

**WSR 12-10-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-58—Filed April 19, 2012, 9:07 a.m., effective May 1, 2012]

Effective Date of Rule: May 1, 2012.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-24-04000H; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: April 19, 2012.

Philip Anderson  
 Director

NEW SECTION

**WAC 220-24-04000H All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude. Open May 1 through June 30, 2012.

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(7) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running north-east/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) Mandatory Yelloweye Rockfish Conservation Area - The area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

**Reviser's note:** The typographical 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 July 2, 2012:

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

**WSR 12-10-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-59—Filed April 19, 2012, 9:08 a.m., effective April 19, 2012, 9:08 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
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 rule conforms to federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and National Marine Fisheries Service. The recreational halibut quota is sufficient to provide for these seasons. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 19, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 220-56-25500L Halibut—Seasons—Daily and possession limits.** Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately

until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open May 3, 2012, until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board. Fishery will reopen on August 3 through September 30, 2012, Fridays through Sundays only.

(2) **Catch Record Card Area 2** - Open May 6, through May 22, 2012, Sundays and Tuesdays only. See (i) and (ii) below for additional details.

**(i) Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open May 6, 2012, seven days per week until further notice:

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

47°58.00 N. lat, 124°24.24 W. long

**(ii)** Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open May 10 through May 19, 2012, Thursdays and Saturdays only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(4) **Catch Record Card Area 5** - Open May 24 through May 28, 2012, Thursday through Monday only. Open May 31 through June 23, 2012, Thursdays, Fridays and Saturdays.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open May 3 through May 19, 2012, Thursdays through Saturdays only. However, May 24 through May 28, 2012, open Thursday through Monday only. Open May 31 through June 2, 2012, Thursday, Friday and Saturday.

(6) **Catch Record Card Areas 11, 12, and 13** - Closed.

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) All other permanent rules remain in effect.

**WSR 12-10-008**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
(Medicaid Program)

[Filed April 19, 2012, 2:05 p.m., effective April 19, 2012, 2:05 p.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 182-535-1065, 182-535-1247, 182-535-1255, 182-535-1257, 182-535-1259, 182-535-1261, 182-535-1263, 182-535-1266, 182-535-1267, 182-535-1269, 182-535-1271 and 182-535-1280; and amending WAC 182-535-1060, 182-535-1079, 182-535-1080, 182-535-1082, 182-535-1084, 182-535-1086, 182-535-1088, 182-535-1090, 182-535-1092, 182-535-1094, 182-535-1096, 182-535-1098, 182-535-1099, 182-535-1100, 182-535-1220, 182-535-1350, 182-535-1400, 182-535-1450, and 182-535-1500.

Statutory Authority for Adoption: RCW 41.05.021.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued EO 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the EO, the governor required HCA and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the EO, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments.

The immediate adoption of these cuts to optional services is necessary to maintain the mandatory medicaid services for the majority of HCA clients. This rule filing continues the emergency rule adopted under WSR 12-02-008 on December 23, 2011, and complies with sections 201 and 209 of the operating budget for fiscal years 2010 and 2011 with respect to dental services. CR-101s were filed under WSR 09-14-093 on June 30, 2009, and WSR 10-20-160 on October 6, 2010. HCA filed a CR-102 on March 2, 2012, and held a

public hearing on April 10, 2012. HCA has filed the permanent adoption order (CR-103P) under WSR 12-09-081.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 19, Repealed 12.

Date Adopted: April 19, 2012.

Kevin M. Sullivan  
Rules Coordinator

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

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

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

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

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

~~((b)) (ii) Children's ((health insurance program (CNP-CHP)) health care as described in WAC 388-505-0210; ((and~~

~~(e) Limited casualty program--))~~

~~(ii) Medically needy ((program)) (((LCP-MNP)) MN);~~

~~(iv) Medical care services (MCS) as described in WAC 182-508-0005;~~

~~(v) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).~~

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

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

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

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

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

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

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

(i) Twenty years of age and younger;

(ii) Twenty years of age and younger enrolled in ~~((a))~~ an agency-contracted managed care ~~(plan are eligible for medical assistance administration (MAA)-covered dental services that are not covered by their plan,))~~ organization (MCO). MCO clients are eligible under fee-for-service for covered dental-related services not covered by their MCO plan, subject to the provisions of ~~this chapter ((388-535-WAC))~~ and other applicable ~~((WAC))~~ agency rules;

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

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

(A) Nursing home;

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

(C) Privately operated intermediate care facility for the intellectually disabled (ICF/ID); or

(D) State-operated residential habilitation center (RHC).

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

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

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

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

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

(4) Exception to rule procedures as described in WAC 182-501-0169 are not available for services that are excluded from a client's benefit package.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Oral health evaluations and assessments.

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

(c) Limited oral evaluations as defined in WAC ~~((388-535-1050))~~ 182-535-1050, only when the provider performing the limited oral evaluation is not providing routine scheduled dental services for the client. The limited oral evaluation:

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

- (A) Specific dental problem or oral health complaint;
- (B) Dental emergency; or
- (C) Referral for other treatment.

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

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

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

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

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

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

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

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

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

(ii) Duplicate radiographs to be submitted:

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

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

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

(c) Covers an intraoral complete series ~~((includes four bitewings;))~~ once in a three-year period only if the ~~((department))~~ agency has not paid for a panoramic radiograph for the same client in the same three-year period. The intraoral complete series includes fourteen through twenty-two periapical and posterior bitewings. The agency limits reimbursement for all radiographs to a total payment of no more than payment for a complete series.

(d) Covers medically necessary periapical radiographs ~~((that are not included in a complete series))~~ for diagnosis in conjunction with definitive treatment, such as root canal ther-

apy. Documentation supporting ~~((the))~~ medical necessity ~~((for these))~~ must be included in the client's record.

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

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

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

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

(i) May ~~((cover))~~ reimburse for panoramic radiographs for preoperative or postoperative surgery cases more than once in a three-year period, only on a case-by-case basis and when prior authorized, except when required by an oral surgeon. For orthodontic services, see chapter 182-535A WAC.

(j) Covers cephalometric films ~~((;~~

~~((i))~~ For orthodontics, as described in chapter 388-535A WAC; or

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

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

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

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

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

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

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

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

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

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

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

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

(b) ~~Is limited to once every:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Oral hygiene instruction, no more than once every six months, up to two times within a twelve-month period.

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

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

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

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

(a) Sealants for clients eighteen years of age and younger and clients of the division of developmental disabilities of any age.

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

~~((b)) (c) Sealants once per tooth:~~

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

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

~~((e)) (d) Sealants only when used on the occlusal surfaces of:~~

(i) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one; and

(ii) Primary teeth A, B, I, J, K, L, S, and T.

~~((d)) (e) Sealants on noncarious teeth or teeth with incipient caries.~~

~~((e)) (f) Sealants only when placed on a tooth with no preexisting occlusal restoration, or any occlusal restoration placed on the same day.~~

~~((f)) (g) Additional sealants not described in this subsection on a case-by-case basis and when prior authorized.~~

(5) **Space maintenance.** The ~~((department covers))~~ agency:

(a) Covers fixed unilateral or fixed bilateral space maintainers for clients ~~((through age eighteen))~~ twelve years of age and younger, subject to the following:

~~(i) Only one space maintainer is covered per quadrant.~~

~~(ii) Space maintainers are covered only for missing primary molars A, B, I, J, K, L, S, and T.~~

~~(iii) Replacement space maintainers are covered only on a case-by-case basis and when prior authorized.~~

~~(b) ((Only one space maintainer per quadrant.~~

~~(c) Space maintainers only for missing primary molars A, B, I, J, K, L, S, and T.~~

~~(d) Replacement space maintainers only on a case-by-case basis and when prior authorized.)~~ Covers removal of fixed space maintainers for clients eighteen years of age and younger.

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

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

(1) ~~((Restorative/operative procedures. The department covers restorative/operative procedures performed in a hospital or an ambulatory surgical center for:~~

- ~~(a) Clients ages eight and younger;~~
- ~~(b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and~~
- ~~(c) Clients of the division of developmental disabilities according to WAC 388-535-1099.~~

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

~~(a) Tooth preparation, acid etching, all adhesives (including ((amalgam)) bonding agents), liners((:)) and bases, ((and)) polishing, and curing as part of the ((amalgam)) restoration.~~

~~(b) ((The)) Occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the amalgam restoration.~~

~~(c) ((Buccal or lingual surface amalgam restorations, regardless of size or extension, as a one surface restoration. The department covers one buccal and one lingual surface per tooth.~~

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

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

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

~~(a) Considers multiple restoration involving the proximal and occlusal surfaces of the same tooth as a multisurface restoration, and limits reimbursement to a single multisurface restoration.~~

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

~~(c) Considers multiple restorations of fissures and grooves of the occlusal surface of the same tooth as a one-surface restoration.~~

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

~~(e) Reimburses proximal restorations that do not involve the incisal angle on anterior teeth as a two-surface restoration.~~

~~(f) Covers only one buccal and one lingual surface per tooth. The agency reimburses buccal or lingual restorations, regardless of size or extension, as a one-surface restoration.~~

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

(h) Does not pay for replacement restorations within a two-year period unless the restoration has an additional adjoining carious surface. The agency pays for the replacement restoration as one multisurface restoration. The client's record must include X rays and documentation supporting the medical necessity for the replacement restoration.

~~((4) Amalgam)) (3) Additional limitations on restorations ((for permanent posterior)) on primary teeth ((only)). The ((department)) agency covers:~~

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

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

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

~~(d) Does not pay for replacement of amalgam restoration on permanent posterior teeth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration)) A maximum of two surfaces for a primary first molar. (See subsection (6) of this section for a primary first molar that requires a restoration with three or more surfaces.) The agency does not pay for additional restorations on the same tooth.~~

~~(b) A maximum of three surfaces for a primary second molar. (See subsection (6) of this section for a primary posterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth.~~

~~(c) A maximum of three surfaces for a primary anterior tooth. (See subsection (6) of this section for a primary anterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth after three surfaces.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(8)) (c) A maximum of five surfaces per tooth for permanent posterior teeth, except for upper molars. The agency~~

allows a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen.

(d) A maximum of six surfaces per tooth for resin-based composite restorations for permanent anterior teeth.

(5) Crowns. The ~~((department))~~ agency:

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

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

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

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

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

(i) Tooth and soft tissue preparation;

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

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

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

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

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

(viii) Local anesthesia.

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

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

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

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

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

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



~~((9))~~ **(6) Other restorative services.** The ~~((department))~~ agency covers the following restorative services:

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

(b) Prefabricated stainless steel crowns with resin window, resin-based composite crowns, prefabricated esthetic coated stainless steel crowns, and fabricated resin crowns for primary anterior teeth once every three years ~~((without))~~ only for clients twenty years of age and younger as follows:

(i) For ages twelve and younger without prior authorization if the tooth requires a four or more surface restoration; and

(ii) For ages thirteen to twenty with prior authorization ((if the tooth requires a four or more surface restoration)).

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

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

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

(iii) The tooth had a pulpotomy.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Considers the following included in endodontic treatment:

(i) Pulpectomy when part of root canal therapy;

(ii) All procedures necessary to complete treatment; and

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

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

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

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

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

(f) The agency considers endodontic retreatment to include:

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

(ii) Placement of new filling material; and

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

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

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

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

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

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

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

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

**WAC 182-535-1088 Covered dental-related services ~~((for clients through age twenty))~~—Periodontic services.** ~~((The department covers medically necessary periodontic~~

services, subject to the coverage limitations listed, for clients through age twenty as follows:)) Clients described in WAC 182-535-1060 are eligible to receive the dental-related periodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specified service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A dental record which identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

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

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

(b) Covers complete dentures, as follows:

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

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

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

(iv) ~~((Replacement of a complete denture or overdenture is covered only if prior authorized at least five years after the~~

seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.) Complete dentures are limited to:

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

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

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

(vi) The provider must obtain a signed denture agreement of acceptance (#13-809) from the client at the conclusion of the final denture try-in for an agency-authorized complete denture. If the client abandons the complete denture after signing the agreement of acceptance, the agency will deny subsequent requests for the same type of dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement must be kept in the provider's files and be available upon request by the agency.

(c) Covers resin partial dentures, as follows:

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

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

(B) The client has established caries control;

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

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

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

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

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

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

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

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

(d) (~~(Covers cast metal framework partial dentures, as follows:~~

~~(i) Cast metal framework with resin-based partial dentures, including any conventional clasps, rests, and teeth, are covered for clients ages eighteen through twenty only once in~~

a five-year period, on a case-by-case basis, when prior authorized and department coverage criteria listed in subsection (d)(v) of this subsection are met.

~~(ii) Cast metal framework partial dentures for clients ages seventeen and younger are not covered.~~

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

~~(iv) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only if placed at least five years after the seat date of the partial denture being replaced. The replacement denture must be prior authorized and meet department coverage criteria listed in (d)(v) of this subsection.~~

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

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

~~(B) The client has established caries control;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(g) Limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (f) of this subsection. ((The department may consider~~

east metal partial dentures if the criteria in subsection (1)(d) are met.)

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

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

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

(b) Repairs:

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

(ii) To partial dentures, once in a twelve-month period. The cost of the repairs cannot exceed the cost of the replacement partial denture. The agency covers additional repairs on a case-by-case basis and when prior authorized.

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

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

(e) Laboratory fees, subject to the following:

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

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

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

(B) Moves from the state;

(C) Cannot be located;

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

(E) Dies.

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

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

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

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

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

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

**WAC 182-535-1094 Covered dental-related services ((for clients through age twenty))—Oral and maxillofacial surgery services.** ((The department covers medically necessary oral and maxillofacial surgery services;)) Clients described in WAC 182-535-1060 are eligible to receive the oral and maxillofacial surgery services listed in this section, subject to the coverage limitations ((listed, for clients through age twenty as follows:)), restrictions, and client-age requirements identified for a specific service.

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

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

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

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

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

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

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

(d) For site-of-service and oral surgery CPT codes that require prior authorization, the agency requires the dental provider to submit:

(i) Documentation used to determine medical appropriateness;

(ii) Cephalometric films;

(iii) X rays;

(iv) Photographs; and

(v) Written narrative.

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

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

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

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

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

- (vi) A copy of the post-operative instructions; and
- (vii) A copy of all pre- and post-operative prescriptions.

~~((e))~~ (f) Covers routine and surgical extractions.

~~((f))~~ (g) Requires prior authorization for unusual, complicated surgical extractions.

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

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

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

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

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

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

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

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

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

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

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

(i) Removal of lateral exostosis;

(ii) Removal of torus palatinus or torus mandibularis; and

(iii) Surgical reduction of soft tissue ~~((o))~~ osseous tuberosity.

