare for workers with disabilities (HWD) described in WAC 388-475-1000 through 388-475-1250;

(c) SSI-related CN-P medicaid described in WAC 388-475-0100 (2)(a) and (b) or meets the requirements in WAC 388-475-0880 and is CN-P eligible after the income disregards have been applied;

(d) CN-P medicaid for a child as described in WAC 388-505-0210 (1), (2), (7) or (8); or

(e) ((~~General assistance expedited medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6)~~)) Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060.

(2) If you are eligible for a CN-P medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.

(3) If you are eligible for a CN-P medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).

(4) If you are eligible for a CN-P medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 388-515-1505. Room and board and long-term care standards are located at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents.

(5) If you are eligible for a premium based medicaid program such as healthcare for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that CN-P program.

AMENDATORY SECTION (Amending WSR 08-24-069, filed 12/1/08, effective 1/1/09)

WAC 388-515-1514 How does the department determine how much of my income I must pay towards the cost of my care if I am not eligible for medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1)? If you are not eligible for medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).

(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents; and

(b) Pay for your room and board up to the ADSA room and board rate described in http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(3) Income that remains after the allocation described in (2) above, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished from your income or withheld according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty/); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative minus;

(V) The food assistance standard utility allowance ((~~(for long term care services this is set at the standard utility allowance (SUA) for a four-person household),~~)) provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (http://aspe.os.dhhs.gov/poverty); and

(VII) Is reduced by your community spouse's gross countable income.

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b).

(4) If you are eligible for ((~~general assistance expedited medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6),~~)) aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the ((~~general assistance~~)) ABD cash program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ((~~general assistance~~)) ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard described in http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml; or

(c) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(5) The combination of the room and board amount and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.

WSR 12-07-023

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed March 12, 2012, 4:02 p.m., effective March 12, 2012, 4:02 p.m.]

Effective Date of Rule: Immediately.

Purpose: During the reorganization of chapter 182-543 WAC, long-standing policy language regarding reimbursement was unintentionally deleted. This rule-making action reinstates the language that was deleted. This rule revision also clarifies in WAC 182-543-5500 that prior authorization is required for the purchase of replacement batteries for wheelchairs.

Citation of Existing Rules Affected by this Order: Amending WAC 182-543-5500, 182-543-9100, 182-543-9200, 182-543-9300, and 182-543-9400.

Statutory Authority for Adoption: RCW 41.05.021.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: These emergency rules are necessary to continue the current emergency rule adopted under WSR 11-23-059 while the permanent rule-making process is completed. The unintentional deletion could cause the agency to not be able to maintain prudent and consistent pricing for durable medical equipment. In order to implement the budgetary requirements for fiscal year 2012-13, this crucial missing language must be reinstated. The agency filed the permanent proposed rules under WSR 12-04-026, held a public hearing on March 6, 2012, and has adopted the permanent rule under WSR 12-07-022. The language within the rule text has not changed since the last emergency filing.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: March 12, 2012.

Kevin M. Sullivan
Rules Coordinator

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

WAC 182-543-5500 Covered—Medical supplies and related services. The ((~~department~~)) agency covers, without prior authorization unless otherwise specified, the following medical supplies and related services:

(1) Antiseptics and germicides:

(a) Alcohol (isopropyl) or peroxide (hydrogen) - One pint per month;

(b) Alcohol wipes (box of two hundred) - One box per month;

(c) Betadine or pHisoHex solution - One pint per month;

(d) Betadine or iodine swabs/wipes (box of one hundred) - One box per month;

(2) Bandages, dressings, and tapes;

(3) Batteries - Replacement batteries:

(a) The ((~~department~~)) agency pays for the purchase of replacement batteries for wheelchairs with prior authorization.

(b) The ((~~department~~)) agency does not pay for wheelchair replacement batteries that are used for speech generating devices (SGDs) or ventilators. See WAC ((~~388-543-3400~~)) 182-543-3400 for speech generating devices and chapter ((~~388-548~~)) 182-548 WAC for ventilators.

(4) Blood monitoring/testing supplies:

(a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - One in a three-month period;

(b) Spring-powered device for lancet - One in a six-month period;

(c) Diabetic test strips as follows:

(i) For clients, twenty years of age and younger, as follows:

(A) Insulin dependent, three hundred test strips and three hundred lancets per client, per month.

(B) For noninsulin dependent, one hundred test strips and one hundred lancets per client, per month.

(ii) For clients, twenty-one years of age and older:

(A) Insulin dependent, one hundred test strips and one hundred lancets per client, per month.

(B) For noninsulin dependent, one hundred test strips and one hundred lancets per client, every three months.

(iii) For pregnant women with gestational diabetes, the ((~~department~~)) agency pays for the quantity necessary to support testing as directed by the client's physician, up to sixty days postpartum.

