WSR 12-13-003
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Program)
[Filed June 6, 2012, 1:10 p.m., effective June 10, 2012]

Effective Date of Rule: June 10, 2012.

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

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

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 2E2SHB 1738, section 53.

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

Reasons for this Finding: 2E2SHB 1738, section 53(10) states that the authority "shall adopt any rules it deems necessary to implement this section" dealing with hearing rights. Further, in section 130, the bill states that "this act is necessary for the *immediate* preservation of the public peace, health, or safety of the state government and its existing public institution, and takes effect July 1, 2011.["] Delaying this adoption could jeopardize the agency's ability to provide general hearing rules and procedures that apply to the resolution of disputes between medical assistance clients and the various medical services programs established under chapter 74.09 RCW. This emergency rule is necessary to continue the current emergency rule adopted under WSR 12-05-037 while the permanent rule-making process is completed. This emergency rule differs from the current emergency rule in that the definition of review judge was revised. The agency filed a CR-101 Preproposal statement of inquiry under WSR 11-19-004 on September 7, 2011, has completed internal review, and is currently preparing to send an external review to interested stakeholders. The agency anticipates filing the CR-102 for public hearing on or before July 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 30, 2012.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-526 WAC

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

NEW SECTION

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

(1) This chapter:

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

"HCA" means the health care authority.

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

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

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

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

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

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

"Party" means:

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

(2) A person or entity:

(a) Named in the action;

(b) To whom the action is directed; or

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

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

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

Olympia

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

Seattle

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

Vancouver

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

Spokane

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

Yakima

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

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

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

NEW SECTION

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

Department of Social and Health Services Board of Appeals	
Location	Office Building 2 (OB-2) 2nd Floor 1115 Washington Street Olympia, Washington
Mailing address	P.O. Box 45803 Olympia, WA 98504-5803
Telephone	(360) 664-6100
Fax	(360) 664-6187
Toll free	1-877-351-0002
Internet web site	www.dshs.wa.gov/boa

NEW SECTION

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

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

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

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

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

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

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

NEW SECTION

WAC 388-526-0037 When must the office of administrative hearings reschedule a proceeding based on the

amount of notice required? Any party may request that the proceeding be rescheduled and the office of administrative hearings (OAH) must reschedule if:

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

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

NEW SECTION

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

NEW SECTION

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

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

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

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

NEW SECTION

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

NEW SECTION

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

(1) Personal service (hand delivery);

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

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

(4) Commercial delivery service; or

(5) Legal messenger service.

NEW SECTION

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

NEW SECTION

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

(1) Personal service is made;

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

(3) Fax produces proof of transmission;

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

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

NEW SECTION

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

(1) A sworn statement;

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

(3) An affidavit or certificate of mailing;

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

(5) Proof of fax transmission.

NEW SECTION

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

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

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

NEW SECTION

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

(a) Personal service (hand delivery);

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

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

(d) Commercial delivery service; or

(e) Legal messenger service.

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

NEW SECTION

WAC 388-526-0080 What are your options for resolving a dispute with the health care authority? (1) If you disagree with a decision or action of the health care

authority, or one of its authorized agents, you have several options for resolving your dispute, which may include the following:

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

(b) Prehearing meeting;

(c) Prehearing conference; and

(d) Hearing.

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

NEW SECTION

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

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

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

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

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

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

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

NEW SECTION

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

NEW SECTION

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

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

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

(3) Review the applicable law or program rule.

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

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

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

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

NEW SECTION

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

(2) Before your hearing is held:

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

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

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

NEW SECTION

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

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

NEW SECTION

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

NEW SECTION

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

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

"Intermediary interpreter" means an interpreter who:

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

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

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

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

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

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

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

NEW SECTION

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

(1) Be written in your primary language; or

(2) Include a statement in your primary language:

(a) Indicating the importance of the notice; and

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

NEW SECTION

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

(a) Has limited English proficiency; and

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

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

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

(a) A relative of any party;

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

(c) HCA authorized agents.

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

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

(b) Education, certification, and experience;

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

(d) Ability to be impartial.

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

(a) Use the interpretive mode that the parties, the hearing impaired person, the interpreter, and the administrative law judge (ALJ) consider the most accurate and effective;

(b) Interpret statements made by the parties and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may video tape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

NEW SECTION

WAC 388-526-0150 What requirements apply to hearing decisions involving limited English-speaking parties? (1) When an interpreter is used at a hearing, the administrative law judge must explain that the decision is written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost to you.

(2) Interpreters must provide a telephone number where they can be reached. This number must be attached to any decision or order mailed to the parties.

(3) The office of administrative hearings or the board of appeals must mail a copy of a decision or order to the interpreter for use in oral translation.

NEW SECTION

WAC 388-526-0155 Who represents you during the hearing process? (1) You may represent yourself or have anyone represent you, except health care authority (HCA) employees, HCA's authorized agents, and DSHS employees.

(2) Your representative may be a friend, relative, community advocate, attorney, or paralegal.

(3) You should inform the HCA hearing representative or the office of administrative hearings of your representative's name, address, and telephone number.