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

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

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

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

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

(3) **Occlusal orthotic devices.** (Refer to WAC ~~((388-535-1098 (5)))~~ 182-535-1098 (4)(c) for occlusal guard cover-

age and limitations on coverage.) The ~~((department))~~ agency covers:

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

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

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

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

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

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

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

**WAC 182-535-1098 Covered dental-related services ~~((for clients through age twenty))~~—Adjunctive general services.**

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

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

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

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

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

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

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

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

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

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

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

~~((iv))~~ (iii) For clients ((ages)) from nine ((through)) to twenty years of age, deep sedation or general anesthesia ser-

vices are covered on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC ~~((388-535-1094))~~ 182-535-1094, deep sedation or general anesthesia services do not require prior authorization.

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

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

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

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

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

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) **Preventive services.**

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

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

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

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

(A) Primary teeth A, B, I, J, K, L, S, and T; or  
 (B) Permanent teeth two, three, four, five, twelve, thirteen, fourteen, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, and thirty-one.

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

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

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

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

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

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

(3) **Periodontic services.**

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

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

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

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

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

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

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

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

(iii) Periodontal maintenance allowed six months after scaling or root planing.

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

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

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

~~((+))~~ (5) **Nonemergency dental services.** The ~~((department))~~ agency covers nonemergency dental services performed in a hospital or an ambulatory surgical center for services listed as covered in WAC ~~((388-535-1082, 388-535-1084, 388-535-1086, 388-535-1088, and 388-535-1094))~~ 182-535-1082, 182-535-1084, 182-535-1086, 182-535-1088, and 182-535-1094. Documentation supporting the medical

necessity of the service must be included in the client's record.

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

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

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

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

(b) Any service specifically excluded by statute.

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

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

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

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

(A) Washington Administrative Code (WAC).

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

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

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

(i) Detailed and extensive oral evaluations or reevaluations.

(ii) Extraoral radiographs.

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

(iv) Any temporomandibular joint films.

(v) Tomographic surveys.

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

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

(viii) Comprehensive periodontal evaluations.

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

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

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

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

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

(i) Nutritional counseling for control of dental disease.

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

(iii) Removable space maintainers of any type.

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

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

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

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

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

(ix) Custom fluoride trays of any type.

(x) Bleach trays.

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

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

(ii) Gold foil restorations.

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

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

(v) Preventive restorations.

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

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

~~((+))~~ (viii) Permanent indirect crowns on permanent anterior teeth for clients fourteen years of age and younger.

(ix) Temporary or provisional crowns (including ion crowns).

~~((+))~~ (x) Labial veneer resin or porcelain laminate restorations.

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

(xii) Sedative fillings.

(xiii) Any type of core buildup, cast post and core, or prefabricated post and core, for clients twenty-one years of age and older.

(xiv) Any type of coping.

~~((+))~~ (xv) Crown repairs.

~~((+))~~ (xvi) Polishing or recontouring restorations or overhang removal for any type of restoration.

(xvii) Amalgam restorations of primary posterior teeth for clients sixteen years of age and older.

(xviii) Crowns on teeth one, sixteen, seventeen, and thirty-two.

(xix) Any services other than extraction on supernumerary teeth.

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

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

(A) Endodontic therapy on permanent bicuspid;

(B) Any apexification/recalcification procedures; or

(C) Any apicoectomy/periradicular service.

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

(iii) The following endodontic services:

(A) Indirect or direct pulp caps.

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

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

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

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

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

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

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

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

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

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

(F) Guided tissue regeneration.

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

(H) Distal or proximal wedge procedures.

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

(A) Intracoronal or extracoronal provisional splinting.

(B) Full mouth or quadrant debridement.

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of nonsurgical periodontal service.

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

(i) Removable unilateral partial dentures.

(ii) Adjustments to any removable prosthesis.

(iii) Any interim complete or partial dentures.

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

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

(vi) Precision attachments.

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

(viii) Replacement of second or third molars for any removable prosthesis.

(ix) Immediate dentures.



(x) Cast-metal framework partial dentures.

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

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

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

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

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

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

Fixed partial denture retainer.

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

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

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

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

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

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

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

~~((iv))~~ (iii) Vestibuloplasty.

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

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

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

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

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

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

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

(ii) General anesthesia for clients twenty-one years of age and older.

(iii) Oral or parenteral conscious sedation for clients twenty-one years of age and older.

(iv) Analgesia or anxiolysis as a separate procedure except for administration of nitrous oxide for clients twenty-one years of age and older.

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

(A) Fabrication of an athletic mouthguard.

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

(C) Nightguards.

(D) Occlusion analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Additional radiographs (X rays) (refer to WAC ~~((388-535-1080))~~ 182-535-1080(2)(-));

(b) Study models;

(c) Photographs; and

(d) Any other information as determined by the ~~((department))~~ agency.

(4) The ~~((department))~~ agency may require second opinions and/or consultations before authorizing any procedure.

(5) When the ~~((department))~~ agency authorizes a dental-related service for a client, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The authorization is valid for six months and only if the client is eligible for covered services on the date of service.

(6) The ~~((department))~~ agency denies a request for a dental-related service when the requested service:

(a) Is covered by another ~~((department))~~ agency program;

(b) Is covered by an agency or other entity outside the ~~((department))~~ agency; or

(c) Fails to meet the program criteria, limitations, or restrictions in this chapter ~~((388-535-WAC))~~.

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

**WAC 182-535-1350 Payment methodology for dental-related services.** The ~~((medical assistance administration (MAA)))~~ agency uses the description of dental services described in the American Dental Association's Current Dental Terminology (CDT), and the American Medical Association's Physician's Current Procedural Terminology (CPT).

(1) For covered dental-related services provided to eligible clients, ~~((MAA))~~ the agency pays dentists and other eligible providers on a fee-for-service or contractual basis, subject to the exceptions and restrictions listed under WAC ~~((388-535-1100))~~ 182-535-1100 and ~~((388-535-1400))~~ 182-535-1400.

(2) ~~((MAA))~~ The agency sets maximum allowable fees for dental services ~~((provided to children))~~ as follows:

(a) ~~((MAA's))~~ The agency's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) ~~((MAA))~~ The agency consults with representatives of the provider community to identify program areas and concerns that need to be addressed.

(c) ~~((MAA))~~ The agency consults with dental experts and public health professionals to identify and prioritize dental services and procedures for their effectiveness in improving or promoting ~~((children's))~~ dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for ~~((children's))~~ dental services are allocated to specific procedures based on the priorities identified in (c) of this subsection and considerations of access to services.

(e) Larger percentage increases may be given to those procedures which have been identified as most effective in improving or promoting ~~((children's))~~ dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the ~~((department's))~~ agency's evaluation of utilization trends, effectiveness of interventions, and access issues.

(3) ~~((MAA))~~ The agency reimburses dental general anesthesia services for eligible clients on the basis of base anesthesia units plus time. Payment for dental general anesthesia is calculated as follows:

(a) Dental procedures are assigned an anesthesia base unit of five;

(b) Fifteen minutes constitute one unit of time. When a dental procedure requiring dental general anesthesia results in multiple time units and a remainder (less than fifteen minutes), the remainder or fraction is considered as one time unit;

(c) Time units are added to the anesthesia base unit of five and multiplied by the anesthesia conversion factor;

(d) The formula for determining payment for dental general anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(4) When billing for anesthesia, the provider must show the actual beginning and ending times on the claim. Anesthesia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safely placed under postoperative supervision).

(5) ~~((MAA))~~ The agency pays eligible providers listed in WAC ~~((388-535-1070))~~ 182-535-1070 for conscious sedation with parenteral and multiple oral agents, or for general anesthesia when the provider meets the criteria in this chapter and other applicable WAC.

(6) Dental hygienists who have a contract with ~~((MAA))~~ the agency are paid at the same rate as dentists who have a contract with ~~((MAA))~~ the agency, for services allowed under The Dental Hygienist Practice Act.

(7) Licensed denturists who have a contract with ~~((MAA))~~ the agency are paid at the same rate as dentists who have a contract with ~~((MAA))~~ the agency, for providing dentures and partials.

(8) ~~((MAA))~~ The agency makes fee schedule changes whenever the legislature authorizes vendor rate increases or decreases.

(9) ~~((MAA))~~ The agency may adjust maximum allowable fees to reflect changes in services or procedure code descriptions.

(10) ~~((MAA))~~ The agency does not pay separately for chart or record setup, or for completion of reports, forms, or charting. The fees for these services are included in ~~((MAA's))~~ the agency's reimbursement for comprehensive oral evaluations or limited oral evaluations.

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

**WAC 182-535-1400 Payment for dental-related services.** (1) The ~~((medical assistance administration (MAA)))~~ agency considers that a provider who furnishes covered dental services to an eligible client has accepted ~~((MAA's))~~ the agency's rules and fees.

(2) Participating providers must bill ~~((MAA))~~ the agency their usual and customary fees.

(3) Payment for dental services is based on ~~((MAA's))~~ the agency's schedule of maximum allowances. Fees listed in the ~~((MAA))~~ agency's fee schedule are the maximum allowable fees.

(4) ~~((MAA))~~ The agency pays the provider the lesser of the billed charge (usual and customary fee) or ~~((MAA's))~~ the agency's maximum allowable fee.

(5) ~~((MAA))~~ The agency pays "by report" on a case-by-case basis, for a covered service that does not have a set fee.

(6) Participating providers must bill a client according to WAC ~~((388-502-0160))~~ 182-502-0160, unless otherwise specified in this chapter.

(7) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The

exception to this is dentures and partial dentures as described in WAC ~~((388-535-1240))~~ 182-535-1240 and ~~((388-535-1290))~~ 182-535-1290.

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

**WAC 182-535-1450 Payment for denture laboratory services.** ~~This section applies to payment for denture laboratory services. The ((medical assistance administration (MAA))) agency does not directly reimburse denture laboratories. ((MAA's)) The agency's reimbursement for complete dentures, ((immediate dentures,)) partial dentures, and overdentures includes laboratory fees. The provider is responsible to pay a denture laboratory for services furnished at the request of the provider.~~

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

**WAC 182-535-1500 Payment for dental-related hospital services.** ~~The ((medical assistance administration (MAA))) agency pays for medically necessary dental-related ((hospital)) services provided in an inpatient ((and)) or outpatient ((services in accord with)) hospital setting according to WAC ((388-550-1100)) 182-550-1100.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-535-1065 Coverage limits for dental-related services provided under the GA-U and ADATSA programs.
- WAC 182-535-1247 Dental-related services for clients age twenty-one and older—General.
- WAC 182-535-1255 Covered dental-related services—Adults.
- WAC 182-535-1257 Covered dental-related services for clients age twenty-one and older—Preventive services.
- WAC 182-535-1259 Covered dental-related services for clients age twenty-one and older—Restorative services.
- WAC 182-535-1261 Covered dental-related services for clients age twenty-one and older—Endodontic services.
- WAC 182-535-1263 Covered dental-related services for clients age twenty-one and older—Periodontic services.

- WAC 182-535-1266 Covered dental-related services for clients age twenty-one and older—Prosthodontics (removable).
- WAC 182-535-1267 Covered dental-related services for clients age twenty-one and older—Oral and maxillofacial surgery services.
- WAC 182-535-1269 Covered dental-related services for clients age twenty-one and older—Adjunctive general services.
- WAC 182-535-1271 Dental-related services not covered for clients age twenty-one and older.
- WAC 182-535-1280 Obtaining prior authorization for dental-related services for clients age twenty-one and older.

**WSR 12-10-009**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed April 19, 2012, 2:24 p.m., effective April 19, 2012, 2:24 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending WAC 388-106-0015, 388-106-0020, 388-106-0070, and 388-106-0310 to consolidate the medically needy in-home (MNI) and medically needy residential (MNR) waivers into the COPES waiver. As a result of this waiver consolidation, the department is repealing WAC 388-106-0400 through 388-106-0535 pertaining to the MNI and MNR waivers.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-106-0400, 388-106-0410, 388-106-0415, 388-106-0420, 388-106-0425, 388-106-0430, 388-106-0435, 388-106-0500, 388-106-0510, 388-106-0515, 388-106-0520, 388-106-0525, 388-106-0530 and 388-106-0535; and amending WAC 388-106-0015, 388-106-0020, 388-106-0070, and 388-106-0310.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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; 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 is consolidating three waivers into one waiver to improve efficiency. This rule amendment is necessary to manage budget shortfalls and maintain fund solvency. The Centers for Medicare and Medicaid Services (CMS) gave the department approval effective April 1, 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 4, Repealed 14; 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 4, Repealed 14.

Date Adopted: April 18, 2012.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-023, filed 5/29/08, effective 7/1/08)

**WAC 388-106-0015 What long-term care services does the department provide?** The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPEs)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

~~(3) **Medically needy residential waiver (MNRW)** is a medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.~~

~~(4) **Medically needy in-home waiver (MNIW)** is a medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.~~

~~(5)) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.~~

~~((6)) (4) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.~~

~~((7)) (5) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.~~

~~((8)) (6) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.~~

~~((9)) (7) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.~~

~~((10)) (8) **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.~~

~~((11)) (9) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.~~

~~((12)) (10) **Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.~~

~~((13)) (11) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.~~

~~((14)) (12) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.~~

~~((15)) (13) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-853 WAC.~~

~~((16)) (14) **Nursing facility.**~~

~~((17)) (15) **New Freedom consumer directed services (NFCDS)** is a medicaid waiver program authorized under RCW 74.39A.030.~~

AMENDATORY SECTION (Amending WSR 08-05-026, filed 2/12/08, effective 3/14/08)

**WAC 388-106-0020 Under the MPC, COPEs, ((MNRW, MNIW,)) and chore programs, what services are not covered?** The following types of services are not covered under MPC, COPEs, ((MNRW, MNIW,)) and chore:

- (1) Child care.
- (2) Individual providers must not provide:
  - (a) Sterile procedures unless the provider is a family member or the client self directs the procedure;
  - (b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.

(3) Agency providers, including family members who provide care while working as an agency provider, must not provide:

- (a) Sterile procedures;
- (b) Self-directed care;
- (c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.
- (4) Services provided over the telephone.
- (5) Services to assist other household members not eligible for services.
- (6) Development of social, behavioral, recreational, communication, or other types of community living skills.
- (7) Nursing care.
- (8) Pet care.
- (9) Assistance with managing finances.
- (10) Respite.
- (11) Yard care.

**AMENDATORY SECTION** (Amending WSR 08-12-023, filed 5/29/08, effective 7/1/08)

**WAC 388-106-0070 Will I be assessed in CARE?** You will be assessed in CARE if you are applying for or receiving DDD services, COPEs, (~~(MNIW, MNRW)~~) MPC, chore, respite, adult day health, GAU-funded residential care, PACE, private duty nursing, New Freedom or long-term care services within the WMIP program.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

**AMENDATORY SECTION** (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

**WAC 388-106-0310 Am I eligible for COPEs-funded services?** You are eligible for COPEs-funded services if you meet all of the following criteria. The department must assess your needs in CARE and determine that:

- (1) You are age:
  - (a) Eighteen or older and blind or have a disability, as defined in WAC (~~(388-475-0050)~~) 182-512-0050; or
  - (b) Sixty-five or older.
- (2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505, community options program entry system (COPEs).
- (3) You:
  - (a) Are not eligible for medicaid personal care services (MPC); or
  - (b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.
- (4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPEs services are provided) which is defined in WAC 388-106-0355(1).