(d) See WAC ((~~388-543-5500~~)) 182-543-5500(12) for blood glucose monitors.

(5) Braces, belts, and supportive devices:

(a) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - Two per twelve-month period;

(b) Ankle, elbow, or wrist brace - Two per twelve-month period;

(c) Lumbosacral brace, rib belt, or hernia belt - One per twelve-month period;

(d) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - One per twelve-month period.

(6) Decubitus care products:

(a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - One per twelve-month period;

(b) Synthetic or lamb's wool sheepskin pad - One per twelve-month period;

(c) Heel or elbow protectors - Four per twelve-month period.

(7) Ostomy supplies:

(a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - Four total ounces per month.

(b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - Ten per month.

(c) Adhesive remover or solvent - Three ounces per month.

(d) Adhesive remover wipes, fifty per box - One box per month.

(e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - Sixty per month.

(f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - Ten per month.

(g) Continent plug for continent stoma - Thirty per month.

(h) Continent device for continent stoma - One per month.

(i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - Twenty per month.

(j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - Twenty per month.

(k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - Ten per month.

(l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - Ten per month.

(m) Irrigation bag - Two every six months.

(n) Irrigation cone and catheter, including brush - Two every six months.

(o) Irrigation supply, sleeve - One per month.

(p) Ostomy belt (adjustable) for appliance - Two every six months.

(q) Ostomy convex insert - Ten per month.

(r) Ostomy ring - Ten per month.

(s) Stoma cap - Thirty per month.

(t) Ostomy faceplate - Ten per month. The ((~~department~~)) agency does not pay for either of the following when billed in combination with an ostomy faceplate:

(i) Drainable pouches with plastic face plate attached; or

(ii) Drainable pouches with rubber face plate.

(8) Syringes and needles;

(9) Urological supplies - Diapers and related supplies:

(a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:

(i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;

(ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;

(iii) The padding must provide uniform protection;

(iv) The product must be hypoallergenic;

(v) The product must meet the flammability requirements of both federal law and industry standards; and

(vi) All products are covered for client personal use only.

(b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:

(i) Be hourglass shaped with formed leg contours;

(ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;

(iii) Have leg gathers that consist of at least three strands of elasticized materials;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have a back sheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;

(vi) Have a top sheet that resists moisture returning to the skin;

(vii) Have an inner lining that is made of soft, absorbent material; and

(viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:

(A) For child diapers, at least two tapes, one on each side.

(B) The tape adhesive must release from the back sheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:

(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;

(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;

(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a back sheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of nonwoven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The ((~~department~~)) agency pays for urological products when they are used alone. The following are examples of products which the ((~~department~~)) agency does not pay for when used in combination with each other:

(i) Disposable diapers;

(ii) Disposable pull-up pants and briefs;

(iii) Disposable liners, shields, guards, pads, and undergarments;

(iv) Rented reusable diapers (e.g., from a diaper service); and

(v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) The ((~~department~~)) agency approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use. Example: pull-up pants for daytime use and disposable diapers for nighttime use. The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit.

(h) Purchased disposable diapers (any size) are limited to two hundred per month for clients three years of age and older.

(i) Reusable cloth diapers (any size) are limited to:

(i) Purchased - Thirty-six per year; and

(ii) Rented - Two hundred per month.

(j) Disposable briefs and pull-up pants (any size) are limited to:

(i) Two hundred per month for a client age three to eighteen years of age; and

(ii) One hundred fifty per month for a client nineteen years of age and older.

(k) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:

(i) Purchased - Four per year.

(ii) Rented - One hundred fifty per month.

(l) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred per month.

(m) Underpads for beds are limited to:

(i) Disposable (any size) - One hundred eighty per month.

(ii) Purchased, reusable (large) - Forty-two per year.

(iii) Rented, reusable (large) - Ninety per month.

(10) Urological supplies - Urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - Two per month. The ((~~department~~)) agency does not pay for these when billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adapter; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - Two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adapter, for use with urinary leg bag or urostomy pouch. The ((~~department~~)) agency does not pay for these when billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - Two per twelve-month period.

(e) Indwelling catheters (any type) - Three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - One hundred and twenty per month. The ((~~department~~)) agency does not pay for these when billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - Three per month. The ((~~department~~)) agency does not pay for these when billed in combination with other insertion trays without drainage bag and/or indwelling catheter, individual indwelling catheters, and/or individual lubricant packets.