NEW SECTION

WAC 388-526-0157 How does a party appear? (1) If you are going to represent yourself, you should provide the administrative law judge (ALJ) and other parties with your name, address, and telephone number.

(2) If you are represented, your representative should provide the ALJ and other parties with the representative's name, address, and telephone number.

(3) The presiding officer may require your representative to file a written notice of appearance or to provide documentation that you have authorized the representative to appear on your behalf. In cases involving confidential information, your representative must file a legally sufficient signed written consent or release of information document.

(4) If your representative is an attorney admitted to practice in Washington state, your attorney must file a written notice of appearance, and must file a notice of withdrawal upon withdrawal of representation.

(5) If you or your representative put in a written notice of appearance, the ALJ should call the telephone number on the notice of appearance if you, or your representative, do not appear by calling in with a telephone number before a hearing (including a prehearing).

NEW SECTION

WAC 388-526-0160 If a health care authority employee, a health care authority's authorized agent, and DSHS employee cannot represent you, can they assist you during the hearing process? Although a health care authority (HCA) employee, HCA authorized agent, and DSHS employee cannot represent you during the hearing process, they may assist you by:

(1) Acting as a witness;

(2) Referring you to community legal resources;

(3) Helping you get nonconfidential information; or

(4) Informing you about or providing copies of the relevant laws or rules.

NEW SECTION

WAC 388-526-0165 What if you would like to be represented by an attorney but you cannot afford one? (1) Neither the health care authority (HCA), HCA's authorized agents, or the office of administrative hearings (OAH) will pay for an attorney for you.

(2) If you want an attorney to represent you and cannot afford one, community resources may be available to assist you. These legal services may be free or available at a reduced cost. HCA, HCA's authorized agent, or OAH can tell you who to contact for legal assistance.

(3) Information about legal assistance can also be found at www.oah.wa.gov.

NEW SECTION

WAC 388-526-0170 Who represents the health care authority during the hearing? (1) The health care authority (HCA) hearing representative as defined in WAC 388-526-0010 represents HCA during the hearing. The HCA hearing representative may or may not be an attorney.

(2) An administrative law judge (ALJ) is independent and does not represent HCA or any other party.

NEW SECTION

WAC 388-526-0175 What is a prehearing meeting? (1) A prehearing meeting is an informal meeting with a health care authority (HCA) hearing representative that may be held before any prehearing conference or hearing.

(2) An HCA hearing representative may contact you before the scheduled hearing to arrange a prehearing meeting. You may also contact the HCA hearing representative to request a prehearing meeting.

(3) A prehearing meeting is voluntary. You are not required to request one, and you are not required to participate in one.

(4) The prehearing meeting includes you and/or your representative, the HCA hearing representative, and any other party. An administrative law judge (ALJ) does not attend a prehearing meeting.

(5) The prehearing meeting gives the parties an opportunity to:

(a) Clarify issues;

(b) Exchange documents and witness statements;

(c) Resolve issues through agreement or withdrawal; and

(d) Ask questions about the hearing process and the laws and rules that apply.

(6) A prehearing meeting may be held or information exchanged:

(a) In person;

(b) By telephone conference call;

(c) Through correspondence; or

(d) Any combination of the above that is agreeable to the parties.

(7) If a prehearing conference is required by the program or rule, a prehearing meeting may not be an option available to you.

NEW SECTION

WAC 388-526-0180 What happens during a prehearing meeting? During a prehearing meeting:

(1) A health care authority (HCA) hearing representative:

(a) Explains the role of the HCA hearing representative in the hearing process;

(b) Explains how a hearing is conducted and the relevant laws and rules that apply;

(c) Explains your right to representation during the hearing;

(d) Responds to your questions about the hearing process;

(e) Identifies accommodation and safety issues;

(f) Distributes copies of the documents to be presented during the hearing;

(g) Provides, upon request, copies of relevant laws and rules;

(h) Identifies additional documents or evidence you may want or be required to present during the hearing;

(i) Tells you how to obtain documents from your file;

(j) Clarifies the issues; and

(k) Attempts to settle the dispute, if possible.

(2) You should explain your position and provide documents that relate to your case. You also have the right to consult legal resources.

(3) You and the HCA hearing representative may enter into written agreements or stipulations, including agreements that settle your dispute.

NEW SECTION

WAC 388-526-0185 What happens after a prehearing meeting? (1) If you and the health care authority (HCA) hearing representative resolve the dispute during the prehearing meeting and put it in writing or present the agreement to an administrative law judge (ALJ), your agreement may be legally enforceable.

(2) Any agreements or stipulations made at the prehearing meeting must be presented to an ALJ before or during the hearing, if you want the ALJ to consider the agreement.

(3) If all of your issues are not resolved in the prehearing meeting, you may request a prehearing conference before an ALJ or go to your scheduled hearing. The ALJ may also order a prehearing conference.

(4) You may withdraw your hearing request at any time if the HCA hearing representative agrees to some action that resolves your dispute, or for any other reason. If you withdraw your hearing request, the hearing is not held and the ALJ sends a written order of dismissal.