REPEALER

The following sections of the Washington Administrative Code are repealed:

|                  |  |
|------------------|--|
| WAC 388-106-0400 | What services may I receive under medically needy residential waiver (MNRW)? |
| WAC 388-106-0410 | Am I eligible for MNRW-funded services?                                      |
| WAC 388-106-0415 | When do MNRW services start?   |
| WAC 388-106-0420 | How do I remain eligible for MNRW?   |
| WAC 388-106-0425 | How do I pay for MNRW services?  |
| WAC 388-106-0430 | Can I be employed and receive MNRW?  |
| WAC 388-106-0435 | Are there waiting lists for MNRW?  |
| WAC 388-106-0500 | What services may I receive under medically needy in-home waiver (MNIW)?     |
| WAC 388-106-0510 | Am I eligible for MNIW-funded services?                                      |
| WAC 388-106-0515 | When do MNIW services start?   |
| WAC 388-106-0520 | How do I remain eligible for MNIW?   |
| WAC 388-106-0525 | How do I pay for MNIW?   |
| WAC 388-106-0530 | Can I be employed and receive MNIW?  |
| WAC 388-106-0535 | Are there waiting lists for MNIW?  |

**WSR 12-10-012**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
 (Medicaid Program)

[Filed April 19, 2012, 4:20 p.m., effective April 22, 2012]

Effective Date of Rule: April 22, 2012.

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

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

Statutory Authority for Adoption: RCW 41.05.021.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Governor Gregoire issued Executive Order (EO) 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the EO, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the EO, funding for the benefits was eliminated effective January 1, 2011, as part of these regulatory amendments. HCA is proceeding with the permanent rule adoption process initiated by the CR-101 filed under WSR 10-22-12 [10-22-121]. HCA is currently preparing a draft for the permanent rule to share with stakeholders for their input. HCA anticipates filing the CR-102 sometime in June 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 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: April 19, 2012.

Kevin M. Sullivan  
Rules Coordinator

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

**WAC 182-501-0050 Healthcare general coverage.** WAC ((388-501-0050)) 182-501-0050 through ((388-501-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Extenuating circumstances exist that result in a loss or destruction of ((department-purchased)) agency-purchased equipment, devices, or supplies, through no fault of the client

that occurred while the client was exercising reasonable care under the circumstances; or

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

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

**(9) Covered healthcare services.**

(a) Covered healthcare services are either:

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

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

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

**(10) Noncovered healthcare services.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

| Service Categories                                   | CN*          | MN           | MCS          | AEM          |
|--|--------------|--------------|--------------|--------------|
| <del>(a) Adult day health</del>                      | <del>C</del> | <del>C</del> | <del>N</del> | <del>E</del> |
| <del>(b) Ambulance (ground and air)</del>            | <del>C</del> | <del>C</del> | <del>C</del> | <del>E</del> |
| <del>(c) Blood processing/administration</del>       | <del>C</del> | <del>C</del> | <del>C</del> | <del>E</del> |
| <del>(d) Dental services</del>                       | <del>C</del> | <del>C</del> | <del>C</del> | <del>E</del> |
| <del>(e) Detoxification</del>                        | <del>C</del> | <del>C</del> | <del>C</del> | <del>E</del> |
| <del>(f) Diagnostic services (lab &amp; x ray)</del> | <del>C</del> | <del>C</del> | <del>C</del> | <del>E</del> |

| Service Categories  | CN* | MN | MCS | AEM |
|---|-----|----|-----|-----|
| (g) Family planning services                                  | €   | €  | €   | £   |
| (h) Healthcare professional services                          | €   | €  | €   | £   |
| (i) Hearing care (audiology/hearing exams/aids)               | €   | €  | €   | £   |
| (j) Home health services                                      | €   | €  | €   | £   |
| (k) Hospice services  | €   | €  | N   | £   |
| (l) Hospital services--inpatient/outpatient                   | €   | €  | €   | £   |
| (m) Intermediate care facility/services for mentally retarded | €   | €  | €   | £   |
| (n) Maternity care and delivery services                      | €   | €  | N   | £   |
| (o) Medical equipment, durable (DME)                          | €   | €  | €   | £   |
| (p) Medical equipment, nondurable (MSE)                       | €   | €  | €   | £   |
| (q) Medical nutrition services                                | €   | €  | €   | £   |
| (r) Mental health services                                    | €   | €  | €   | £   |
| (s) Nursing facility services                                 | €   | €  | €   | £   |
| (t) Organ transplants   | €   | €  | €   | N   |
| (u) Out-of-state services                                     | €   | €  | N   | £   |
| (v) Oxygen/respiratory services                               | €   | €  | €   | £   |
| (w) Personal care services                                    | €   | €  | N   | N   |
| (x) Prescription drugs  | €   | €  | €   | £   |
| (y) Private duty nursing                                      | €   | €  | N   | £   |
| (z) Prosthetic/orthotic devices                               | €   | €  | €   | £   |
| (aa) School medical services                                  | €   | €  | N   | N   |
| (bb) Substance abuse services                                 | €   | €  | €   | £   |
| (cc) Therapy occupational/physical/speech                     | €   | €  | €   | £   |
| (dd) Vision care (exams/lenses)                               | €   | €  | €   | £   |

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Other programs:

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

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

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

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

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

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

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

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



| <u>Service Categories</u>  | <u>CN<sup>1</sup> 20-</u> | <u>21+</u> | <u>MN 20-</u>        | <u>21+</u> | <u>MCS<br/>DL</u>    |
|--|---------------------------|------------|----------------------|------------|----------------------|
| <u>Adult day health</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y<sup>2</sup></u> | <u>N</u>   | <u>N</u>             |
| <u>Ambulance (ground and air)</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Blood processing/administration</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Dental services</u>   | <u>Y</u>                  | <u>N</u>   | <u>Y</u>             | <u>N</u>   | <u>N</u>             |
| <u>Detoxification</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Diagnostic services (lab and X ray)</u>                                     | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Healthcare professional services</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Hearing evaluations</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Hearing aids</u>  | <u>Y</u>                  | <u>N</u>   | <u>Y</u>             | <u>N</u>   | <u>N</u>             |
| <u>Home health services</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Hospice services</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Hospital services - Inpatient/outpatient</u>                                | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Intermediate care facility/services for mentally retarded</u>               | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Maternity care and delivery services</u>                                    | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>N</u>             |
| <u>Medical equipment, durable (DME)</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Medical equipment, nondurable (MSE)</u>                                     | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Medical nutrition services</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Mental health services:</u>   |                           |            |                      |            |                      |
| • <u>Inpatient care</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| • <u>Outpatient community mental health services</u>                           | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y<sup>3</sup></u> |
| • <u>Psychiatrist visits</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y<sup>4</sup></u> |
| • <u>Medication management</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Nursing facility services</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Organ transplants</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Out-of-state services</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>N</u>             |
| <u>Oxygen/respiratory services</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Personal care services</u>  | <u>Y</u>                  | <u>Y</u>   | <u>N</u>             | <u>N</u>   | <u>N</u>             |
| <u>Prescription drugs</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Private duty nursing</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>N</u>             |
| <u>Prosthetic/orthotic devices</u>   | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Psychological evaluation<sup>5</sup></u>                                    | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>N</u>             |
| <u>Reproductive health services (includes family planning and TAKE CHARGE)</u> | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Substance abuse services</u>  | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Therapy - Occupational, physical and speech</u>                             | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Vision care - Exams, refractions, and fittings</u>                          | <u>Y</u>                  | <u>Y</u>   | <u>Y</u>             | <u>Y</u>   | <u>Y</u>             |
| <u>Vision - Frames and lenses</u>  | <u>Y</u>                  | <u>N</u>   | <u>Y</u>             | <u>N</u>   | <u>N</u>             |

<sup>1</sup> Clients enrolled in the children's health insurance program and the apple health for kids program receive CN-scope of medical care.

<sup>2</sup> Restricted to 18-20 year olds.

<sup>3</sup> Restricted to DL clients enrolled in managed care.

<sup>4</sup> DL clients can receive one psychiatric diagnostic evaluation per year and eleven monthly visits per year for medication management.

<sup>5</sup> Only two allowed per lifetime.

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

**WAC 182-501-0065 Healthcare coverage—Description of ((covered)) categories of service.** This rule provides a brief description of the medical, dental, mental health, and

substance abuse service categories listed in the table in WAC ((388-501-0060)) 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC

citations listed in the following descriptions for specific details regarding each service category. (~~For Alien Emergency Medical (AEM) services, refer to WAC 388-438-0110.~~)

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) **Hospice services**—Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. (~~[WAC 388-551-1210 through 388-551-1850]~~) (WAC 182-551-1210 through 182-551-1850)

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) **Out-of-state services**—(~~(Emergency services; prior authorized care. Services provided in bordering cities are treated as if they were provided in state. [WAC 388-501-0175 and 388-501-0180; 388-531-1100; and 388-556-0500])~~) See WAC 182-502-0120 for payment of services out-of-state.

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

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

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

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

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

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

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

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

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

~~(ee)~~) ~~(dd)~~) **Therapy—Occupational/physical/ speech**—Evaluations, assessments, and treatment. (~~(f)~~) (WAC 388-545-300, 388-545-500, and 388-545-700) (~~dd~~) (Chapter 182-545 WAC)

~~(ee)~~) **Vision care**—Eye exams, refractions, (~~(frames, lenses;)~~) fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (~~(f)~~) (WAC 388-544-0250 through 388-544-0550) (WAC 182-531-1000)

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

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

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

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

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

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

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

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

(c) Chiropractic care for adults;

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

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

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

(i) Artificial insemination;

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

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

- (vi) Sex therapy.
  - (i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related healthcare services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;
  - (j) Hair transplants, epilation (hair removal), and electrolysis;
  - (k) Marital counseling;
  - (l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;
  - (m) Nonmedical equipment;
  - (n) Penile implants;
  - (o) Prosthetic testicles;
  - (p) Psychiatric sleep therapy;
  - (q) Subcutaneous injection filling;
  - (r) Tattoo removal;
  - (s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;
  - (t) Upright magnetic resonance imaging (MRI); and
  - (u) Vehicle purchase - new or used vehicle.
- (5) For a specific list of noncovered healthcare services in the following service categories, refer to the WAC citation:
- (a) Ambulance transportation and nonemergent transportation as described in chapter ~~((388-546))~~ 182-546 WAC;
  - (b) Dental services for clients twenty years of age and younger as described in chapter ~~((388-535))~~ 182-535 WAC;
  - (c) ~~((Dental services for clients twenty-one years of age and older as described in chapter 388-535 WAC;~~
  - ~~((d)))~~ Durable medical equipment as described in chapter ((388-543)) 182-543 WAC;
  - ~~((e)))~~ (d) Hearing ((care services)) aids for clients twenty years of age and younger as described in chapter ((388-547)) 182-547 WAC;
  - ~~((f)))~~ (e) Home health services as described in WAC ((388-551-2130)) 182-551-2130;
  - ~~((g)))~~ (f) Hospital services as described in WAC ((388-550-1600)) 182-550-1600;
  - ~~((h) Physician-related))~~ (g) Healthcare professional services as described in WAC ((388-531-0150)) 182-531-0150;
  - ~~((i)))~~ (h) Prescription drugs as described in chapter ((388-530)) 182-530 WAC; ((and
  - ~~((j)))~~ (i) Vision care ((services)) hardware for clients twenty years of age and younger as described in chapter ((388-544)) 182-544 WAC; and
  - (j) Vision care exams as described in WAC 182-531-1000.
- (6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the ~~((department))~~ agency or the agency's designee denies all or part of a request for a noncovered healthcare service(s), the ~~((department))~~ agency or the agency's designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:
- (a) A statement of the action the ~~((department))~~ agency or the agency's designee intends to take;
  - (b) Reference to the specific WAC provision upon which the denial is based;

- (c) Sufficient detail to enable the recipient to:
  - (i) Learn why the ~~((department's))~~ agency's or the agency designee's action was taken; and
  - (ii) Prepare a response to the ~~((department's))~~ agency's or the agency's designee decision to classify the requested healthcare service as noncovered.
- (d) The specific factual basis for the intended action; and
- (e) The following information:
  - (i) Administrative hearing rights;
  - (ii) Instructions on how to request the hearing;
  - (iii) ~~((Acknowledgement))~~ Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;
  - (iv) Instructions on how to request an exception to rule (ETR);
  - (v) Information regarding ~~((department-covered))~~ agency-covered healthcare services, if any, as an alternative to the requested noncovered healthcare service; and
  - (vi) Upon the client's request, the name and address of the nearest legal services office.
- (7) A client can request an exception to rule (ETR) as described in WAC ~~((388-501-0160))~~ 182-501-0160.

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

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

- (a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and
  - (b) Providers (as defined in WAC ~~((388-500-0005))~~ 182-500-0085) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.
- (2) The provider is responsible for:
- (a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;
  - (b) Verifying whether the client is enrolled with ~~((a department contracted))~~ an agency-contracted managed care organization (MCO);
  - (c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC ~~((388-501-0050 (4)(a) and 388-501-0065))~~ 182-501-0050 (4)(a) and 182-501-0065);
  - (d) Informing the client of those limitations;
  - (e) Exhausting all applicable ~~((department))~~ agency or ((department contracted)) agency-contracted MCO processes necessary to obtain authorization for requested service(s);
  - (f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and
  - (g) Retaining all documentation which demonstrates compliance with this section.
- (3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the ~~((department))~~ agency or ((department contracted)) agency-contracted MCO for medical assistance services furnished to clients. See 42 CFR § 447.15.

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

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

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

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

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

(a) The agreement must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a medical assistance program. In this circumstance, the provider must:

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

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

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

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

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

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

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

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

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

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

(7) Under chapter 388-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on healthcare expenses to become eligible for coverage under the medically needy program. An individual

must incur healthcare expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the (~~(department)~~) agency for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then accept as payment in full the amount paid by the (~~(department)~~) agency or the agency's designee or managed care organization for medical assistance services furnished to clients. These situations are as follows:

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

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

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

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

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

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

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

(c) Shipping and/or postage charges;

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

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

#### WSR 12-10-014

#### EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-62—Filed April 20, 2012, 8:48 a.m., effective May 2, 2012]

Effective Date of Rule: May 2, 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: This emergency rule is necessary to assure safe and successful youth fishing events. Several thousand trout will be planted two days prior to the event to acclimate them and assure they bite well. On May 4 and May 5, 2012, preregistered kids will be allowed to fish during the event. 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: April 20, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900X Exceptions to statewide rules—Columbia Park Pond.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 2, through 3:00 p.m. May 5, 2012, it is unlawful to fish in Columbia Park Pond, except as provided in the sections below:

(a) Open to fishing 4:00 p.m. to 7:00 p.m. May 4, 2012, by participants in the Special Needs Kids Fishing Event.