(g) Intermittent urinary catheter - One hundred twenty per month. The ((~~department~~)) agency does not pay for these when billed in combination with an insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston). The ((~~department~~)) agency does not pay for these when billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - Thirty per month. The ((~~department~~)) agency does not pay for these when billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - Thirty per month. The ((~~department~~)) agency does not pay for these when billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric), replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - Sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - Two per month. The ((~~department~~)) agency does not pay for these when billed in combination with a latex urinary leg bag, urinary suspensory without leg bag, extension drainage tubing, or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - Two per month.

(o) Urinary leg bag, vinyl, with or without tube - Two per month. The ((~~department~~)) agency does not pay for these when billed in combination with drainage bag and without catheter.

(p) Urinary leg bag, latex - One per month. The ((~~department~~)) agency does not pay for these when billed in combination with or without catheter.

(11) Miscellaneous supplies:

(a) Bilirubin light therapy supplies when provided with a bilirubin light which the ((~~department~~)) agency prior authorized - Five days supply.

(b) Continuous passive motion (CPM) softgoods kit - One, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - One box of twenty.

(d) Eye patch (adhesive wound cover) - One box of twenty.

(e) Nontoxic gel (e.g., LiceOff TM) for use with lice combs - One bottle per twelve-month period.

(f) Nonsterile gloves - Two hundred, per client, per month.

(i) For clients residing in an assisted living facility, the ((~~department~~)) agency pays, with prior authorization, for additional nonsterile gloves up to the quantity necessary as directed by the client's physician, not to exceed a total of four hundred per client, per month.

(ii) Prior authorization requests must include a completed:

(A) General Information for Authorization form (((~~DSHS~~)) HCA 13-835). The ((~~department's~~)) agency's electronic forms are available online (see WAC ((~~388-543-7000~~)) 182-543-7000 Authorization); and

(B) Limitation Extension Request Incontinent Supplies and Gloves form (((~~DSHS~~)) HCA 13-870).

(g) Sterile gloves - Thirty pair, per client, per month.

(12) Miscellaneous DME:

(a) Bilirubin light or light pad - Five days rental per twelve-month period for at-home newborns with jaundice.

(b) Blood glucose monitor (specialized or home) - One in a three-year period. See WAC ((~~388-543-5500~~)) 182-543-5500(4) for blood monitoring/testing supplies. The ((~~department~~)) agency does not pay for continuous glucose monitoring systems including related equipment and supplies under the durable medical equipment benefit. See WAC ((~~388-553-500~~)) 182-553-500 home infusion therapy/parenteral nutrition program.

(c) Continuous passive motion (CPM) machine - Up to ten days rental and requires prior authorization.

(d) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - Two per twelve-month period.

(e) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap with adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - Two per twelve-month period.

(f) Pneumatic compressor - One in a five-year period.

(g) Positioning car seat - One in a five-year period.

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

WAC 182-543-9100 Reimbursement method—Other DME. (1) The ((~~department~~)) agency sets, evaluates and updates the maximum allowable fees for purchased other durable medical equipment (DME) at least once yearly using one or more of the following:

(a) The current medicare rate, as established by the federal centers for medicare and medicaid services (CMS), for a new purchase if a medicare rate is available;

(b) A pricing cluster; or

(c) On a by-report basis.

(2) Establishing reimbursement rates for purchased other DME based on pricing clusters.

(a) A pricing cluster is based on a specific healthcare common procedure coding system (HCPCS) code.

(b) The ((~~department's~~)) agency's pricing cluster is made up of all the brands/models for which the ((~~department~~)) agency obtains pricing information. However, the ((~~department~~)) agency may limit the number of brands/models included in the pricing cluster. The ((~~department~~)) agency considers all of the following when establishing the pricing cluster:

(i) A client's medical needs;

(ii) Product quality;

(iii) Introduction, substitution or discontinuation of certain brands/models; and/or

(iv) Cost.

(c) When establishing the fee for other DME items in a pricing cluster, the maximum allowable fee is the median amount of available manufacturers' list prices for all brands/models as noted in subsection (2)(b) of this section.

(3) The ((~~department~~)) agency evaluates a by report (BR) item, procedure, or service for medical necessity, appropriateness and reimbursement value on a case-by-case basis. The ((~~department~~)) agency calculates the reimbursement rate for these items at eighty-five percent of the manufacturer's ((~~list~~)) suggested retail price (MSRP) as of July 31st of the base year or one hundred twenty-five percent of the wholesale acquisition cost from the manufacturer's invoice.