NEW SECTION

WAC 388-526-0190 What happens if you do not participate in a prehearing meeting? You are not required to participate in a prehearing meeting. If you do not participate, it does not affect your right to a hearing.

NEW SECTION

WAC 388-526-0195 What is a prehearing conference? (1) A prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to prepare for a hearing. The ALJ must record the prehearing conference using audio recording equipment (such as a digital recorder or tape recorder).

(2) An ALJ may conduct the prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties. Your attendance is mandatory.

(3) You may lose the right to participate during the hearing if you do not attend the prehearing conference.

NEW SECTION

WAC 388-526-0197 When is a prehearing conference scheduled? (1) The administrative law judge (ALJ) may require a prehearing conference. Any party may request a prehearing conference.

(2) The ALJ must grant the first request for a prehearing conference if it is received by the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(3) The ALJ may grant untimely or additional requests for prehearing conferences.

(4) If the parties do not agree to a continuance, the OAH and/or the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance.

(5) The OAH must schedule prehearing conferences for all cases which concern:

(a) The department's division of residential care services under Title XIX of the federal social security act; and

(b) Provider and vendor overpayment hearings.

NEW SECTION

WAC 388-526-0200 What happens during a prehearing conference? During a prehearing conference the parties and the administrative law judge may:

(1) Simplify or clarify the issues to be decided during the hearing;

(2) Agree to the date, time, and place of the hearing;

(3) Identify accommodation and safety issues;

(4) Agree to postpone the hearing;

(5) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(6) Agree to facts and documents to be entered during the hearing;

(7) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(8) Schedule additional prehearing conferences;

(9) Resolve the dispute;

(10) Consider granting a stay if authorized by law or program rule; or

(11) Determine any other procedural issues raised by the parties.

NEW SECTION

WAC 388-526-0205 What happens after a prehearing conference? (1) After the prehearing conference ends, the administrative law judge (ALJ) must enter a written prehearing order describing:

(a) The actions taken;

(b) Any changes to the documents;

(c) Any agreements reached; and

(d) Any ruling of the ALJ.

(2) The ALJ must send the prehearing order to the parties at least fourteen calendar days before the scheduled hearing, except a hearing may still occur as allowed under WAC 388-526-0280(5). The parties and the ALJ may agree to a shorter time period.

(3) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(4) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(5) The ALJ may take further appropriate actions to address other concerns.

NEW SECTION

WAC 388-526-0210 What happens if a party does not attend a prehearing conference? (1) All parties are required to attend a prehearing conference.

(2) If you do not attend, you may not be allowed to participate in the hearing. The administrative law judge may dismiss your hearing request or enter an order of default against you.

NEW SECTION

WAC 388-526-0215 What is the authority of the administrative law judge? (1) The administrative law judge (ALJ) must hear and decide the issues de novo (anew) based on what is presented during the hearing.

(2) As needed, the ALJ may:

(a) Determine the order for presenting evidence;

(b) Issue subpoenas or orders directing witnesses to appear or bring documents;

(c) Rule on objections, motions, and other procedural matters;

(d) Rule on an offer of proof made to admit evidence;

(e) Admit relevant evidence;

(f) Impartially question witnesses to develop the record;

(g) Call additional witnesses and request exhibits to complete the record;

(h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;

(i) Keep order during the hearing;

(j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;

(k) Permit others to attend, photograph, or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;

(l) Allow a party to waive rights given by chapters 34.05 RCW or 388-526 WAC, unless another law prevents it;

(m) Decide whether a party has a right to a hearing;

(n) Issue protective orders;

(o) Consider granting a stay if authorized by law or agency rule; and

(p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) The ALJ enters initial orders. Initial orders may become final orders pursuant to WAC 388-526-0525.

NEW SECTION

WAC 388-526-0216 Is the authority of the administrative law judge and the review judge limited? The authority of the administrative law judge and the review judge is limited to those powers conferred (granted) by statute or rule. The ALJ and the review judge do not have any inherent or common law powers.

NEW SECTION

WAC 388-526-0218 When do review judges conduct the hearing and enter final orders? (1) Review judges conduct the hearing and enter the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5). Any party dissatisfied with a decision or an order of dismissal of a review judge may request reconsideration from the review judge as provided by this chapter and WAC 388-96-904(12).

(2) The review judge enters final agency decisions on all cases in the form of a final order.

(3) Following a review judge's decision, you, but not the health care authority or any of its authorized agents, may file a petition for judicial review as provided by this chapter.

(4) A review judge has the same authority as an administrative law judge, as described in WAC 388-526-0215, when conducting a hearing.

NEW SECTION

WAC 388-526-0220 What rules and laws must an administrative law judge and review judge apply when conducting a hearing or making a decision? (1) Administrative law judges (ALJs) and review judges must first apply the applicable program rules adopted in the Washington Administrative Code (WAC).

(2) If no program rule applies, the ALJ or review judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules that were in effect on the date the agency notice was sent, unless otherwise required by other rule or law. If the health care authority (HCA) or HCA's authorized agents amends the notice, the ALJ and review judge must apply the rules that were in effect on the date the initial notice was sent, unless otherwise required by other rule or law.