(b) Open to fishing 8:00 a.m. to 3:00 p.m. May 5, 2012, by juvenile anglers participating in the Kids Fishing Day Event.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 3:01 p.m. May 5, 2012:

WAC 232-28-61900X Exceptions to statewide rules—Columbia Park Pond.

### **WSR 12-10-016 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 12-66—Filed April 20, 2012, 4:03 p.m., effective April 25, 2012, 12:01 a.m.]

Effective Date of Rule: April 25, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900A; 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 rule change is necessary to ensure a successful youth fishing event. Several thousand rainbow trout will be stocked four days prior to the event to acclimate them to assure they will bite while the kids are fishing. During the event, only registered kids will be allowed to fish. 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: April 20, 2012.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900A Exceptions to statewide rules—Sarge Hubbard Park (Reflection Pond) Pond.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. April 25, through 4:00 p.m. April 28, 2012, it is unlawful to fish in Sarge Hubbard Park Pond, except as provided in the sections below:

(a) Open to fishing 9:00 a.m. to 4:00 p.m. April 28, 2012, by juvenile anglers participating in the Yakima Greenway Association's "Kids' Fish-In" event.

(b) The daily limit is reduced to two trout during the youth fishing event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. April 28, 2012:

WAC 232-28-61900A Exceptions to statewide rules—Sarge Hubbard Park Pond.

**WSR 12-10-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-64—Filed April 23, 2012, 11:23 a.m., effective May 1, 2012, 7:00 a.m.]

Effective Date of Rule: May 1, 2012, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100F; and amending WAC 220-52-051, 220-52-075, and 220-69-240.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2012 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the pot fishery season for nonspot shrimp; (2) opens a Region 1 beam trawl area on May 16; (3) opens the pot fishery season for spot shrimp in Region 3 west of Port Angeles; (4) reflects changes to the shrimp catch reporting and purchase reporting requirements; (5) initiates the weekly spot shrimp harvest limit; and (6) initiates the pot mesh size rule for spot shrimp. 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 3, 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: April 23, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 220-52-05100G Puget Sound shrimp pot and beam trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all non-spot shrimp species from 7:00 a.m. May 1, 2012, until further notice, except as provided for in this section:

i) In Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 7:00 a.m. June 16, 2012.

ii) All waters of Catch Areas 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

iii) All waters of Shrimp Management Area 1A north of a line projected at 48° 31.5' N latitude are closed.

(b) All waters of Catch Areas 23C and 29 are open to the harvest of all shrimp species effective immediately, until further notice.

(c) All waters of Catch Areas 23A-S and 23D are open to the harvest of all shrimp species effective 7:00 a.m. May 23, 2012, until further notice.

(d) The shrimp catch accounting week is Wednesday through Tuesday.

(e) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 900 pounds per week, effective immediately, until further notice.

(f) It is unlawful to pull shellfish pots in more than one catch area per day.

(g) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait will open at 7:00 a.m. May 1, 2012, until further notice.

(c) That portion of Catch Area 22A within SMA 1B will open at 7:00 a.m. May 16, 2012, until further notice.



(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

#### NEW SECTION

**WAC 220-52-07500K Shellfish harvest logs.** Notwithstanding the provisions of WAC 220-52-075, effective immediately, until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to [shrimpreport@dfw.wa.gov](mailto:shrimpreport@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360.586.8408. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

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

#### NEW SECTION

**WAC 220-69-24000Z Duties of commercial purchasers and receivers.** Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: All buyers of shrimp taken by pot gear (including fishers who buy their own catch) are no longer required to report the previous week's purchases by phone or FAX.

(2) Puget Sound shrimp - Trawl gear: All buyers of shrimp taken by trawl gear (including fishers who buy their own catch) must report the previous day's purchases by 10:00 a.m. the following morning. Reports must be made by text message, e-mail or FAX. Text message and e-mail reports must be submitted to [shrimpreport@dfw.wa.gov](mailto:shrimpreport@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360.586.8408. Reports must include dealer name, fisher name, pounds sold per shrimp species, catch area, date sold, and the complete fish ticket serial number, including the first alphanumeric letter. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

**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 7:00 a.m. May 1, 2012:

|                   |   |
|-------------------|---|
| WAC 220-52-05100F | Puget Sound shrimp beam trawl fishery—Season. (12-52) |
|-------------------|---|

**WSR 12-10-026  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-65—Filed April 23, 2012, 4:15 p.m., effective May 4, 2012, 12:01 a.m.]

Effective Date of Rule: May 4, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 232-28-61900Z; 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 rule change is necessary to assure a safe and successful event. The fish will be planted one day prior to the event to better acclimate them before the event. Fish will be placed into netted areas along the shoreline of the pond. On the day of the event, preregistered kids will be allowed to fish within these netted 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: April 23, 2012.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900Z Exceptions to statewide rules—Klineline Pond (Clark Co.)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 4, 2012 through 3:00 p.m. May 5, 2012, it is unlawful to fish in those waters of Klineline Pond, except as provided in this section:

(a) Open to fishing 8:00 a.m. to 3:00 p.m. on May 5, 2012, in the netted area, to juvenile anglers participating in the Klineline Kids Fishing Event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 3:00 p.m. May 5, 2012:

WAC 232-28-61900Z Exceptions to statewide rules—Klineline Pond (Clark Co.)

**WSR 12-10-033**  
**EMERGENCY RULES**  
**SECRETARY OF STATE**  
(Elections Division)

[Filed April 25, 2012, 9:54 a.m., effective April 25, 2012, 9:54 a.m.]

Effective Date of Rule: Immediately.

Purpose: To adopt emergency rules to conduct (1) the special election to fill the vacancy in the first congressional district; and (2) precinct committee officer elections in accordance with recently passed legislation, E3SHB 1860.

Citation of Existing Rules Affected by this Order: Amending WAC 434-230-100.

Statutory Authority for Adoption: RCW 29A.04.611, 29A.24.031, 29A.28.061.

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

Reasons for this Finding: The timing of the vacancy in the first congressional district, the special requirements for conducting the special election due to redistricting, and the timing of recently passed legislation on precinct committee officer elections requires emergency rule making in order to have rules in place prior to the candidate filing period May 14 - 18, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, 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 2, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 24, 2012.

Steve Excell  
Assistant Secretary of State

NEW SECTION

**WAC 434-208-150 First congressional district vacancy.** (1) **Dates.** Washington state's first congressional district in the United States House of Representatives was

vacated on March 20, 2012. Pursuant to Article I, Section 2 of the United States Constitution and RCW 29A.28.041, the governor issued a writ of election on April 2, 2012, to fill the vacancy, ordering a special primary election to be held on August 7, 2012, and a special election to be held on November 6, 2012.

(2) **District boundaries.** The special primary and special election for the short term shall be conducted as a separate race from the primary and election for the full term:

(a) The special primary and special election for the short term shall be conducted using the boundaries of the first congressional district approved by the Washington state redistricting commission on January 1, 2002, and amended by the legislature on February 8, 2002.

(b) The primary and election for the full term, which begins January 3, 2013, shall be conducted using the boundaries of the first congressional district approved by the Washington state redistricting commission on January 1, 2012, and amended by the legislature on February 8, 2012.

(3) **Candidacy.** Pursuant to Article I, Section 2 of the United States Constitution and RCW 29A.20.021(4), candidates for the United States House of Representatives are only required to reside within the state of Washington, not within the boundaries of the congressional district. The first congressional district short term is a temporary elected position; for purposes of RCW 29A.20.021(2) and 29A.36.201, candidates filing for the short term are not prohibited from filing for another office or appearing on the ballot more than once. Consistent with the top two primary election system enacted by chapter 2, Laws of 2005, and WAC 434-215-130, the minor party and independent candidate nominating procedures referenced in RCW 29A.28.041 and 29A.28.061 do not apply. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008).

(4) **Ballots.** Each voter in the vacated first congressional district is eligible to vote in both the short term race in the first congressional district and the full term race in the voter's 2012 congressional district (District 1, 2, 6 or 7). The location of the congressional races on the ballot must be consistent with WAC 434-230-025.

(a) The full term congressional race shall be listed on the ballot before the short term race, and labeled in substantially the following form:

U.S. Representative  
Congressional District (1, 2, 6 or 7).

(b) The short term congressional race shall be listed on the ballot after the full term race, and labeled in substantially the following form:

U.S. Representative  
Congressional District 1  
1 Month short term.

(5) **Results.** The results for the special primary and special election in the first congressional district shall be certified separately from the results of the primary and election in the full term congressional elections. Consistent with the top two primary election system, the two candidates who receive the most votes, and at least one percent of the votes, in the special primary qualify for the special election. The candidate who receives the most votes in the special election shall be declared elected to the short term.

NEW SECTION

**WAC 434-215-021 Declaration of candidacy—Precinct committee officer.** Declarations of candidacy for the office of precinct committee officer shall be in substantially the following form:

# Declaration of Candidacy

## Precinct Committee Officer

**instructions** File this form with your county elections department.  
**Note:** This document becomes public record once filed.

**office information** member of the  Democratic Party  
 Republican Party  
 precinct representing (name / number)

**personal information as registered to vote**  
 first name middle last  
 date of birth (mm / dd / yyyy) phone number  
 residential address city / ZIP

**ballot information**  
 exact name I would like printed on the ballot (*only contested races will appear on the ballot*)

**contact information**  
 mailing address (*if different from residential address*) city / ZIP  
 email address phone number

**oath**  
 I declare that the above information is true, that I am a registered voter residing at the residential address and precinct listed above, and that I am a candidate for Precinct Committee Officer for the party and precinct identified above.  
 Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.  
 sign here [ ] date here [ ]

**for office use only**  
 voter registration number date  
 precinct verified office code  
 staff

03/2012

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

**WAC 434-230-100 Political party precinct committee officer.** ((The method for electing precinct committee officers on party ballots established in chapter 271, Laws of 2004 (the pick-a-party primary), was repealed by chapter 2, Laws of 2005. The method for electing precinct committee officers on a top two primary ballot under chapter 2, Laws of 2005 (the top two primary), was declared unconstitutional by the U.S. District Court for the Western District of Washington in *Washington State Republican Party, et al. v. State of Washington, et al.*, Case No. C05-0927-JCC (January 11, 2011). "The central holding is that the political parties, not the government, are free to define the scope of their membership." Consequently, precinct committee officer elections are no longer conducted by state or county government. As private organizations, the political parties determine how to conduct their internal affairs, including selection of their officers.)) (1) The election of major political party precinct committee officers is established in RCW 29A.52.— (section 3, chapter 89, Laws of 2012) and RCW 29A.80.051.

(2) The election of precinct committee officer is an intra-party election; candidates compete against other candidates in the same political party.

(a) If only one candidate files for a position, that candidate is deemed elected without appearing on the ballot and the county auditor shall issue a certificate of election.

(b) If more than one candidate files for a position, the contested race must appear on the ballot at the August primary and the candidate who receives the most votes is declared elected.

(c) If no candidates file during the regular filing period, the race does not appear on the ballot and the position may be filled by appointment pursuant to RCW 29A.28.071.

(d) No write-in line may be printed on the ballot for a contested race, and no write-in votes may be counted.

(3) If both major political parties have contested races on the ballot in the same precinct, the political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the other political party appearing second. Within each party, candidates shall be listed in the order determined by lot.

(4)(a) The position of political party precinct committee officer must appear following all measures and public offices.

(b) The following explanation must be printed before the list of candidates: "For this office only: In order to vote for precinct committee officer, a partisan office, you must affirm that you are a Democrat or a Republican and may vote only for one candidate from the party you select. Your vote for a candidate affirms your affiliation with the same party as the candidate. This preference is private and will not be matched to your name or shared."

(c)(i) If all candidates are listed under one heading, the applicable party abbreviation "Dem" or "Rep" must be printed next to each candidate's name, with the first letter of the abbreviation capitalized. For example:

John Smith Dem  
Jane Doe Dem

(ii) If candidates are listed under a major political party heading, the applicable heading of either "democratic party candidates" or "republican party candidates" must be printed above each group of candidates. The first letter of each word must be capitalized.

(d) One of the following statements, as applicable, must be printed directly below each candidate's name: "I affirm I am a Democrat." or "I affirm I am a Republican."

(5) A voter may vote for only one candidate for precinct committee officer. If a voter votes for more than one candidate, the votes must be treated as overvotes.

**WSR 12-10-040**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-68—Filed April 27, 2012, 10:57 a.m., effective May 5, 2012, 12:01 a.m.]

Effective Date of Rule: May 5, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000G; 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 Area 2 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: April 27, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 220-56-36000G 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. May 5, 2012, through 11:59 a.m. May 7, 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.

2. It is unlawful to dig for razor clams at any time in Twin Harbors Beach clam sanctuary defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 7, 2012:

WAC 220-56-36000G      Razor clams—Areas and seasons.

**WSR 12-10-044**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-63—Filed April 27, 2012, 12:33 p.m., effective May 1, 2012, 12:01 a.m.]

Effective Date of Rule: May 1, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000L; and amending WAC 220-52-030.

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: Based on historical catches and on-site inspection, there should be adequate clams to support an eight-week season. Biotxin levels currently fall below the regulatory threshold. 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: April 27, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 220-52-03000L Commercial razor clams.** Notwithstanding the provisions of WAC 220-52-030, effective 12:01 a.m. May 1, 2012, through 11:59 p.m. June 25, 2012, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 1 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point, defined by a line of boundary markers consisting of four fluorescent orange posts with the eastern-most post located at N 46° 39.597; W 124° 03.466, and the western-most post located at N 46° 39.548; W 124° 03.733.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 26, 2012:

WAC 220-52-03000L      Commercial razor clams.

**WSR 12-10-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed April 30, 2012, 10:40 a.m., effective May 1, 2012]

Effective Date of Rule: May 1, 2012.

Purpose: To implement funding for training costs as approved in [3]JESHB 2127 (2012 supplemental budget).

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.050 (3)(a).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Initiative I-1163 mandates basic minimum training standards for workers in adult family homes and in contracted assisted living, adult residential care, and enhanced adult residential care facilities. The 2012

supplemental operating budget provided funding for training costs.

Date Adopted: April 26, 2012.

Katherine I. Vasquez  
Rules Coordinator

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.