(4) Monthly rental reimbursement rates for other DME. The ((~~department's~~)) agency's maximum allowable fee for monthly rental is established using one of the following:

(a) For items with a monthly rental rate on the current medicare fee schedule as established by the federal centers for medicare and medicaid services (CMS), the ((~~department~~)) agency equates its maximum allowable fee for monthly rental to the current medicare monthly rental rate;

(b) For items that have a new purchase rate but no monthly rental rate on the current medicare fee schedule as established by the federal centers for medicare and medicaid services (CMS), the ((~~department~~)) agency sets the maximum allowable fee for monthly rental at one-tenth of the new purchase price of the current medicare rate;

(c) For items not included in the current medicare fee schedule as established by the federal centers for medicare and medicaid services (CMS), the ((~~department~~)) agency considers the maximum allowable monthly reimbursement rate as by-report. The ((~~department~~)) agency calculates the monthly reimbursement rate for these items at one-tenth of eighty-five percent of the manufacturer's list price.

(5) Daily rental reimbursement rates for other DME. The ((~~department's~~)) agency's maximum allowable fee for daily rental is established using one of the following:

(a) For items with a daily rental rate on the current medicare fee schedule as established by the centers for medicare and medicaid services (CMS), the ((~~department~~)) agency equates its maximum allowable fee for daily rental to the current medicare daily rental rate;

(b) For items that have a new purchase rate but no daily rental rate on the current medicare fee schedule as established by CMS, the ((~~department~~)) agency sets the maximum allowable fee for daily rental at one-three-hundredth of the new purchase price of the current medicare rate;

(c) For items not included in the current medicare fee schedule as established by CMS, the ((~~department~~)) agency considers the maximum allowable daily reimbursement rate as by-report. The ((~~department~~)) agency calculates the daily reimbursement rate at one-three-hundredth of eighty-five percent of the manufacturer's ((~~list~~)) suggested retail price (MSRP) as of July 31st of the base year or one hundred twenty-five percent of the wholesale acquisition cost from the manufacturer's invoice.

(6) The ((~~department~~)) agency does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under fee-for-service (FFS) when the client is any of the following:

(a) An inpatient hospital client;

(b) Eligible for both medicare and medicaid, and is staying in a skilled nursing facility in lieu of hospitalization;

(c) Terminally ill and receiving hospice care; or

(d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(7) The ((~~department~~)) agency rescinds any purchase order for a prescribed item if the equipment was not delivered to the client before the client:

(a) Dies;

(b) Loses medical eligibility;

(c) Becomes covered by a hospice agency; or

(d) Becomes covered by a managed care organization.

(8) A provider may incur extra costs for customized equipment that may not be easily resold. In these cases, for purchase orders rescinded in subsection (7) of this section, the ((~~department~~)) agency may pay the provider an amount it considers appropriate to help defray these extra costs. The ((~~department~~)) agency requires the provider to submit justification sufficient to support such a claim.

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

WAC 182-543-9200 Reimbursement method—Wheelchairs. (1) The ((~~department~~)) agency reimburses a DME provider for purchased wheelchairs based on the specific brand and model of wheelchair dispensed. The ((~~department~~)) agency decides which brands and/or models of wheelchairs are eligible for reimbursement based on all of the following:

(a) A client's medical needs;

(b) Product quality;

(c) Cost; and

(d) Available alternatives.

(2) The ((~~department~~)) agency sets, evaluates and updates the maximum allowable fees at least once yearly for wheelchair purchases, wheelchair rentals, and wheelchair accessories (e.g., cushions and backs) using the lesser of the following:

(a) The current medicare fees;

(b) The actual invoice for the specific item; or

(c) A percentage of the manufacturer's ((~~list~~)) suggested retail price (MSRP) as of January 31st of the base year, or a percentage of the wholesale acquisition cost (AC). The ((~~department~~)) agency uses the following percentages:

(i) For basic standard wheelchairs, sixty-five percent of MSRP or one hundred forty percent of AC;

(ii) For add-on accessories and parts, eighty-four percent of MSRP or one hundred forty percent of AC;

(iii) For up-charge modifications and cushions, eighty percent of MSRP or one hundred forty percent of AC;

(iv) For all other manual wheelchairs, eighty percent of MSRP or one hundred forty percent of AC; and

(v) For all other power-drive wheelchairs, eighty-five percent of MSRP or one hundred forty percent of AC.

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

WAC 182-543-9300 Reimbursement method—Prosthetics and orthotics. (1) The ((~~department~~)) agency sets, evaluates and updates the maximum allowable fees for prosthetics and orthotics at least once yearly as follows:

(a) For items with a rate on the current medicare fee schedule, as established by the federal centers for medicare and medicaid services (CMS), the ((~~department~~)) agency equates its maximum allowable fee to the current medicare rate; and

(b) For those items not included in the medicare fee schedule, as established by CMS, the rate is considered by-report. The ((~~department~~)) agency evaluates a by-report item, procedure, or service based upon medical necessity criteria, appropriateness, and reimbursement value on a case-by-case basis. The ((~~department~~)) agency calculates the reimbursement for these items at eighty-five percent of the manufacturer's ((~~list~~)) suggested retail price as of July 31st of the base year or one hundred twenty-five percent of the wholesale acquisition cost from the manufacturer's invoice.