(4) When applying program rules regarding the procedural rights and responsibilities of the parties, the ALJ and review judge must apply the rules that are in effect on the date the procedure is followed.

(5) Program rules determine the amount of time HCA or HCA's authorized agent has to process your application for services, benefits, or a license.

(6) The ALJ and review judge must apply the rules in this chapter beginning on the date each rule is effective.

NEW SECTION

WAC 388-526-0221 How is the index of significant decisions used? (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the index of significant decisions.

(2) The index of significant decisions is available to the public at www.dshs.wa.gov/boa. For information on how to obtain a copy of the index, see WAC 388-01-190.

(3) If a precedential published decision entered by the Court of Appeals or the Supreme Court reverses an indexed board of appeals final order, that order will be removed from the index of significant decisions.

NEW SECTION

WAC 388-526-0225 May an administrative law judge or review judge decide that a rule is invalid? (1) Neither an administrative law judge or a review judge may decide that a rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a rule is raised during the hearing, the ALJ or review judge may allow argument for court review.

NEW SECTION

WAC 388-526-0230 When is the administrative law judge assigned to the hearing? The office of administrative hearings (OAH) assigns an administrative law judge (ALJ) at least five business days before the hearing. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing. If requested by a party, the OAH must send the name of the assigned ALJ to the party by e-mail or in writing at least five business days before the party's scheduled hearing date.

NEW SECTION

WAC 388-526-0235 May a party request a different judge? A party may file a motion of prejudice against an administrative law judge (ALJ) under RCW 34.12.050. A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425.

NEW SECTION

WAC 388-526-0240 How does a party file a motion of prejudice? (1) A party may request a different administrative law judge (ALJ) by sending a written motion of prejudice to the office of administrative hearings (OAH) before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. A motion of prejudice must include an affidavit or statement that a party does not believe that the ALJ can hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include but are not limited to those:

(a) Granting or denying a request for a continuance; and

(b) Granting or denying a request for a prehearing conference.

(3) A party must send the written motion of prejudice to the chief ALJ at the OAH headquarters identified in WAC 388-526-0025(1) and must send a copy to the OAH field office where the ALJ is assigned.

(4) A party may make an oral motion of prejudice at the beginning of the hearing before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

(a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or

(b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

(5) The first request for a different ALJ is automatically granted. The chief ALJ or a designee grants or denies any later requests.

NEW SECTION

WAC 388-526-0245 May an administrative law judge or review judge be disqualified? (1) An administrative law judge (ALJ) or review judge may be disqualified for bias, prejudice, or conflict of interest, or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge.

(2) Ex parte contact means a written or oral communication with the ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(3) To ask to disqualify an ALJ or review judge, a party must send a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of possible bias, conflict of interest, or an ex parte contact.

(4) A party must send or deliver the petition to the ALJ or review judge assigned to the case. That ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

NEW SECTION

WAC 388-526-0250 What happens after you request a hearing, and when must the office of administrative hearings provide notice of the hearing and prehearing conferences? (1) The office of administrative hearings (OAH) must send a copy of your hearing request to the health care authority (HCA) or HCA's authorized agent who made the decision on HCA's behalf, unless OAH received your hearing request from HCA or HCA's authorized agent. The OAH should send it to HCA or HCA's authorized agent within four business days of the OAH receiving your request.

(2) The OAH must send a notice of hearing to all parties and their representatives at least fourteen calendar days before the hearing date.

(3) If the OAH schedules a prehearing conference, the OAH must send a notice of prehearing conference to the parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) The OAH and/or an administrative law judge (ALJ) may convert a scheduled hearing into a prehearing conference and provide less than seven business days notice of the prehearing conference; and

(b) The OAH may give less than seven business days notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 388-526-0280 (3)(b).

(4) The OAH and/or the ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(5) If the ALJ denies a continuance after a prehearing conference, the hearing may proceed on the scheduled hearing date, but the ALJ must still issue a written order regarding the denial of the continuance.

(6) You may ask for a prehearing meeting even after you have requested a hearing.

NEW SECTION

WAC 388-526-0255 What information must the office of administrative hearings include in the notice of hearing? (1) A notice of hearing is a written notice that must include:

(a) The names of all parties who receive the notice and, if known, the names and addresses of their representatives;

(b) The name, mailing address, and telephone number of the administrative law judge (ALJ), if known;

(c) The date, time, place, and nature of the hearing;

(d) The legal authority and jurisdiction for the hearing; and

(e) The date of the hearing request.

(2) The office of administrative hearings (OAH) also sends you information with your notice of hearing telling you the following:

(a) If you fail to attend or participate in a prehearing conference or a hearing, you may lose your right to a hearing. Then the ALJ may send:

(i) An order of default against you; or

(ii) An order dismissing the hearing.

(b) If you need a qualified interpreter because you or any of your witnesses are persons with limited English proficiency, OAH will provide an interpreter at no cost to you.