AMENDATORY SECTION (Amending WSR 12-02-050, filed 12/30/11, effective 1/30/12)

**WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and (~~boarding homes~~) assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.** For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE |  |  |  |  |  |
|---|--|--|--|--|--|
| KING COUNTY   |  |  |  |  |  |
| CARE CLASSIFICATION   | AL Without Capital                     | AL With Capital                        | ARC                                    | EARC                                   | AFH                                    |
|   | Add-on                                 | Add-on                                 |  |  |  |
| A Low   | <del>\$(66.52)</del><br><u>67.59</u>   | <del>\$(71.94)</del><br><u>73.01</u>   | <del>\$(47.06)</del><br><u>48.13</u>   | <del>\$(47.06)</del><br><u>48.13</u>   | <del>\$(46.61)</del><br><u>48.40</u>   |
| A Med   | <del>\$(72.02)</del><br><u>73.09</u>   | <del>\$(77.44)</del><br><u>78.51</u>   | <del>\$(53.39)</del><br><u>54.46</u>   | <del>\$(53.39)</del><br><u>54.46</u>   | <del>\$(52.86)</del><br><u>54.65</u>   |
| A High  | <del>\$(80.84)</del><br><u>81.88</u>   | <del>\$(86.23)</del><br><u>87.30</u>   | <del>\$(58.63)</del><br><u>59.70</u>   | <del>\$(58.63)</del><br><u>59.70</u>   | <del>\$(59.12)</del><br><u>60.91</u>   |
| B Low   | <del>\$(66.52)</del><br><u>67.59</u>   | <del>\$(71.94)</del><br><u>73.01</u>   | <del>\$(47.06)</del><br><u>48.13</u>   | <del>\$(47.06)</del><br><u>48.13</u>   | <del>\$(46.84)</del><br><u>48.63</u>   |
| B Med   | <del>\$(74.22)</del><br><u>75.29</u>   | <del>\$(79.64)</del><br><u>80.71</u>   | <del>\$(59.72)</del><br><u>60.79</u>   | <del>\$(59.72)</del><br><u>60.79</u>   | <del>\$(59.41)</del><br><u>61.20</u>   |
| B Med-High  | <del>\$(84.05)</del><br><u>85.12</u>   | <del>\$(89.47)</del><br><u>90.54</u>   | <del>\$(63.50)</del><br><u>64.57</u>   | <del>\$(63.50)</del><br><u>64.57</u>   | <del>\$(63.64)</del><br><u>65.43</u>   |
| B High  | <del>\$(88.48)</del><br><u>89.55</u>   | <del>\$(93.90)</del><br><u>94.97</u>   | <del>\$(72.58)</del><br><u>73.65</u>   | <del>\$(72.58)</del><br><u>73.65</u>   | <del>\$(72.73)</del><br><u>74.52</u>   |
| C Low   | <del>\$(72.02)</del><br><u>73.09</u>   | <del>\$(77.44)</del><br><u>78.51</u>   | <del>\$(53.39)</del><br><u>54.46</u>   | <del>\$(53.39)</del><br><u>54.46</u>   | <del>\$(52.86)</del><br><u>54.65</u>   |
| C Med   | <del>\$(80.84)</del><br><u>81.88</u>   | <del>\$(86.23)</del><br><u>87.30</u>   | <del>\$(67.00)</del><br><u>68.07</u>   | <del>\$(67.00)</del><br><u>68.07</u>   | <del>\$(67.44)</del><br><u>69.23</u>   |
| C Med-High  | <del>\$(100.58)</del><br><u>101.65</u> | <del>\$(106.00)</del><br><u>107.07</u> | <del>\$(89.29)</del><br><u>90.36</u>   | <del>\$(89.29)</del><br><u>90.36</u>   | <del>\$(88.28)</del><br><u>90.07</u>   |
| C High  | <del>\$(101.58)</del><br><u>102.65</u> | <del>\$(107.00)</del><br><u>108.07</u> | <del>\$(90.14)</del><br><u>91.21</u>   | <del>\$(90.14)</del><br><u>91.21</u>   | <del>\$(89.51)</del><br><u>91.30</u>   |
| D Low   | <del>\$(74.22)</del><br><u>75.29</u>   | <del>\$(79.64)</del><br><u>80.71</u>   | <del>\$(72.14)</del><br><u>73.21</u>   | <del>\$(72.14)</del><br><u>73.21</u>   | <del>\$(68.74)</del><br><u>70.53</u>   |
| D Med   | <del>\$(82.46)</del><br><u>83.53</u>   | <del>\$(87.88)</del><br><u>88.95</u>   | <del>\$(83.57)</del><br><u>84.64</u>   | <del>\$(83.57)</del><br><u>84.64</u>   | <del>\$(84.09)</del><br><u>85.88</u>   |
| D Med-High  | <del>\$(106.61)</del><br><u>107.68</u> | <del>\$(112.03)</del><br><u>113.10</u> | <del>\$(106.26)</del><br><u>107.33</u> | <del>\$(106.26)</del><br><u>107.33</u> | <del>\$(101.14)</del><br><u>102.93</u> |

|        |                               |                               |                               |                               |                               |
|--------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| D High | \$((114.88))<br><u>115.95</u> | \$((120.30))<br><u>121.37</u> | \$((114.88))<br><u>115.95</u> | \$((114.88))<br><u>115.95</u> | \$((115.12))<br><u>116.91</u> |
| E Med  | \$((138.82))<br><u>139.89</u> | \$((144.24))<br><u>145.31</u> | \$((138.82))<br><u>139.89</u> | \$((138.82))<br><u>139.89</u> | \$((139.06))<br><u>140.85</u> |
| E High | \$((162.76))<br><u>163.83</u> | \$((168.18))<br><u>169.25</u> | \$((162.76))<br><u>163.83</u> | \$((162.76))<br><u>163.83</u> | \$((163.01))<br><u>164.80</u> |

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>METROPOLITAN COUNTIES* |                               |                               |                               |                               |                               |
|---|-------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| CARE CLASSIFICATION   | AL Without Capital            | AL With Capital               | ARC                           | EARC                          | AFH                           |
|   | Add-on                        | Add-on                        |                               |                               |                               |
| A Low   | \$((61.02))<br><u>62.09</u>   | \$((65.94))<br><u>67.01</u>   | \$((47.06))<br><u>48.13</u>   | \$((47.06))<br><u>48.13</u>   | \$((46.61))<br><u>48.40</u>   |
| A Med   | \$((64.33))<br><u>65.40</u>   | \$((69.25))<br><u>70.32</u>   | \$((51.28))<br><u>52.35</u>   | \$((51.28))<br><u>52.35</u>   | \$((50.77))<br><u>52.56</u>   |
| A High  | \$((78.61))<br><u>79.68</u>   | \$((83.53))<br><u>84.60</u>   | \$((55.91))<br><u>56.98</u>   | \$((55.91))<br><u>56.98</u>   | \$((55.98))<br><u>57.77</u>   |
| B Low   | \$((61.02))<br><u>62.09</u>   | \$((65.94))<br><u>67.01</u>   | \$((47.06))<br><u>48.13</u>   | \$((47.06))<br><u>48.13</u>   | \$((46.84))<br><u>48.63</u>   |
| B Med   | \$((69.81))<br><u>70.88</u>   | \$((74.73))<br><u>75.80</u>   | \$((56.56))<br><u>57.63</u>   | \$((56.56))<br><u>57.63</u>   | \$((56.26))<br><u>58.05</u>   |
| B Med-High  | \$((79.07))<br><u>80.14</u>   | \$((83.99))<br><u>85.06</u>   | \$((60.14))<br><u>61.21</u>   | \$((60.14))<br><u>61.21</u>   | \$((60.32))<br><u>62.11</u>   |
| B High  | \$((86.29))<br><u>87.36</u>   | \$((91.21))<br><u>92.28</u>   | \$((70.53))<br><u>71.60</u>   | \$((70.53))<br><u>71.60</u>   | \$((70.68))<br><u>72.47</u>   |
| C Low   | \$((64.33))<br><u>65.40</u>   | \$((69.25))<br><u>70.32</u>   | \$((51.49))<br><u>52.56</u>   | \$((51.49))<br><u>52.56</u>   | \$((51.15))<br><u>52.94</u>   |
| C Med   | \$((78.61))<br><u>79.68</u>   | \$((83.53))<br><u>84.60</u>   | \$((66.14))<br><u>67.21</u>   | \$((66.14))<br><u>67.21</u>   | \$((65.80))<br><u>67.59</u>   |
| C Med-High  | \$((97.27))<br><u>98.34</u>   | \$((102.19))<br><u>103.26</u> | \$((82.96))<br><u>84.03</u>   | \$((82.96))<br><u>84.03</u>   | \$((82.04))<br><u>83.83</u>   |
| C High  | \$((98.24))<br><u>99.31</u>   | \$((103.16))<br><u>104.23</u> | \$((88.24))<br><u>89.31</u>   | \$((88.24))<br><u>89.31</u>   | \$((87.03))<br><u>88.82</u>   |
| D Low   | \$((69.81))<br><u>70.88</u>   | \$((74.73))<br><u>75.80</u>   | \$((71.15))<br><u>72.22</u>   | \$((71.15))<br><u>72.22</u>   | \$((67.23))<br><u>69.02</u>   |
| D Med   | \$((80.21))<br><u>81.28</u>   | \$((85.13))<br><u>86.20</u>   | \$((81.90))<br><u>82.97</u>   | \$((81.90))<br><u>82.97</u>   | \$((81.83))<br><u>83.62</u>   |
| D Med-High  | \$((103.11))<br><u>104.18</u> | \$((108.03))<br><u>109.10</u> | \$((103.63))<br><u>104.70</u> | \$((103.63))<br><u>104.70</u> | \$((98.06))<br><u>99.85</u>   |
| D High  | \$((111.72))<br><u>112.79</u> | \$((116.64))<br><u>117.71</u> | \$((111.72))<br><u>112.79</u> | \$((111.72))<br><u>112.79</u> | \$((111.38))<br><u>113.17</u> |
| E Med   | \$((134.51))<br><u>135.58</u> | \$((139.43))<br><u>140.50</u> | \$((134.51))<br><u>135.58</u> | \$((134.51))<br><u>135.58</u> | \$((134.17))<br><u>135.96</u> |
| E High  | \$((157.30))<br><u>158.37</u> | \$((162.22))<br><u>163.29</u> | \$((157.30))<br><u>158.37</u> | \$((157.30))<br><u>158.37</u> | \$((156.96))<br><u>158.75</u> |

\*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

| COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE<br>NONMETROPOLITAN COUNTIES** |  |  |  |  |  |
|---|--|--|--|--|--|
| CARE CLASSIFICATION   | AL Without Capital                         | AL With Capital                            | ARC  | EARC                                       | AFH  |
|   | Add-on                                     | Add-on                                     |  |  |  |
| A Low   | \$(( <del>59.94</del> ))<br><u>61.01</u>   | \$(( <del>65.18</del> ))<br><u>66.25</u>   | \$(( <del>47.06</del> ))<br><u>48.13</u>   | \$(( <del>47.06</del> ))<br><u>48.13</u>   | \$(( <del>46.61</del> ))<br><u>48.40</u>   |
| A Med   | \$(( <del>64.33</del> ))<br><u>65.40</u>   | \$(( <del>69.57</del> ))<br><u>70.64</u>   | \$(( <del>50.23</del> ))<br><u>51.30</u>   | \$(( <del>50.23</del> ))<br><u>51.30</u>   | \$(( <del>49.74</del> ))<br><u>51.53</u>   |
| A High  | \$(( <del>78.61</del> ))<br><u>79.68</u>   | \$(( <del>83.85</del> ))<br><u>84.92</u>   | \$(( <del>55.04</del> ))<br><u>56.08</u>   | \$(( <del>55.04</del> ))<br><u>56.08</u>   | \$(( <del>54.95</del> ))<br><u>56.74</u>   |
| B Low   | \$(( <del>59.94</del> ))<br><u>61.01</u>   | \$(( <del>65.18</del> ))<br><u>66.25</u>   | \$(( <del>47.06</del> ))<br><u>48.13</u>   | \$(( <del>47.06</del> ))<br><u>48.13</u>   | \$(( <del>46.84</del> ))<br><u>48.63</u>   |
| B Med   | \$(( <del>69.81</del> ))<br><u>70.88</u>   | \$(( <del>75.05</del> ))<br><u>76.12</u>   | \$(( <del>55.54</del> ))<br><u>56.58</u>   | \$(( <del>55.54</del> ))<br><u>56.58</u>   | \$(( <del>55.22</del> ))<br><u>57.01</u>   |
| B Med-High  | \$(( <del>79.07</del> ))<br><u>80.14</u>   | \$(( <del>84.31</del> ))<br><u>85.38</u>   | \$(( <del>59.01</del> ))<br><u>60.08</u>   | \$(( <del>59.01</del> ))<br><u>60.08</u>   | \$(( <del>59.14</del> ))<br><u>60.93</u>   |
| B High  | \$(( <del>86.29</del> ))<br><u>87.36</u>   | \$(( <del>91.53</del> ))<br><u>92.60</u>   | \$(( <del>66.71</del> ))<br><u>67.78</u>   | \$(( <del>66.71</del> ))<br><u>67.78</u>   | \$(( <del>66.86</del> ))<br><u>68.65</u>   |
| C Low   | \$(( <del>64.33</del> ))<br><u>65.40</u>   | \$(( <del>69.57</del> ))<br><u>70.64</u>   | \$(( <del>50.23</del> ))<br><u>51.30</u>   | \$(( <del>50.23</del> ))<br><u>51.30</u>   | \$(( <del>49.74</del> ))<br><u>51.53</u>   |
| C Med   | \$(( <del>78.61</del> ))<br><u>79.68</u>   | \$(( <del>83.85</del> ))<br><u>84.92</u>   | \$(( <del>62.52</del> ))<br><u>63.59</u>   | \$(( <del>62.52</del> ))<br><u>63.59</u>   | \$(( <del>63.29</del> ))<br><u>65.08</u>   |
| C Med-High  | \$(( <del>97.27</del> ))<br><u>98.34</u>   | \$(( <del>102.51</del> ))<br><u>103.58</u> | \$(( <del>79.79</del> ))<br><u>80.86</u>   | \$(( <del>79.79</del> ))<br><u>80.86</u>   | \$(( <del>78.92</del> ))<br><u>80.71</u>   |
| C High  | \$(( <del>98.24</del> ))<br><u>99.31</u>   | \$(( <del>103.48</del> ))<br><u>104.55</u> | \$(( <del>83.41</del> ))<br><u>84.48</u>   | \$(( <del>83.41</del> ))<br><u>84.48</u>   | \$(( <del>82.32</del> ))<br><u>84.11</u>   |
| D Low   | \$(( <del>69.81</del> ))<br><u>70.88</u>   | \$(( <del>75.05</del> ))<br><u>76.12</u>   | \$(( <del>67.26</del> ))<br><u>68.33</u>   | \$(( <del>67.26</del> ))<br><u>68.33</u>   | \$(( <del>63.59</del> ))<br><u>65.38</u>   |
| D Med   | \$(( <del>80.21</del> ))<br><u>81.28</u>   | \$(( <del>85.45</del> ))<br><u>86.52</u>   | \$(( <del>77.42</del> ))<br><u>78.49</u>   | \$(( <del>77.42</del> ))<br><u>78.49</u>   | \$(( <del>77.39</del> ))<br><u>79.18</u>   |
| D Med-High  | \$(( <del>103.11</del> ))<br><u>104.18</u> | \$(( <del>108.35</del> ))<br><u>109.42</u> | \$(( <del>97.95</del> ))<br><u>99.02</u>   | \$(( <del>97.95</del> ))<br><u>99.02</u>   | \$(( <del>92.74</del> ))<br><u>94.53</u>   |
| D High  | \$(( <del>105.60</del> ))<br><u>106.67</u> | \$(( <del>110.84</del> ))<br><u>111.91</u> | \$(( <del>105.60</del> ))<br><u>106.67</u> | \$(( <del>105.60</del> ))<br><u>106.67</u> | \$(( <del>105.32</del> ))<br><u>107.11</u> |
| E Med   | \$(( <del>127.14</del> ))<br><u>128.21</u> | \$(( <del>132.38</del> ))<br><u>133.45</u> | \$(( <del>127.14</del> ))<br><u>128.21</u> | \$(( <del>127.14</del> ))<br><u>128.21</u> | \$(( <del>126.86</del> ))<br><u>128.65</u> |
| E High  | \$(( <del>148.68</del> ))<br><u>149.75</u> | \$(( <del>153.92</del> ))<br><u>154.99</u> | \$(( <del>148.68</del> ))<br><u>149.75</u> | \$(( <del>148.68</del> ))<br><u>149.75</u> | \$(( <del>148.41</del> ))<br><u>150.20</u> |

\*\* Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.