(2) The ((~~department~~)) agency follows healthcare common procedure coding system (HCPCS) guidelines for product classification and code assignation.

(3) The ((~~department's~~)) agency's reimbursement for a prosthetic or orthotic includes the cost of any necessary molds, fitting, shipping, handling or any other administrative expenses related to provision of the prosthetic or orthotic to the client.

(4) The ((~~department's~~)) agency's hospital reimbursement rate includes any prosthetics and/or orthotics required for surgery and/or placed during the hospital stay.

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

WAC 182-543-9400 Reimbursement method—Medical supplies and related services. (1) The ((~~department~~)) agency sets, evaluates and updates the maximum allowable fees for medical supplies and nondurable medical equipment (DME) items at least once yearly using one or more of the following:

(a) The current medicare rate, as established by the federal centers for medicare and medicaid services (CMS), if a medicare rate is available;

(b) A pricing cluster;

(c) Based on input from stakeholders or other relevant sources that the ((~~department~~)) agency determines to be reliable and appropriate; or

(d) On a by-report basis.

(2) Establishing reimbursement rates for medical supplies and non-DME items based on pricing clusters.

(a) A pricing cluster is based on a specific healthcare common procedure coding system (HCPCS) code.

(b) The ((~~department's~~)) agency's pricing cluster is made up of all the brands for which the ((~~department~~)) agency obtains pricing information. However, the ((~~department~~)) agency may limit the number of brands included in the pricing cluster if doing so is in the best interests of its clients as determined by the ((~~department~~)) agency. The ((~~department~~)) agency considers all of the following when establishing the pricing cluster:

(i) A client's medical needs;

(ii) Product quality;

(iii) Cost; and

(iv) Available alternatives.

(c) When establishing the fee for medical supplies or other nonDME items in a pricing cluster, the maximum allowable fee is the median amount of available manufacturers' list prices.

(3) The ((~~department~~)) agency evaluates a by-report (BR) item, procedure, or service for its medical necessity, appropriateness and reimbursement value on a case-by-case

basis. The ((~~department~~)) agency calculates the reimbursement rate at eighty-five percent of the manufacturer's ((~~list~~)) suggested retail price as of July 31st of the base year or one hundred twenty-five percent of the wholesale acquisition cost from the manufacturer's invoice.

(4) For clients residing in skilled nursing facilities, see WAC ((~~388-543-5700~~)) 182-543-5700.

WSR 12-07-029
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-33—Filed March 13, 2012, 1:40 p.m., effective May 5, 2012, 7:00 a.m.]

Effective Date of Rule: May 5, 2012, 7:00 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500C; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available, but only enough recreational shares exist for a limited number of open days in these marine areas. 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: March 13, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-32500C Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective 7:00 a.m. May 5, 2012, through 11:59 p.m. May 31, 2012, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 7, 8-1, 8-2, 9, 10, 11, 12 and the Discovery Bay Shrimp District, except as provided for in this section:

1) Marine Area 7 - open May 5, 11, 12, 17, 18 and 19.

2) Marine Areas 8-1, 8-2, 9, 10 and 11 - Open May 5 and 11 from 7:00 a.m. through 3:00 p.m., and divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on those open days in Marine Area 8-2.

3) Marine Area 12 - Open May 5, 11, 12 and 16 from 9:00 a.m. through 1:00 p.m.

4) Discovery Bay Shrimp District - Open May 5, 11, 12 and 16 from 7:00 a.m. through 3:00 p.m.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 1, 2012:

WAC 220-56-32500C Shrimp—Areas and seasons.

WSR 12-07-030
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-35—Filed March 13, 2012, 3:16 p.m., effective March 13, 2012, 3:16 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

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: Surveys indicate that the clam population on this beach has increased, allowing a longer season in 2012. The delayed opening date avoids conflicts with the seaweed season and adds harvest opportunity in this region after other local beaches have closed. Oyster season should coincide with the clam season on this beach. 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 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: March 13, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-35000S Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

(1) Fort Flagler State Park, including that portion of the spit west of the park boundary (Rat Island): Open May 15, 2012, until further notice.

NEW SECTION

WAC 220-56-38000A Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands, except during the open periods specified herein:

(1) Fort Flagler State Park, including that portion of the spit west of the park boundary (Rat Island): Open May 15, 2012, until further notice.

WSR 12-07-034
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed March 14, 2012, 10:58 a.m., effective March 17, 2012]

Effective Date of Rule: March 17, 2012.