(c) If the hearing is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for yourself or your witnesses, including the need for an interpreter in a primary language or for sensory impairments.

(e) How to contact OAH if a party has a safety concern.

NEW SECTION

WAC 388-526-0260 May the health care authority or the health care authority's authorized agent amend a notice? (1) The administrative law judge (ALJ) must allow the health care authority (HCA) or HCA's authorized agent to amend (change) the notice of an action before or during the hearing to match the evidence and facts.

(2) HCA or HCA's authorized agent must put the change in writing and give a copy to the ALJ and all parties.

(3) The ALJ must offer to continue (postpone) the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier agency notice.

(4) If the ALJ grants a continuance, the office of administrative hearings must send a new hearing notice at least fourteen calendar days before the hearing date.

NEW SECTION

WAC 388-526-0265 May you amend your hearing request? (1) The administrative law judge (ALJ) may allow you to amend your hearing request before or during the hearing.

(2) The ALJ must offer to continue (postpone) the hearing to give the other parties more time to prepare or present evidence or argument if there is a significant change in the hearing request.

(3) If the ALJ grants a continuance, the office of administrative hearings must send a new hearing notice at least fourteen calendar days before the hearing date.

NEW SECTION

WAC 388-526-0270 Must you tell the health care authority hearing representative and the office of administrative hearings when your mailing address changes? (1) You must tell the health care authority (HCA) hearing representative and the office of administrative hearings (OAH), as soon as possible, when your mailing address changes.

(2) If you do not notify the HCA hearing representative and OAH of a change in your mailing address and they continue to send notices and other important papers to your last known mailing address, the administrative law judge (ALJ) may assume that you received the documents.

NEW SECTION

WAC 388-526-0275 What is a continuance? A continuance is a change in the date or time of a prehearing conference, hearing or the deadline for other action.

NEW SECTION

WAC 388-526-0280 Who may request a continuance? (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the administrative law judge (ALJ) to request a continuance, a party should contact the other parties, if possible, to find out if they will agree to a continuance. If you are unable to contact the parties, the office of administrative hearings (OAH) or the health care authority hearing representative must assist you in contacting them.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.

(a) If the parties agree to a continuance, the ALJ must grant it unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ must set a prehearing conference to decide whether there is good cause to grant or deny the continuance. The prehearing conference will be scheduled as required by WAC 388-526-0197 and 388-526-0250.

(4) If the ALJ grants a continuance, the OAH must send a new hearing notice at least fourteen calendar days before the new hearing date.

(5) If the ALJ denies the continuance, the ALJ will proceed with the hearing on the date the hearing is scheduled, but must still issue a written order regarding the denial of the continuance.

NEW SECTION

WAC 388-526-0285 What is an order of dismissal? (1) An order of dismissal is an order sent by the administrative law judge to end the hearing. The order is made because the party who requested the hearing withdrew the request, failed to appear, or refused to participate, resulting in a default.

(2) If your hearing is dismissed because you did not appear or refused to participate, the agency action stands.

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

NEW SECTION

WAC 388-526-0290 If your hearing is dismissed, may you request another hearing? (1) If the administrative law judge (ALJ) sends an order dismissing your hearing, you may ask that the ALJ vacate (set aside) the order of dismissal.

(2) If the order of dismissal is vacated, your hearing is reinstated, which means you get another opportunity to have a hearing on your initial request for hearing.

NEW SECTION

WAC 388-526-0295 Where do you send a request to vacate an order of dismissal? You must send your request to vacate an order of dismissal to the board of appeals (BOA) or the office of administrative hearings (OAH). You should specify in your request why the order of dismissal should be vacated. BOA forwards any request received to OAH to schedule a hearing. OAH sends you a notice of the hearing on the request to vacate the order of dismissal.

NEW SECTION

WAC 388-526-0300 What is the deadline for vacating an order of dismissal? (1) You must send your request to vacate an order of dismissal to the office of administrative hearings (OAH) or the board of appeals (BOA) within twenty-one calendar days after the date the order of dismissal was mailed to you. If no request is received within that deadline, the dismissal order becomes a final order.

(2) You may make a late request to vacate the order of dismissal for up to one year after it was mailed but you must show good cause according to WAC 388-526-0020 for the late request to be accepted and the dismissal to be vacated.

(3) If you ask to vacate more than one year after the order was mailed, the administrative law judge may vacate the order of dismissal if the health care authority hearing representative and any other party agrees to waive (excuse) the deadline.

NEW SECTION

WAC 388-526-0305 How does an administrative law judge vacate an order of dismissal? (1) If your request was received more than twenty-one days, but less than one year after the dismissal order was mailed, the administrative law judge (ALJ) first must decide if you have good cause according to WAC 388-526-0020.

(2) If your request was timely or you show good cause for missing the deadline, the ALJ will receive evidence and argument at a hearing from the parties on whether the order of dismissal should be vacated.

(3) The ALJ vacates an order of dismissal and reinstates the hearing if you show good cause or if the health care authority hearing representative agrees to waive the deadline. You will then be allowed to present your case about your original request for hearing, either at the same time or at a later date if a continuance is granted.