**WSR 12-10-052**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-67—Filed April 30, 2012, 12:51 p.m., effective May 1, 2012]

Effective Date of Rule: May 1, 2012.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 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: The department is in the process of adopting permanent rules that are necessary to implement the recreational fishing seasons, limits and other regulations. These emergency rules are interim until permanent rules take effect.

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: April 30, 2012.

Philip Anderson  
 Director

NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Kettle and Spokane rivers.** Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect.

1. Kettle River (Stevens County):

Effective May 1, through May 31, 2012; Selective gear rules are not required from the Canadian border upstream to the Highway 21 Bridge at Curlew for juvenile anglers under 15 years old.

2. Spokane River (Spokane County):

From SR 25 Bridge upstream to 400 feet below Little Falls Dam: Closed to fishing for walleye immediately through May 31, 2012. Open to fishing for walleye from June 1, 2012, until further notice.

**WSR 12-10-053**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-69—Filed April 30, 2012, 12:53 p.m., effective May 1, 2012]

Effective Date of Rule: May 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 220-56-105, 220-56-124, 220-56-282, 232-28-620, and 232-28-621.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans. The Puget Sound sturgeon change was intended as part of the sportfishing rule-making process for 2012-2013 and is consistent with Columbia River compact action.

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 5, 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: April 30, 2012.

Philip Anderson  
 Director

NEW SECTION

**WAC 220-56-10500E River mouth definitions.** Notwithstanding the provisions of WAC 220-56-105, when pertaining to angling for the Little White Salmon River, any reference to the mouth shall be construed to include those waters upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost uplands" shall be construed to mean those lands not covered by water during an ordinary high tide.

NEW SECTION

**WAC 220-56-12400K Unlawful provisions—Hood-sport Hatchery.** Notwithstanding the provisions of WAC 220-56-124, effective July 1, 2012, until further notice, those waters of Catch Record Card Area 12 within a 2,000-foot arc seaward of yellow buoys at the mouth of Finch Creek at the Hood-sport Salmon Hatchery are regulated as provided for in this section:

(1) Special daily limit of four salmon, of which no more than two salmon may be Chinook salmon greater than 24 inches in length. Release wild Chinook. Release chum salmon July 1, 2012, until further notice.

NEW SECTION

**WAC 220-56-28200L Sturgeon—Areas, seasons, limits and unlawful acts—Puget Sound.** Notwithstanding the provisions of WAC 220-56-282 and WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Puget Sound - It is unlawful to catch and release white sturgeon in Puget Sound and all Puget Sound tributaries unless the season for those waters is open for salmon or game fish.

NEW SECTION

**WAC 232-28-62000M Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

**(1) Catch Record Card Area 1:**

(a) May 1 through June 8 - Closed.

(b) June 9 through June 22 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) June 23 until further notice - Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(d) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-56-195.

**(2) Catch Record Card Area 2:**

(a) May 1 through June 8 - Closed.

(b) June 9 through June 23 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) June 24 until further notice - Open Sundays through Thursdays only. Daily limit 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(d) June 9 until further notice - Grays Harbor Control Zone described in WAC 220-56-195(11) - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

**(3) Willapa Bay (Catch Record Card Area 2-1):**

(a) May 1 through June 8 - Closed.

(b) June 9 through July 31 - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(c) August 1 until further notice - Daily limit of six salmon, not more than three of which may be adult salmon.

Release chum and wild Chinook. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

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

(a) May 1 through June 8 - Closed.

(b) June 9, until further notice - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

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

(a) May 1 through June 15 - Closed.

(b) June 16 through June 30 - Daily limit of 2 salmon. Release coho and wild Chinook.

(c) July 1, until further notice - Daily limit of 2 salmon. Release wild coho.

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

(a) May 1 through June 15 - Closed.

(b) June 16 through June 30 - Daily limit of 2 salmon. Release coho and wild Chinook. Waters east of a true north-south line through Sail Rock closed.

(c) July 1, until further notice - Daily limit of 2 salmon. Release wild coho salmon. Waters east of a true north-south line through Sail Rock closed through July 31. Release Chinook salmon caught east of the Bonilla-Tatoosh line beginning August 1. Release chum salmon beginning August 1.

NEW SECTION

**WAC 232-28-62100P Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 8-2:** Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point:

(a) May 18 through June 8, open only from Friday through 11:59 a.m. Monday of each week - Daily limit of 2 salmon.

(b) June 10 until further notice: open only from Friday through 11:59 a.m. Monday of each week - Daily limit of 2 salmon. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

**(2) Catch Record Card Area 9:**

(a) May 1 through June 30 - Closed.

(b) July 1 through July 15 - Daily limit 2 salmon. Release Chinook and chum.

(3) **Catch Record Card Area 10:** Waters of Elliott Bay east of a line from West Point to Alki Point, closed July 1 until further notice.

(4) **Catch Record Card Area 12:** July 1 until further notice, in waters south of Ayock Point - Daily limit 4 salmon, of which no more than two may be Chinook salmon. Release chum and wild Chinook.

**WSR 12-10-056**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-71—Filed April 30, 2012, 4:56 p.m., effective April 30, 2012, 4:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
 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: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans.

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: April 30, 2012.

Philip Anderson  
 Director

NEW SECTION

**WAC 232-28-61900E Freshwater exceptions to statewide rules—2012 North of Falcon Coast** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**1. Chehalis River (Grays Harbor, Thurston, and Lewis counties):**

**From mouth (Highway 101 Bridge in Aberdeen) to Highway 6 Bridge in town of Adna:** Salmon: Open immediately until June 30, 2012. Daily limit one fish.

**2. Hoh River (Jefferson County):**

**From Willoughby Creek to Morgan's Crossing boat launch site:** Closed to salmon fishing.

**WSR 12-10-071**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-75—Filed May 1, 2012, 2:03 p.m., effective May 1, 2012, 2:03 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Extends the ongoing 2012 spring recreational salmon season for four additional retention days. The rules continue to prohibit the full removal of nonlegal fish from the water. Regulation is consistent with guidance from the Washington fish and wildlife commission and the department's director, and compact/joint state action of January 26 and April 30, 2012. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty

and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: May 1, 2012.

Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-61900I Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**1. Columbia River:**

i. Effective immediately through May 6, 2012: Open from Tower Island power lines in Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations). Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook salmon or hatchery steelhead or one of each. Release all wild Chinook. Salmon minimum size is 12 inches.

ii. Effective until further notice: For the mainstem Columbia River salmon and steelhead fishery from the Rocky Point/Tongue Point line upstream to the Oregon/Washington border, it is unlawful when fishing from vessels that are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to

totally remove from the water any salmon or steelhead required to be released.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900U Exceptions to statewide rules—Columbia River. (12-57)

**WSR 12-10-073  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 12-72—Filed May 1, 2012, 3:29 p.m., effective May 1, 2012, 3:29 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: 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: The department is in the process of adopting permanent rules that are necessary to implement the personal-use fishing plans that were agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed upon management plans, and are interim until permanent rules take effect.

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: May 1, 2012.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-61900L Freshwater exceptions to statewide rules—2012 North of Falcon Puget Sound.** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**1. Baker Lake (Whatcom Co.):**

Salmon: Open July 1 until further notice. Daily limit three sockeye only. Minimum size 18 inches.

**2. Green River (King Co.):** Closed to fishing from Auburn Black Diamond Road to the mouth of Cristy Creek.

**3. Deschutes River (Thurston Co.):**

From the Old Highway 99 Bridge on Capitol Boulevard in Tumwater upstream to the Henderson Boulevard Bridge near Pioneer Park: Selective gear rules when fishing for salmon.

**4. Hoko River (Clallam Co.):**

**From mouth to upper Hoko Bridge:** Lawful to fish up to the hatchery ladder, except closed to fishing from shore on the hatchery side of the river from the ladder downstream 100 feet.

**5. McAllister Creek (Thurston Co.):**

From mouth to Olympia-Steilacoom Road Bridge: Salmon: Open July 1 until further notice. Daily limit of six and up to two adults may be retained.

**6. Nooksack River (Whatcom Co.):** Closed to salmon fishing.

**7. Skagit River (Skagit Co.):**

From Memorial Highway Bridge (highway 536 at Mount Vernon) upstream to Gilligan Creek: Anti-snagging rule and night closure in effect from June 16, 2012, until further notice. Salmon: Open June 16 through July 15, 2012. Daily limit of three sockeye.

**8. Skykomish River (Snohomish Co.):**

From the mouth to the mouth of the Wallace River: Effective immediately until further notice: Closed to salmon fishing.

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The closure date for retention of sturgeon in John Day Pool was adopted because Washington and Oregon fish managers estimate that the harvest guideline of five hundred fish will be reached on May 20, 2012. The Bonneville Pool harvest guideline of two thousand white sturgeon was not reached during the regular season, which closed February 18, 2012. A balance of one thousand sixty fish remains on the guideline. This action sets additional fishing time to catch the remaining balance. The dates for retention of white sturgeon are based on actions adopted at the joint Washington-Oregon public hearing on April 30, 2012. 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; and 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: May 1, 2012.

Philip Anderson  
Director

**WSR 12-10-074**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-76—Filed May 1, 2012, 3:30 p.m., effective May 1, 2012, 3:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Q; 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

NEW SECTION

**WAC 232-28-61900K Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective May 12 through July 8, 2012, it is permissible to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to the Wauna powerlines, and all adjacent Washington tributaries. Minimum size when open to retain white sturgeon in this area is 41 inches fork length.

(2) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam, except a person may retain white sturgeon June 15, June 16, June 22, and June 23, 2012.

(3) Effective 12:01 a.m. May 21, 2012, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from John Day Dam upstream to McNary Dam.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900Q Exceptions to statewide rules—Columbia River sturgeon. (12-56)

**WSR 12-10-075**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed May 1, 2012, 4:29 p.m., effective May 1, 2012, 4:29 p.m.]

Effective Date of Rule: Immediately.

Purpose: To make technical corrections based on input from the department of health and local health jurisdictions.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296A-0010, 170-296A-2325, 170-296A-3200, 170-296A-3210, 170-296A-3750, 170-296A-3875, 170-296A-3925, 170-296A-4325, 170-296A-4650, 170-296A-4950, 170-296A-5175, 170-296A-7075, 170-296A-7225, 170-296A-7250, 170-296A-7375, 170-296A-7700, and 170-296A-7750.

Statutory Authority for Adoption: Chapter 43.215 RCW.

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

Reasons for this Finding: The changes being made include corrections to bleach mixtures for sanitizing and disinfecting, updating conditions that are notifiable to the health department and required rail height. All of these changes are necessary to protect the health and safety of children in child care.

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 17, 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 17, Repealed 0.

Date Adopted: May 1, 2012.

Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-0010 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates otherwise. Certain definitions appear in the section the term is used if the definition applies only to a specific section or sections:

**"Accessible to children"** means areas of the facility and materials that the children can easily get to on their own.

**"Agency"** as used in this chapter, has the same meaning as in RCW 43.215.010 (1) ~~((and (+)))~~(c).

**"Available"** means accessible and ready for use or service.

**"Bathroom"** means any room containing a built-in flush-type toilet.

**"Capacity"** means the maximum number of children the licensee is authorized by the department to have in care at any given time.

**"Child"** means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

**"Child abuse or neglect"** has the same meaning as "abuse or neglect" under RCW 26.44.020 and chapter 388-15 WAC.

**"Child care"** means the developmentally appropriate care, protection, and supervision of children that is designed to promote positive growth and educational experiences for children outside the child's home for periods of less than twenty-four hours a day.

**"Clean"** or **"cleaning"** means to remove dirt and debris (such as soil, food, blood, urine, or feces) by scrubbing and washing with a soap or detergent solution and rinsing with water. Cleaning is the first step in the process of sanitizing or disinfecting a surface or item.

**"Confidential"** means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

**"Denial of a license"** means an action by the department to not issue a child care license to an applicant for an initial license, or to a licensee operating under an initial license seeking a nonexpiring full license, based on the applicant's or initial licensee's inability or failure to meet the requirements of chapter 43.215 RCW or requirements adopted by the department pursuant to chapter 43.215 RCW.

**"Department"** or **"DEL"** means the Washington state department of early learning.

**"Developmentally appropriate"** means curriculum, materials or activities provided at a level that is consistent with the abilities or learning skills of the child.

**"Discipline"** means a method used to redirect a child in order to achieve a desired behavior.

**"Disinfect"** or **"disinfecting"** means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of ~~((appropriate concentration))~~ one tablespoon of chlorine bleach to one quart of cool water; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in

place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

**"DOH"** means the Washington state department of health.

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

**"Enforcement action"** means a department issued:

(a) Denial, suspension, revocation or modification of a license;

(b) Probationary license;

(c) Civil monetary penalty (fine); or

(d) Disqualification from having unsupervised access to children in care.

**"Family home child care"** means a facility licensed by the department where child care is provided for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.215.010 (1)(c).

**"Family living quarters"** means a licensee's or license applicant's residence and other spaces or buildings on the premises that meet the facility requirements of this chapter and are approved by the department for child care.

**"Fine"** has the same meaning as "civil monetary penalty," "civil fines," or "monetary penalty" under chapter 43.215 RCW.

**"Inaccessible to children"** means an effective method or barrier that reasonably prevents a child's ability to reach, enter, or use items or areas.

**"Infant"** means a child age birth through eleven months of age.

**"Licensed space"** means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

**"Licensee"** for the purposes of this chapter, means the individual listed on a family home child care license issued by the department of early learning authorizing that individual to provide child care under the requirements of this chapter and chapter 43.215 RCW.