Purpose: The department is amending chapter 388-106 WAC, Long-term care services, to revise the assessment process for allocating personal care hours to disabled children.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0125.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The department must revise its assessment in order to allocate personal care services for children on a more individualized basis to comply with a supreme court order. This CR-103E continues emergency rules filed under WSR 11-23-092 on November 17, 2011, while the department completes the process of permanent adoption. The department held a CR-102 public hearing on January 10, 2012, and is ready to file the CR-103P for permanency.

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

Date Adopted: March 12, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-050, filed 5/12/10, effective 6/12/10)

WAC 388-106-0125 ((~~If I am age twenty-one or older,~~)) How does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours. Each classification group is assigned a number of base hours as described below based

upon the level of funding provided by the legislature for personal care services, and based upon the relative level of functional disability of persons in each classification group as compared to persons in other classification groups.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E.** CARE then further classifies you into:

(a) **Group E High** with ((~~416~~)) 393 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ((~~346~~)) 327 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ((~~277~~)) 260 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ((~~234~~)) 215 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ((~~185~~)) 168 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ((~~138~~)) 120 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ((~~194~~)) 176 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ((~~174~~)) 158 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ((~~132~~)) 115 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ((~~87~~)) 73 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B.** CARE further classifies you into:

(a) **Group B High** with ((~~147~~)) 129 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with ((~~82~~)) 69 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with ((~~47~~)) 39 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B.** CARE further classifies you into:

(a) **Group B High** with ((~~147~~)) 129 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ((~~101~~)) 84 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ((~~82~~)) 69 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ((~~47~~)) 39 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A.** CARE further classifies you into:

(a) **Group A High** with ((~~71~~)) 59 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ((~~56~~)) 47 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ((~~26~~)) 22 base hours if you have an ADL score of 0-4.

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

WSR 12-07-042

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 12-37—Filed March 14, 2012, 2:22 p.m., effective March 15, 2012]

Effective Date of Rule: March 15, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule is needed to conform Washington's recreational bottomfish rules to federal action taken by the Pacific Fishery Management Council. 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: March 14, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25500K Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, WAC 220-56-230, and WAC 220-56-235, effective March 15 through June 15, 2012, it is permissible to take, fish for or possess rockfish, except yelloweye and canary rockfish, seaward of a line approximating the 30-fathom depth contour in Marine Area 2.

The following coordinates define the 30-fathom line:

47°31.70'N lat.	124°37.03'W long.;
47°25.67'N lat.	124°34.79'W long.;
47°12.82'N lat.	124°29.12'W long.;
46°52.94'N lat.	124°22.58'W long.;
46°44.18'N lat.	124°18.00'W long.;
46°38.17'N lat.	124°15.88'W long.

REPEALER

The following section of the Washington Administrative code is repealed effective June 16, 2012:

WAC 220-56-25500K Bottomfish closed areas.

WSR 12-07-043
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-38—Filed March 14, 2012, 2:23 p.m., effective March 17, 2012]

Effective Date of Rule: March 17, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-250.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule is intended to protect yelloweye and canary rockfish, two species managed under rebuilding plans by the Pacific Fishery Management Council. The closure will reduce the amount of yelloweye and canary rockfish that are incidentally caught when anglers are targeting lingcod in deeper water. This rule conforms to measures approved through the Pacific Fishery Management Council and federal rules adopted by the National Marine Fisheries Service.

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

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

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

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

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

Date Adopted: March 14, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-25000Q Lingcod—Areas and seasons. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255:

(1) Effective March 17, 2012, until further notice, it is unlawful to fish for, retain, or possess lingcod in Catch Record Card Area 1 seaward of a line extending from 46°38.17'N. lat., 124°21.00'W. long. to 46°25.00'N. lat., 124°21.00'W. long.

(2) Effective March 17, 2012, until further notice, it is unlawful to fish for, retain, or possess lingcod in Catch Record Card Area 2 seaward of a line extending from 47°31.70'N. lat., 124°45.00'W. long. south to 46°38.17'N. lat., 124°30.00'W. long. year-round, except that lingcod may be taken, retained and possessed seaward of the line on days open during the primary halibut season.

WSR 12-07-044
EMERGENCY RULES
DEPARTMENT OF EARLY LEARNING

[Filed March 15, 2012, 10:18 a.m., effective March 15, 2012, 10:18 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department of early learning (DEL) is extending adoption of new WAC 170-151-994, 170-295-0065, and 170-296-0172 to implement section 4 of 2SHB 1903 (chapter 295, Laws of 2011), requiring current DEL child care licensees to pay a one-time $45 fee to be used only to fund DEL costs of creating, developing and administering an individual-based/portable background check clearance registry established in the bill. The registry is necessary for DEL to administer a portable background check process as directed by 2SHB 1903 by July 1, 2012. The registry would allow individual child care workers to change licensed child care employers or work in multiple child care facilities without having to undergo a new DEL background check for each employer or facility as required now. This filing replaces and supersedes emergency rules filed as WSR 11-23-085 on November 17, 2011.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070 (2)(c), and 43.43.832(6); chapter 43.215.