NEW SECTION

WAC 388-526-0310 May a party request a stay of the agency action? A party may request that an administrative law judge (ALJ) or review judge stay (stop) an agency action until there is a decision entered by the ALJ or review judge. An ALJ or review judge decides whether to grant the stay.

NEW SECTION

WAC 388-526-0315 May a party require witnesses to testify or provide documents? A party may require wit-

nesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

NEW SECTION

WAC 388-526-0320 Who may prepare a subpoena? (1) Administrative law judges (ALJs), the health care authority hearing representative, and attorneys for the parties may prepare subpoenas. If an attorney does not represent you, you may ask the ALJ to prepare a subpoena on your behalf. The ALJ may schedule a hearing to decide whether to issue a subpoena.

(2) An ALJ may deny a request for a subpoena. For example, an ALJ may deny a request for a subpoena when the ALJ determines that a witness has no actual knowledge regarding the facts or that the documents are not relevant.

NEW SECTION

WAC 388-526-0325 How is a subpoena served? (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

WAC 388-526-0330 May the administrative law judge quash a subpoena? (1) A party may request that an administrative law judge (ALJ) quash (set aside) or change the subpoena request at any time before the deadline given in the subpoena.

(2) An ALJ may set aside or change a subpoena if it is unreasonable.

(3) Witnesses with safety or accommodation concerns should contact the office of administrative hearings (OAH).

NEW SECTION

WAC 388-526-0335 Do you have to pay for a subpoena? There is no cost to prepare a subpoena, but you may have to pay for:

(1) Serving a subpoena;

(2) Complying with a subpoena; and

(3) Witness fees according to RCW 34.05.446(7).

NEW SECTION

WAC 388-526-0340 How is your hearing held? (1) Hearings may be held in person or by telephone conference.

(2) A telephone conference hearing is where all parties appear by telephone.

(3) An in-person hearing is where you appear face-to-face with the administrative law judge (ALJ) and the other parties appear either in person or by telephone.

(4) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(5) If a hearing is originally scheduled as an in-person hearing, you may request that the ALJ convert it to a telephone hearing. Once a telephone conference hearing begins, the ALJ may stop, reschedule, and convert the hearing to an in-person hearing if any party makes such a request.

NEW SECTION

WAC 388-526-0345 Is an administrative law judge present at your hearing? (1) If your hearing is scheduled as an in-person hearing, an administrative law judge (ALJ) is physically or visually present.

(2) If your hearing is scheduled as a telephone conference, an ALJ is present by telephone.

NEW SECTION

WAC 388-526-0350 Is your hearing recorded? The administrative law judge must record the entire hearing using audio recording equipment (such as a digital recorder or a tape recorder).

NEW SECTION

WAC 388-526-0355 Who may attend your hearing? (1) All parties and their representatives may attend the hearing.

(2) Witnesses may be excluded from the hearing if the administrative law judge (ALJ) finds good cause.

(3) The ALJ may also exclude other persons from all or part of the hearing.

NEW SECTION

WAC 388-526-0360 May a party convert how a hearing is held or how a witness appears at a hearing? (1) The parties have the right to request that:

(a) A hearing format be converted (changed) from an in-person hearing to a telephone conference or from a telephone conference to an in-person hearing; or

(b) A witness appear in person or by telephone conference. The office of administrative hearings (OAH) must advise you of the right to request a change in how a witness appears.

(2) A party must show a compelling reason to change the way a witness appears (in-person or by telephone conference). Some examples of compelling reasons are:

(a) A party does not speak or understand English well.

(b) A party wants to present a significant number of documents during the hearing.

(c) A party does not believe that one of the witnesses or another party is credible, and wants the administrative law judge (ALJ) to have the opportunity to see the testimony.

(d) A party has a disability or communication barrier that affects their ability to present their case.

(e) A party believes that the personal safety of someone involved in the hearing process is at risk.

(3) A compelling reason to convert the way a witness appears at a hearing can be overcome by a compelling reason not to convert how a witness appears for a hearing.

NEW SECTION

WAC 388-526-0365 How does a party convert how a hearing is held or how the witnesses or parties appear? (1) If a party wants to convert the hearing or change how their witnesses or other parties appear, the party must contact the office of administrative hearings (OAH) to request the change.

(2) The administrative law judge (ALJ) may schedule a prehearing conference to determine if the request should be granted.

(3) If the ALJ grants the request, the ALJ reschedules the hearing or changes how the witness or party appears.

(4) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

NEW SECTION

WAC 388-526-0370 How are documents submitted for a telephone conference? (1) When a hearing is conducted by telephone, an administrative law judge (ALJ) may order the parties to provide the hearing documents at least five days before the hearing, so all parties have an opportunity to view them during the hearing.

(2) The health care authority hearing representative may be able to help you copy and send your documents to the ALJ and any other parties.