**"Licensor"** means an individual employed by the department and designated by the director to inspect and monitor an agency or other child care facility for compliance with the requirements of this chapter and chapter 43.215 RCW.

**"MERIT"** means the managed education registry information tool used to track professional development for early learning professionals. See also "STARS."

**"Modification of a license"** means department action to change the conditions identified on a current license.

**"Nonexpiring full license"** or **"nonexpiring license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296A-1450.

**"Nonprescription medication"** means any of the following:

(a) Nonaspirin and aspirin fever reducers or pain relievers;

(b) Nonnarcotic cough suppressants;

(c) Cold or flu medications;

(d) Antihistamines or decongestants;

(e) Teething pain reducers;

(f) Vitamins;

(g) Ointments or lotions specially intended to relieve itching;

(h) Diaper ointments and talc free powders specially used in the diaper area of children;

(i) Sun screen;

(j) Hand sanitizer gels; or

(k) Hand wipes with alcohol.

**"One year of experience"** means at least twelve months of early learning experience as demonstrated by a resume and references:

(a) In a supervisory role in a child care setting where the individual was responsible for supervising staff and complying with licensing standards; or

(b) As a Washington state:

(i) Child care center or school age center director, program supervisor, or lead teacher as defined in chapters 170-151 and 170-295 WAC; or

(ii) Family home child care licensee or qualified primary staff person.

**"Overnight care"** means child care provided for a child anytime between the hours of eight o'clock at night and six o'clock in the morning that includes a sleep period for the child.

**"Personal needs"** means an individual's hygiene, toileting, medication, cleansing, eating or clothing needs. "Personal needs" does not mean smoking or use of tobacco products, illegal drug use or misuse of prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

**"Physical restraint"** means the practice of rendering a child helpless or keeping a child in captivity.

**"Poison"** for the purposes of this chapter includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items, that even in small quantities are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

**"Premises"** means the licensed or unlicensed space at the licensed address including, but not limited to, buildings, land and residences.

**"Preschool age child"** means a child age thirty months through five years of age who is not attending kindergarten or elementary school.

**"Primary staff person"** means a staff person other than the licensee who has been authorized by the department to care for and have unsupervised access to children in care.

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

**"Revocation"** or **"revoke"** means the formal action by the department to close a child care business and take the license due to the licensee's failure to comply with chapter 43.215 RCW or requirements adopted pursuant to chapter 43.215 RCW.

**"Sanitize"** means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of (~~appropriate concentration~~) three-quarters teaspoon of chlorine bleach to one quart of cool water; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

**"School age child"** means a child not less than five years of age through twelve years of age who is attending kindergarten or school.

**"Screen time"** means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

**"Sleeping equipment"** includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play." "Sleeping equipment" does not include any car seat or infant swing.

**"Staff"** unless referring specifically to a "primary staff person," means any primary staff person, assistant, or volunteer helping to provide child care, or a household member acting in the capacity of a primary staff person, assistant or volunteer, whether compensated or not compensated.

**"STARS"** means the state training and registry system.

**"Suspension of a license"** means a formal department action to stop a license pending a department decision regarding further enforcement action.

**"Toddler"** means a child age twelve months through twenty-nine months of age.

**"Unlicensed space"** means the indoor and outdoor areas of the premises, not approved as licensed space by DEL, that the licensee must make inaccessible to the children during child care hours.

**"Unsupervised access"** has the same meaning as "unsupervised access" in WAC 170-06-0020.

**"WAC"** means the Washington Administrative Code.

**"Weapons"** means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-2325 Reporting notifiable condition to health department.** ((The)) In the event a licensee ((must report a)), staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as defined in chapter 246-101 WAC, the licensee must report the diagnosis to the local health jurisdiction or the state department of health. Contact the local health jurisdiction for the list of notifiable conditions and reporting requirements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-3200 Health plan.** The licensee must have a written health plan. The health plan must include:

- (1) Communicable disease procedures and exclusion of ill persons under WAC 170-296A-3210;
- (2) Immunization tracking under WAC 170-296A-3250 through 170-296A-3300;
- (3) Medication management under WAC 170-296A-3315 through 170-296A-3550;
- (4) Injury treatment under WAC 170-296A-3575 through 170-296A-3600;
- (5) Handwashing and hand sanitizers under WAC 170-296A-3625 through 170-296A-3675;
- (6) Caring for children with special health needs under WAC 170-296A-0050;
- (7) Cleaning, sanitizing, and disinfecting procedures;
- (8) A bloodborne pathogens plan under WAC 170-296A-1850; and
- (9) Notifying the health department when a licensee, staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as required under WAC 170-296A-2325.

A person excluded from the family home by the health department on the basis of such a diagnosis may not return to the family home until approved to do so by the health department.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-3210 Communicable disease procedure.** When the licensee becomes aware that he or she, a household member, staff person or child in care has been diagnosed with any of the following communicable diseases:

| Disease:   | Also known as:                 |
|--|--------------------------------|
| Chickenpox   | Varicella                      |
| Conjunctivitis (bacterial)                                   | Pink eye                       |
| Diphtheria   |                                |
| E. coli infection  |                                |
| Giardiasis   |                                |
| Hepatitis A virus  |                                |
| Invasive haemophilus influenza disease (except otitis media) |                                |
| Measles  |                                |
| Meningitis (bacterial)                                       | Meningococcal meningitis       |
| Mumps  |                                |
| Pertussis  | Whooping cough                 |
| Rubella  | German measles                 |
| Salmonellosis  | Salmonella or "food poisoning" |
| Shigellosis  | Shigella                       |
| Tuberculosis (active)  | TB                             |

- (1) The licensee must, within twenty-four hours notify:
  - (a) The local health jurisdiction or DOH, except notice is not required for a diagnosis of chickenpox((-)) or conjunctivitis((-or invasive haemophilus influenza));



- (b) The department; and
- (c) Parents or guardians of each of the children in care.
- (2) The licensee must follow the health plan before providing care or before readmitting the household member, staff person or child into the child care.
- (3) The licensee's health plan must include provisions for excluding or separating a child, staff person, or household member with communicable disease as described in subsection (1) of this section or any of the following:
  - (a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:
    - (i) Earache;
    - (ii) Headache;
    - (iii) Sore throat;
    - (iv) Rash; or
    - (v) Fatigue that prevents the individual from participating in regular activities.
  - (b) Vomiting that occurs two or more times in a twenty-four hour period;
  - (c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period;
  - (d) Rash not associated with heat, diapering, or an allergic reaction; or
  - (e) Drainage of thick mucus or pus from the eye.

**AMENDATORY SECTION** (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-3750 Mats, cots and other sleeping equipment.** (1) The licensee must provide mats, cots, or other approved sleeping equipment that are made of material that can be cleaned and sanitized as provided in WAC 170-296A-0010.

- (2) Mats, cots, or other sleeping equipment must be in good repair, not torn or with holes or repaired with tape.
- (3) A sleeping mat must be at least one inch thick.
- (4) Mats, cots, or other sleeping equipment must be cleaned, sanitized, and air dried:

- (a) At least once a week or as needed if used by one child; or
- (b) Between each use if used by different children.
- ~~(5)((a) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of bleach to one quart of cool water;~~
- ~~(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~
- ~~(6))~~ When in use, mats, cots, or other sleeping equipment must be arranged to allow the licensee or staff to access the children.
- ~~((7))~~ (6) Mats, cots, and other sleeping equipment must be stored so that the sleeping surfaces are not touching each other, unless they are cleaned and sanitized after each use.

**AMENDATORY SECTION** (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-3875 Cleaning and sanitizing toys.** ~~((+))~~ The licensee must clean and sanitize toys as provided in WAC 170-296A-0010:

- ~~((+))~~ (1) Before a child plays with a toy that has come into contact with another child's mouth or bodily fluids;
- ~~((b))~~ (2) After being contaminated with bodily fluids or visibly soiled; or
- ~~((+))~~ (3) Not less than weekly when the toys have been used by the children.
- ~~((2)(a) If a bleach solution is used to sanitize, the solution must be three-quarter teaspoon of bleach to one quart of cool water;~~
- ~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces, used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and rinsed if required by the product instructions.)~~

**AMENDATORY SECTION** (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-3925 Cleaning, sanitizing, and disinfecting table.** (1) The following table describes the minimum frequency for cleaning, sanitizing, or disinfecting items in the licensed space.

| CLEANING, SANITIZING, AND DISINFECTING TABLE  |                 |   |   |
|---|-----------------|---|---|
|   | "X" means CLEAN | And SANITIZE or DISINFECT                     | FREQUENCY   |
| <del>((+))</del> (a) Kitchen countertops/tabletops, floors, doorknobs, and cabinet handles. | X               | Sanitize (see subsection (3) of this section) | Daily or more often when soiled.  |
| <del>((2))</del> (b) Food preparation/surfaces.   | X               | Sanitize (see subsection (3) of this section) | Before/after contact with food activity; between preparation of raw and cooked foods.   |
| <del>((3))</del> (c) Carpets and large area rugs/small rugs.                                |                 |   | <del>((a))</del> (i) Vacuum daily.<br><del>((b))</del> (ii) Installed carpet - Clean yearly or more often when soiled using a carpet shampoo machine, steam cleaner, or dry carpet cleaner. |

| CLEANING, SANITIZING, AND DISINFECTING TABLE   |                 |   |  |
|--|-----------------|---|--|
|  | "X" means CLEAN | And SANITIZE or DISINFECT                       | FREQUENCY  |
|  | X               |   | ((e)) (iii) Small rugs - Shake outdoors or vacuum daily. Launder weekly or more often when soiled.   |
|  | X               | Sanitize (see sub-section (3) of this section)  | ((f)) (iv) Removable rugs - May be used in the bathroom. They must be easily removable and able to be washed when needed. Launder and sanitize weekly or more often when soiled.                         |
| ((4)) (d) Utensils, surfaces/toys that go in the mouth or have been in contact with other body fluids.   | X               | Sanitize (see sub-section (3) of this section)  | After each child's use; may use disposable, one-time utensils.   |
| ((5)) (e) Toys that are not contaminated with body fluids and machine-washable cloth toys. Dress-up clothes (not worn on the head or come into contact with the head while dressing). Combs/hair-brushes, (none of these items should be shared among children). | X               | Sanitize (see sub-section (3) of this section)  | Weekly or more often when visibly soiled.  |
| ((6)) (f) Bedding, blankets, sleeping bags, individual sheets, pillowcases (if used).  | X               | Sanitize (see sub-section (3) of this section)  | Weekly or more often when soiled.<br><br>Items that are put in the washing machine must be cleaned by using laundry detergent and sanitized by temperature (hot or warm water cycle) or chlorine bleach. |
| ((7)) (g) Wash cloths or single use towels.  | X               | Sanitize (see sub-section (3) of this section)  | After each use.  |
| ((8)) (h) Hats and helmets.  | X               |   | After each child's use or use disposable hats that only one child wears.   |
| ((9)) (i) Cribs and crib mattresses.   | X               | Sanitize (see sub-section (3) of this section)  | Weekly, before use by different child, and more often whenever soiled or wet.  |
| ((10)) (j) Handwashing sinks, faucets, surrounding counters, soap dispensers, doorknobs.   | X               | Disinfect (see sub-section (2) of this section) | Daily or more often when soiled.   |
| ((11)) (k) Toilet seats, toilet training rings, toilet handles, doorknobs or cubicle handles, floors.  | X               | Disinfect (see sub-section (2) of this section) | Daily or immediately if visibly soiled.  |
| ((12)) (l) Toilet bowls.   | X               | Disinfect (see sub-section (2) of this section) | Daily or more often as needed (e.g., child vomits or has explosive diarrhea, etc.).  |
| ((13)) (m) Changing tables, potty chairs (use of potty chairs in child care is discouraged because of high risk of contamination).   | X               | Disinfect (see sub-section (2) of this section) | After each child's use.  |
| ((14)) (n) Waste receptacles.  | X               |   | Daily or more often as needed.   |

(2) "Disinfect" or "disinfecting" means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of one tablespoon of chlorine bleach to one quart of cool water; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

(3) "Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-4325 Stairs.** (1) If there are stairs in the licensed space, the licensee must:

- (a) Keep the stairway well lit;
- (b) Keep the stairway free of clutter; and
- (c) Have a handrail not higher than ~~((thirty))~~ thirty-eight inches high or sturdy slats on one side of the stairs.

(2) The licensee must provide a pressure gate, safety gate, or a door to keep the stairs inaccessible to infants and toddlers when not in use.

(3) Openings between slats or on pressure gates or safety gates must not be larger than three and one-half inches wide.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-4650 Bathroom floors.** (1) Floors in a bathroom or toileting area must have a washable surface and be resistant to moisture. The floor must be cleaned and disinfected as provided in WAC 170-296A-0010 daily or more often if needed.

~~((a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions, including but not limited to quantity used, time the product must be left in place, and adequate time to allow the product to dry.))~~

(2) Removable rugs may be used in the bathroom. The rugs must be laundered and sanitized as provided in WAC 170-296A-0010 at least weekly or more often if needed.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-4950 Rails on platforms, decks, and stairs.** (1) Platforms or decks (not including play equipment) used at any time for child care activities with a drop zone of more than eighteen inches must have guardrails in any area where there are no steps.

(2) Outdoor stairs with four or more steps must have slats (balusters) or a hand rail not higher than ~~((thirty))~~ thirty-eight inches high on at least one side. Openings between the slats must be no wider than three and one-half inches. This requirement does not apply to outdoor play equipment with stairs.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-5175 Wading pools—Defined—Supervision.** (1) A wading pool:

- (a) Is an enclosed pool with water depth of two feet or less measured without children in the pool; and

(b) Can be emptied and moved.

(2) When a wading pool on the premises is intended for use by the children, the licensee must:

(a) Directly supervise or have a primary staff person directly supervise the children;

(b) Obtain written permission from each child's parent or guardian to allow the child to use a wading pool;

(c) Maintain staff-to-child ratios when children are in a wading pool;

(d) Keep infants or toddlers in the wading pool within reach of the licensee or staff;

(e) Use a door alarm or bell to warn staff that children are entering the outdoor area when pool water could be accessed, or keep the wading pool empty when not in use;

(f) Empty the pool daily; and

(g) Clean and disinfect the pool as provided in WAC 170-296A-0010 daily or immediately if the pool is soiled with urine, feces, vomit, or blood((-

~~(i) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(ii) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.))~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-7075 Infant and toddler sleeping or napping equipment.** (1) The licensee must:

(a) Provide and use a single level crib, toddler bed, playpen or other sleeping equipment for each infant or toddler in care that is safe and not subject to tipping. The equipment must be of a design approved for infants or toddlers by the U.S. Consumer Product Safety Commission (see WAC 170-296A-7085 regarding approved cribs)((-);

(b) Provide sleeping or napping equipment with clean, firm, and snug-fitting mattresses that do not have tears or holes or is repaired with tape((-);

(c) Provide mattresses covered with waterproof material that is easily cleaned and sanitized((-

~~(i) If a bleach solution is used to sanitize, the solution must be three quarters teaspoon of chlorine bleach to one quart of cool water.~~

~~(ii) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.))~~ as provided in WAC 170-296A-0010;

(d) Arrange sleeping equipment to allow staff access to children;

(e) Remove sleeping children from car seats, swings or similar equipment; and

(f) Consult with a child's parent or guardian before the child is transitioned from infant sleeping equipment to other approved sleeping equipment.