Other Authority: 2SHB 1903 (chapter 295, Laws of 2011); RCW 43.215.200 and 43.215.215.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal 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: Conducting a background check is integral to determining an individual's character and suitability to provide child care, and for protecting the safety and health of children in child care. RCW 43.215.200, 43.215.215 and 43.43.832(6) provide DEL authority to investigate the criminal background history and other relevant information of individuals: Seeking a DEL child care license; wishing to work in child care; or who reside on the premises of a licensed child care center or home.

In adopting 2SHB 1903, the legislature established a new account in the state treasury specifically for the purpose of funding an individual-based/portable background check clearance registry. Section 4 of the bill states:

"*Effective July 1, 2011, all agency licensees shall pay the department (DEL) a one-time fee established by the department. When establishing the fee, the department must consider the cost of developing and administering the* (individual-based/portable background check clearance) *registry, and shall not set a fee which is estimated to generate revenue beyond the estimated costs for the development and administration of the registry. Fee revenues must be deposited in the individual-based/portable background check clearance account created in section 5 of this act, and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of this act.*"

Section 5 of the bill states, in part, "...*Expenditures from the account may be made only for development, administration, and implementation of the individual-based/portable background check registry established in section 1 of this act. Only the director of the department of early learning or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.*"

The legislature determined that costs of developing, administering and implementing the individual-based/portable background check clearance registry must be funded through user fees. As provided in section 4 of the bill, DEL has estimated that the initial SFY 2012 cost to create, develop, administer and implement the registry and related systems is approximately $326,250. Divided by an estimated 7,250 current child care facilities licensed by DEL as of July 2011, the one-time fee amount would be $45 per licensee - the amount provided in these rules ($326,250/7,250 = $45). See the DEL fiscal note for 2SHB 1903 as enacted filed with the state office of financial management. DEL must generate the one-time fee revenues early in fiscal year 2012 to develop the initial technology, administration, and fund management capacities of the registry.

The registry must be operational by July 1, 2012, when section 2 of 2SHB 1903 directs an estimated 41,500 current licensees, child care staff, and others associated with DEL-licensed child care facilities to renew their DEL background check utilizing the individual-based/portable background check clearance registry. Background check clearances of an estimated 6,500 new licensees, staff and others who enter the child care industry in the state each year will also be entered on the new registry.

DEL plans to develop permanent rules to implement 2SHB 1903, and the department has filed a preproposal statement of inquiry, filing number WSR 11-12-076, to initiate regular rule making, and the department is pursuing permanent rule making.

Filing this rule is consistent with state office of financial management guidance regarding Executive Order 10-06 (extended under Executive Order 11-03) suspending noncritical rule making, but allowing rules to proceed that are: *"Required by federal and state law or required to maintain federally delegated or authorized programs..." or "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 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 0, Amended 0, Repealed 0.

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

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

Date Adopted: March 15, 2012.

Elizabeth M. Hyde
Director

NEW SECTION

WAC 170-151-994 School-age child care centers—Individual-based/portable background check clearance registry—One-time fee. (1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011, all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.

NEW SECTION

WAC 170-295-0065 Child care centers—Individual-based/portable background check clearance registry—One-time fee. (1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011, all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.

NEW SECTION

WAC 170-296-0172 Family home child care providers—Individual-based/portable background check clearance registry—One-time fee. (1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011, all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.

WSR 12-07-051
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-36—Filed March 15, 2012, 4:57 p.m., effective March 16, 2012]

Effective Date of Rule: March 16, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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: Recent analyses of the previous steelhead fisheries in the upper Columbia River revealed additional natural origin steelhead impacts remain under NOAA permit. Reopening steelhead fisheries in both the Wenatchee and Methow rivers will help to reduce the proportion of hatchery fish on the spawning grounds and further reduce competition between natural origin and hatchery juvenile production. Opening these areas to steelhead angling also allows whitefish angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 15, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900G Exceptions to statewide rules. (1) Notwithstanding the provisions of WAC 232-28-619, effective March 16, 2012, until further notice, special daily limit of two hatchery steelhead, 20-inch minimum size. Mandatory retention in effect. Night closure and selective gear rules are in effect. Whitefish anglers must follow selective gear rules in areas open to steelhead fishing, no bait is allowed. Daily whitefish limit is fifteen (15) fish.

(a) **Wenatchee River:** From the mouth to the Wenatchee River at the Icicle Road Bridge.

(b) **Methow River:** From the mouth to the confluence with the Chewuch River in Winthrop. Fishing from a floating device is prohibited from the second powerline crossing (1 mile upstream from the mouth) to the first Hwy 153 bridge (4 miles upstream from the mouth).