NEW SECTION

WAC 388-526-0375 What happens at your hearing? At your hearing:

(1) The administrative law judge (ALJ):

(a) Explains your rights;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

(d) Explains that a decision is mailed after the hearing;

(e) Notifies the parties of appeal rights;

(f) May keep the record open for a time after the hearing if needed to receive more evidence or argument; and

(g) May take actions as authorized according to WAC 388-526-0215.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

NEW SECTION

WAC 388-526-0380 What is a group hearing? (1) A group hearing may be held when two or more parties request a hearing about similar issues.

(2) Hearings may be combined at the request of the parties or the administrative law judge.

(3) All parties participating in a group hearing may have their own representative.

NEW SECTION

WAC 388-526-0385 May a party withdraw from a group hearing? (1) A party may withdraw from a group hearing by asking the administrative law judge (ALJ) for a separate hearing.

(2) If a party asks to withdraw from a group hearing before the ALJ makes a discretionary ruling or the hearing begins, the ALJ must give the party a separate hearing.

(3) If a party later shows good cause, the ALJ may give the party a separate hearing at any time during the hearing process.

NEW SECTION

WAC 388-526-0387 How may you request that a hearing be consolidated or severed when multiple agencies are parties to the proceeding? The following requirements apply only to adjudicative proceedings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW seeks review of decisions made by more than one agency.

(1) When you file a single application for an adjudicative proceeding seeking review of decisions by more than one agency, this review shall be conducted initially in one adjudicative proceeding. The administrative law judge (ALJ) may sever the proceeding into multiple proceedings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Either party requests severance without another party's consent, and the ALJ finds there is good cause for severing the matter and that the proposed severance is not likely to prejudice the rights of an appellant who is a party to any of the severed proceedings.

(2) If there are multiple adjudicative proceedings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon his or her own motion, the ALJ may consolidate the proceedings if he or she finds that the consolidation is not likely to prejudice the rights of the appellant who is a party to any of the consolidated proceedings.

(3) If the ALJ grants the motion to sever the hearing into multiple proceedings or consolidate multiple proceedings

into a single proceeding, the ALJ will send out an order and a new notice of hearing to the appropriate parties in accordance with WAC 388-526-0250.

NEW SECTION

WAC 388-526-0390 What is evidence? (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the administrative law judge.

NEW SECTION

WAC 388-526-0395 When may the parties bring in evidence? (1) The parties may bring evidence to any prehearing meeting, prehearing conference, or hearing, or may send in evidence before these events.

(2) The administrative law judge (ALJ) may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

(a) They have good cause for missing the deadline; or

(b) That the other parties agree.

(3) If the ALJ gives the parties more time to submit evidence, the parties may send it in after the hearing. The ALJ may allow more time for the other parties to respond to the new evidence.

NEW SECTION

WAC 388-526-0400 What evidence may the parties present during the hearing? The parties may bring any documents and witnesses to the hearing to support their position. However, the following provisions apply:

(1) The other parties may object to the evidence and question the witnesses;

(2) The administrative law judge (ALJ) determines whether the evidence is admitted and what weight (importance) to give it;

(3) If the ALJ does not admit the evidence the parties may make an offer of proof to show why the ALJ should admit it;

(4) To make an offer of proof a party presents evidence and argument on the record to show why the ALJ should consider the evidence; and

(5) The offer of proof preserves the argument for appeal.

NEW SECTION

WAC 388-526-0405 What is a stipulation? (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

(2) If an administrative law judge (ALJ) accepts a stipulation, the ALJ must enter it into the record.

(3) A stipulation may be made before or during the hearing.

NEW SECTION

WAC 388-526-0410 After the parties agree to a stipulation, may they change or reject it? (1) A party may change or reject a stipulation after it has been made.

(2) To change or reject a stipulation, a party must show the administrative law judge that:

(a) The party did not intend to make the stipulation or was mistaken when making it; and

(b) Changing or rejecting the stipulation does not harm the other parties.

NEW SECTION

WAC 388-526-0415 What are proposed exhibits? Proposed exhibits are documents or other objects that a party wants the administrative law judge (ALJ) to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

NEW SECTION

WAC 388-526-0420 Do the parties mark and number their proposed exhibits? (1) The health care authority (HCA) hearing representatives must mark and number their proposed exhibits and provide copies to the other parties as far ahead of the hearing as possible.

(2) The administrative law judge (ALJ) may request that you mark and number your proposed exhibits before the hearing. You should bring enough copies of your proposed exhibits for all parties. If you do not bring enough copies, you must make your proposed exhibits available for copying.

(3) If you cannot afford to pay for copies of proposed exhibits, either the HCA hearing representative or the office of administrative hearings must make the copies for you.

(4) The ALJ may require proof that you are unable to pay.

NEW SECTION

WAC 388-526-0425 Who decides whether to admit proposed exhibits into the record? (1) The administrative law judge (ALJ) decides whether or not to admit a proposed exhibit into the record and also determines the weight (importance) of the evidence.

(2) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(3) The ALJ may also exclude proposed exhibits from the record.

(4) The ALJ must make rulings on the record to admit or exclude exhibits.

NEW SECTION

WAC 388-526-0430 What may a party do if they disagree with an exhibit? (1) A party may object to the authenticity or admissibility of any exhibit, or offer argument about how much weight the ALJ should give the exhibit.