(2) Children able to climb out of their sleeping equipment must be transitioned to an alternate sleeping surface.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-7225 High chairs.** (1) If the licensee uses high chairs in the child care, each high chair must:

- (a) Have a base that is wider than the seat;
- (b) Have a safety device that prevents the child from climbing or sliding down the chair;
- (c) Be free of cracks and tears; and
- (d) Have a washable surface.

(2) When a child is seated in a high chair, the chair's safety device must be used to secure the child.

(3) The licensee or staff must clean and sanitize high chairs as provided in WAC 170-296A-0010 after each use.

~~((a) If a bleach solution is used to sanitize, the solution must be one quarter teaspoon of bleach to one quart of cool water.~~

~~(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.)~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-7250 Diapering and toileting.** (1)

The licensee must provide a diaper changing area that is separate from any area where food is stored, prepared or served.

(2) The diaper changing area must:

(a) Have a sink with hot and cold running water close to the diaper changing area. The sink must not be used for food preparation and clean up;

(b) Have a sturdy surface or mat that is:

- (i) Not torn or repaired with tape;
- (ii) Easily cleanable;
- (iii) Waterproof; and
- (iv) Large enough to prevent the area underneath from being contaminated with bodily fluids.

(3) The diapering area must be cleaned and disinfected as provided in WAC 170-296A-0010 between each use.

~~((a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one quart of cool water.~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.)~~

(4) A nonabsorbent, disposable covering that is discarded after each use may be used on the diaper changing mat.

(5) The diaper changing surface must be free of all other items not used in diapering the child.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-7375 Potty chairs or modified toilet seats.** (1) When potty chairs are used, the licensee or staff must immediately after each use:

(a) Empty the potty chair into the toilet; and

(b) Clean and disinfect the potty chair.

(2) The floor under the potty chairs must be made of a material that is resistant to moisture.

(3) When a modified toilet seat is used, it must be cleaned and disinfected as provided in WAC 170-296A-0010 daily or more often when soiled.

~~(4)((a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one quart of cool water;~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~

~~(5)) If a sink or basin is used to clean a potty chair or modified toilet seat, the sink or basin must be cleaned and disinfected afterwards.~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-7700 Washing dishes.** The licensee or staff must wash dishes thoroughly after each use by one of the following methods:

(1) Automatic dishwasher, using the sanitizing cycle if available; or

(2) Handwashing method, by emersion in hot soapy water, rinse, sanitize as provided in WAC 170-296A-0010 and air dry(:

~~(a) If a bleach solution is used to sanitize, the solution must be three quarters teaspoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces and be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry)).~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

**WAC 170-296A-7750 Food preparation area.** (1) The licensee or staff must clean and sanitize food preparation and eating surfaces as provided in WAC 170-296A-0010 before and after use. The licensee's food preparation area must:

(a) Have surfaces that are free of cracks and crevices; and

(b) Have a floor area made of a material that is resistant to moisture.

(2) The licensee must not allow pets in the food preparation area while food is being prepared or served.

(3) The licensee may use the kitchen for other child care activities provided there is continual supervision of the children.

~~((4)(a) If a bleach solution is used to sanitize surfaces, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces and be used strictly according to manufacturer's label instructions including, but~~

~~not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.))~~

**WSR 12-10-076**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 12-73—Filed May 1, 2012, 4:53 p.m., effective May 1, 2012, 4:53 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
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: The department is in the process of adopting permanent rules that are necessary to implement the personal-use fishing plans agreed to with resource managers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans.

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: May 1, 2012.

Philip Anderson  
Director

**NEW SECTION**

**WAC 232-28-61900G Freshwater exceptions to statewide rules—2012 North of Falcon eastern Washington rivers and Columbia River.** Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**1. Columbia River:**

North Jetty: Barbed hooks allowed for salmon 7 days per week when Marine Area 1 or Buoy 10 are open for salmon.

a. From the Highway 395 Bridge at Pasco to Priest Rapids Dam, except Ringold Spring Creek (Hatchery Creek): Salmon: Open June 16 through July 31. Daily limit 6 fish of which no more than 2 may be adult hatchery Chinook. Release wild Chinook.

b. Ringold Area Bank Fishery waters (from WDFW markers 1/4 mile downstream from the Ringold wasteway outlet, to WDFW markers 1/2 mile upstream from Spring Creek): Trout and salmon fishing closed immediately through June 15. From June 16 until further notice, same rules as the adjoining Columbia River.

c. From Priest Rapids Dam to Wells Dam: All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing from July 1 through August 31. Salmon: Open July 1 until further notice. Daily limit 6 Chinook and 6 sockeye only. Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

d. From Wells Dam to Highway 173 Bridge at Brewster: All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing from July 16 through August 31. Salmon: Open July 16 until further notice. Daily limit 6 Chinook and 6 sockeye only. Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

e. From Highway 173 Bridge at Brewster to Chief Joseph Dam: All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing from July 1 through August 31. Salmon: Open July 1 until further notice. Daily limit 6 Chinook and 6 sockeye only. Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

**2. Cowlitz River (Lewis County):**

**From Lexington Bridge Drive in Kelso upstream to the Highway 505 Bridge in Toledo:**

All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

**3. Klickitat River (Klickitat County):**

From mouth to Fisher Hill Bridge: When anti-snagging rule is in effect, only fish hooked inside the mouth may be retained.

**4. Lewis River (Clark County):**

From railroad bridge near Kuhns Road upstream to mouth of East Fork Lewis: Anglers in possession of a valid two pole endorsement may use up to two lines while fishing.

**5. Lewis River, North Fork (Clark/Skamania counties):**

From mouth to Johnson Creek: Anglers in possession of a valid two pole endorsement may use up to two lines while fishing.

**6. Little White Salmon River (Skamania County):**

Drano Lake (waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery): All Species: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing from May 12 through June 30.

(a) **White Salmon River (Klickitat/Skamania counties): From county road bridge below powerhouse to Northwestern Lake Road Bridge:** Closed waters.

(b) **White Salmon River (Klickitat/Skamania counties): From Northwestern Lake Road Bridge to 400 feet below Big Brother's Falls at River Mile 16:** Closed waters: from Big Brother's Falls downstream 400 feet. All game fish: Effective first Saturday in June, catch and release except up to 2 hatchery steelhead may be retained. Selective gear rules in effect.

**7. Okanogan River (Okanogan County): Salmon: Open July until further notice. Daily limit 6 Chinook and 6 sockeye only.** Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

**8. Similkameen River (Okanogan County):**

**From the mouth to Enloe Dam:** Salmon: Open July 1 until further notice. Daily limit 6 Chinook and 6 sockeye only. Of the 6 Chinook, no more than 3 may be adult Chinook, and of these 3 adult Chinook, only 1 may be a wild adult Chinook.

**9. Wind River (Skamania County):**

**From mouth to 400 feet below Shipherd Falls:** Salmon and Steelhead: Open immediately through July 31. Fishing for trout (except hatchery steelhead) is closed. Anglers in possession of a valid two pole endorsement may use up to two lines while fishing immediately through June 30.

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: This filing replaces and supersedes CR-103E filed as WSR 12-03-049 on January 11, 2012.

The initial public notice (CR-101) for permanent rule making will be filed by May 23, 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 1, Amended 5, 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 1, Amended 5, Repealed 0.

Date Adopted: May 1, 2012.

Katherine I. Vasquez  
Rules Coordinator

**WSR 12-10-095**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Financial Services Administration)

[Filed May 2, 2012, 11:12 a.m., effective May 2, 2012, 11:12 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending sections of chapter 388-06 WAC and adding a new section to implement Initiative 1163, passed by the voters on November 8, 2011, and ESHB 2314, signed into law on March 29, 2012. Initiative 1163 requires long-term care workers to have a national fingerprint-based background check beginning January 1, 2012. ESHB 2314 amends Initiative 1163 and chapters 74.39A, 18.20, and 43.20A RCW to require fingerprint-based background checks for long-term care workers beginning January 7, 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-06-0020, 388-06-0110, 388-06-0150, 388-06-0525, and 388-06-0540.

Statutory Authority for Adoption: RCW 43.43.832, 43.43.837, 43.20A.710, chapter 74.39A RCW.

Other Authority: Washington Initiative 1163 and ESHB 2314.

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

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter?** The following definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter:

**"Authorized"** or **"authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

**"CA"** means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

**"Certification"** means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

**"Children"** and **"youth"** are used interchangeably in this chapter and refer to individuals who are under parental or department care including:

(1) Individuals under eighteen years old; or

(2) Foster children up to twenty-one years of age and enrolled in high school or a vocational school program; or

(3) Developmentally disabled individuals up to twenty-one years of age for whom there are no issues of child abuse and neglect; or

(4) JRA youth up to twenty-one years of age and who are under the jurisdiction of JRA or a youthful offender under the jurisdiction of the department of corrections who is placed in a JRA facility.

**"Civil adjudication proceeding"** is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 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.

**"Community residential service businesses"** include all division of developmental disabilities supported living providers with the exception of supported living providers who are also licensed as a boarding home or adult family home provider. Community residential service providers also include DDD companion homes, DDD alternative living and licensed residential homes for children.

**"DCFS"** means division of children and family services and is a division within children's administration that provides child welfare, child protective services, and support services to children in need of protection and their families.

**"DDD"** means the division of developmental disabilities, department of social and health services (DSHS).

**"DLR"** means the division of licensed resources that is a division within children's administration, the department of social and health services.

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

**"I"** and **"you"** refers to anyone who has unsupervised access to children or to persons with developmental disabilities in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

**"JRA"** means the juvenile rehabilitation administration, department of social and health services.

**"Licensor"** means an employee of DLR or of a child placing agency licensed or certified under chapter 74.15 RCW to approve and monitor licenses for homes or facilities that offer care to children. Licenses require that the homes and facilities meet the department's health and safety standards.

**"Individual provider"** as defined in RCW 74.39A.240 means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care pro-

gram, or to provide respite care or residential services and supports to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

**"Individuals with a developmental disability"** means individuals who meet eligibility requirements in Title 71A RCW. A developmental disability is any of the following: Intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition described in chapter 388-823 WAC; originates before the age of eighteen years; is expected to continue indefinitely; and constitutes a substantial limitation to the individual.

**"Long-term care worker"** has the same meaning as defined in RCW 74.39A.009.

**"Spousal abuse"** includes any crime of domestic violence as defined in RCW 10.99.020 when committed against a spouse, former spouse, person with whom the perpetrator has a child regardless of whether the parents have been married or lived together at any time, or an adult with whom the perpetrator is presently residing or has resided in the past.

**"Unsupervised"** means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the child or developmentally disabled individual or vulnerable adult to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

**"Unsupervised access"** means that an individual will or may be left alone with a child or vulnerable adult (individual with developmental disability) at any time for any length of time.

**"We"** refers to the department, including licensors and social workers.

**"WSP"** refers to the Washington state patrol.

**AMENDATORY SECTION** (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0110 Who must have background checks?** (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) ~~((Per RCW 74.39A.055, the department requires state and federal background checks on all long-term care workers for the elderly or persons with disabilities hired or contracted after January 1, 2012.~~

~~(a) This does not include long-term care workers qualified and contracted or hired on or before December 31, 2011. Parents are not exempt from the long-term care background check requirements))~~ As described in WAC 388-06-0115, the division of developmental disabilities requires background checks on all contracted providers, individual providers, employees of contracted providers, and any other individual who is qualified by DDD to have unsupervised access to individuals with developmental disabilities.

(3) Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks. For individual providers and home care agency providers refer to WAC 388-71-0500 through 388-71-05909. For adult family homes refer to chapter 388-76 WAC, adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, assisted living licensing rules.

(4) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

**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 388-06-0115 What are the division of developmental disabilities background check requirements?** (1) Per RCW 74.39A.056, long-term care workers undergoing a background check for initial hire or initial contract will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in WAC 388-06-0115 (a) and (b). Parents are not exempt from the long-term care background check requirements.

(a) Prior to January 1, 2016 community residential service businesses as defined above will be screened as follows:

(i) Individuals who have continuously resided in Washington state for the past three years will be screened through a state name and date of birth background check.

(ii) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.

(b) Beginning January 1, 2016 community residential service businesses as defined above will be screened as described in WAC 388-06-0115(1).

(2) The division of developmental disabilities requires rechecks for all DDD contracted providers and their employees at least every three years or more frequently if required by program rule. Rechecks will be conducted as follows:

(a) Individuals who have continuously resided in Washington state for the past three years will be screened through a state name and date of birth background check.

(b) Individuals who have lived outside of Washington state within the past three years will be screened through a

state name and date of birth check and a national fingerprint-based background check.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children or individuals with a developmental disability?**

(1) For children's administration these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children or individuals with a developmental disability that are processed by the children's administration after the effective date of this chapter.

(2) For the division of developmental disabilities these regulations apply to ~~((any of the following that may involve unsupervised access to children and individuals with a developmental disability:~~

~~((a)) initial contracts(~~(, licenses or certifications))~~) and renewals as required by the applicable DDD background check renewal schedule and program regulations(~~(, and~~~~

~~(b) Any contract, license or certification renewal when there was a lapse of one day or more following expiration))~~.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0150 What does the background check cover?** (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) Except as required in WAC 388-06-0150 (4)(b) and (5), children's administration and division of developmental disabilities will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three years.

(3) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:



(a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(5) The division of developmental disabilities requires fingerprint-based background checks (~~(for all long-term care workers as defined in RCW 74.39A.009(16) hired or contracted on or after January 1, 2012)~~) as described in WAC 388-06-0115. These background checks (~~(must)~~) include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

**WAC 388-06-0525 When are individuals eligible for the one hundred twenty-day provisional hire?** (1) Individuals are eligible for the one hundred twenty-day provisional hire immediately, except as provided under subsection (2) of this section and WAC 388-06-0540. The signed background check application and fingerprinting process must be completed as required by the applicable DSHS program.

(2) Long-term care workers as defined in chapter 74.39A RCW are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based background check, as long as provisional hiring is allowed by the applicable DSHS program rules and the long-term care worker is not disqualified as a result of the initial name and date of birth background check.

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available?** The one hundred twenty-day provisional hire is not available to an agency, entity, or hiring individual requesting:

(1) An initial license;  
 (2) An initial contract; (~~(or)~~)  
 (3) Approval as a family child day care home provider, foster parent or adoptive parent (see 42 U.S.C. Sec 671 (a)(20)); or

(4) Any other individual listed in the boarding home or adult family home license application, such as an adult family home entity representative or resident manager, or a boarding home administrator.