(c) **Icicle River** from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(d) **Okanogan River:** Open through March 31, 2012, from the mouth upstream to the Highway 97 Bridge in Oroville. **EXCEPTION:** CLOSED WATERS from the first powerline crossing downstream of the Hwy 155 Bridge in Omak (Coulee Dam Credit Union Building) to the mouth of Omak Creek and from the Tonasket Bridge (4th Street) downstream to the Tonasket Lagoons Park boat launch.

(e) **Similkameen River:** Open through March 31, 2012, from the mouth upstream to 400 feet below Enloe Dam.

(2) Notwithstanding the provisions of WAC 232-28-619, effective March 16, 2012, until further notice, it is permissible to fish for whitefish. Whitefish anglers must follow selective gear rules in areas open to steelhead fishing, no bait is allowed. Daily whitefish limit is fifteen (15) fish in the following waters:

(a) **Wenatchee River:** From the mouth to the Highway 2 bridge at Leavenworth.

(b) **Methow River:** From Gold Creek to the falls above Brush Creek.

(3) Notwithstanding the provisions of WAC 232-28-619, it is unlawful to fish for whitefish in the following waters:

(a) **Entiat River:** From the mouth (Hwy 97 Bridge) to Entiat Falls.

(b) **Mainstem Columbia River:** From Rock Island Dam to Chief Joseph Dam.

(4) Notwithstanding the provisions of WAC 232-28-619, it is unlawful to fish for steelhead in the following waters:

(a) **Mainstem Columbia River:** From Rock Island Dam to Chief Joseph Dam.

(b) **Entiat River:** Upstream from the Alternate Highway 97 Bridge near the mouth of the Entiat River to 800 feet downstream of the Entiat National Fish Hatchery outfall.

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 March 16, 2012:

WAC 232-28-61900X Exceptions to statewide rules. (11-322)

WSR 12-07-053

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF EARLY LEARNING

[Filed March 16, 2012, 12:49 p.m.]

Effective immediately upon this filing, the department of early learning (DEL) rescinds emergency rules filed on November 17, 2011, as WSR 11-23-085. DEL is extending adoption of new WAC 170-151-994, 170-295-0065, and 170-296-0172 to implement section 4 of 2SHB 1903 (chapter 295, Laws of 2011). The department has filed subsequent emergency rules on this date to replace and supersede the rules filed as WSR 11-23-085.

Elizabeth M. Hyde
Director

WSR 12-07-055

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 12-39—Filed March 16, 2012, 3:38 p.m., effective March 24, 2012, 12:01 a.m.]

Effective Date of Rule: March 24, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000D; and amending WAC 220-56-360.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. 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: March 16, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000D Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 a.m. March 24 through 11:59 a.m. March 25, 2012, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. March 24 through 11:59 a.m. March 25, 2012, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

3. Effective 12:01 a.m. March 24 through 11:59 a.m. March 24, 2012, razor clam digging is allowed in that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the Copalis River (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. that day only.

4. Effective 12:01 a.m. March 24 through 11:59 a.m. March 25, 2012, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Copalis River and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

5. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. March 25, 2012:

WAC 220-56-36000D Razor clams—Areas and seasons.

WSR 12-07-056

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 12-40—Filed March 16, 2012, 3:51 p.m., effective March 31, 2012]

Effective Date of Rule: March 31, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency regulation is needed to allow an early fishing opportunity for juveniles, seniors, and anglers with a disability who have a department of fish and wildlife reduced-fee license, or designated harvester card. Following this early opening for these fishing groups, the lake will close until the last Saturday in April. 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: March 16, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900H Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.) Notwithstanding the provisions of WAC 232-28-619, effective March 31 through April 8, 2012, juveniles, holders of a senior license, and anglers with a disability who have a Department of Fish and Wildlife reduced-fee license or designated harvester card may fish in those waters of Vance Creek Pond #1.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 9, 2012:

WAC 232-28-61900H	Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.)

WSR 12-07-072
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-41—Filed March 20, 2012, 9:43 a.m., effective March 20, 2012, 9:43 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

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: Surveys indicate that the clam population on this beach has decreased, requiring that the season be shortened by two weeks in 2012. Delaying the opening date allows more continuous opportunity for harvesters on nearby Admiralty Inlet beaches (Fort Flagler State Park and Oak Bay County Park). Oyster season should coincide with the clam season on this beach. There is insufficient time to promulgate 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 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: March 20, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-35000T Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

(1) South Indian Island County Park: Open May 15, 2012, until further notice.

NEW SECTION

WAC 220-56-38000B Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands except during the open periods specified herein:

(1) South Indian Island County Park: Open May 15, 2012, until further notice.