(2) Even if a party agrees that a proposed exhibit is a true and authentic copy of a document, the agreement does not mean that a party agrees with:

(a) Everything in the exhibit or agrees that it should apply to the hearing;

(b) What the exhibit says; or

(c) How the administrative law judge should use the exhibit to make a decision.

NEW SECTION

WAC 388-526-0435 When should an administrative law judge receive proposed exhibits for a telephone hearing? (1) Parties should send their proposed exhibits to the administrative law judge (ALJ) and the other parties at least five days before the telephone hearing. In some cases, the ALJ may require that the parties send them earlier.

(2) Sending the proposed exhibits to the ALJ before the telephone hearing allows all parties to use them during the hearing.

(3) For a telephone hearing, the health care authority hearing representative may help you send copies of your proposed exhibits to the ALJ and the other parties if you cannot afford to do so.

NEW SECTION

WAC 388-526-0440 What is judicial notice? (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations.

(2) For example, an administrative law judge may take judicial notice of a calendar, a building code or a standard or practice.

NEW SECTION

WAC 388-526-0445 How does the administrative law judge respond to requests to take judicial notice? (1) The administrative law judge (ALJ) may consider and admit evidence by taking judicial notice.

(2) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(3) If judicial notice has been requested, or if the ALJ intends to take judicial notice, the ALJ must tell the parties before or during the hearing.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

WAC 388-526-0450 What is a witness? (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

NEW SECTION

WAC 388-526-0455 Who may be a witness? (1) A witness may be:

(a) You or the health care authority (HCA) hearing representative; or

(b) Anyone you, the administrative law judge (ALJ), or the HCA hearing representative asks to be a witness.

(2) The ALJ decides who may testify as a witness.

(3) An expert witness may not be a former HCA employee, a former HCA authorized agent, or a former employee of the department in the proceeding against HCA or the department if that employee was actively involved in the agency action while working for HCA or the department, unless the HCA hearing representative agrees.

NEW SECTION

WAC 388-526-0460 How do witnesses testify? All witnesses:

(1) Must affirm or take an oath to testify truthfully during the hearing.

(2) May testify in person or by telephone.

(3) May request interpreters from OAH at no cost to you.

(4) May be subpoenaed and ordered to appear according to WAC 388-526-0315.

NEW SECTION

WAC 388-526-0465 May the parties cross-examine a witness? (1) The parties have the right to cross-examine (question) each witness.

(2) If a party has a representative, only the representative, and not the party, may question the witness.

(3) The administrative law judge may also question witnesses.

NEW SECTION

WAC 388-526-0470 May witnesses refuse to answer questions? Witnesses may refuse to answer questions. However, if a witness refuses to answer, the administrative law judge may reject all of the related testimony of that witness.

NEW SECTION

WAC 388-526-0475 What evidence does an administrative law judge consider? (1) The administrative law judge (ALJ) may only consider admitted evidence to decide the case.

(2) Admission of evidence is based upon the reasonable person standard. This standard means evidence that a reasonable person would rely on in making a decision.

(3) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. The ALJ may only

base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.

(4) The ALJ may reject evidence, if it:

(a) Is not relevant;

(b) Repeats evidence already admitted; or

(c) Is from a privileged communication protected by law.

(5) The ALJ must reject evidence if required by law.

(6) The ALJ decides:

(a) What evidence is more credible if evidence conflicts; and

(b) The weight given to the evidence.

NEW SECTION

WAC 388-526-0480 What does burden of proof mean? (1) Burden of proof is a party's responsibility to:

(a) Provide evidence regarding disputed facts; and

(b) Persuade the administrative law judge (ALJ) that a position is correct.

(2) To persuade the ALJ, the party who has the burden of proof must provide the amount of evidence required by WAC 388-526-0485.

NEW SECTION

WAC 388-526-0485 What is the standard of proof? Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

NEW SECTION

WAC 388-526-0490 How is a position proven at hearing? The administrative law judge (ALJ) decides if a party has met the burden of proof. The ALJ writes a decision based on the evidence presented during the hearing and consistent with the law.

NEW SECTION

WAC 388-526-0495 What is equitable estoppel? (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent the agency from taking some action against you, such as collecting an overpayment. Equitable estoppel may not be used to require the agency to continue to provide something, such as benefits, or to require the agency to take action contrary to a statute.

(2) There are five elements of equitable estoppel. The standard of proof is clear and convincing evidence. You must prove all of the following:

(a) The agency made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by the agency. For example, the agency or one of its authorized agents gave you money based on your application, then later tells you that you received an overpayment and wants you to pay the money back based on the same information.

(b) You reasonably relied on the agency's original statement, action or failure to act. For example, you believed the agency acted correctly when you received money.

(c) You will be injured to your detriment if the agency is allowed to contradict the original statement, action or failure to act. For example, you did not seek nongovernmental assistance because you were receiving benefits from the agency, and you would have been eligible for these other benefits.

(d) Equitable estoppel is needed to prevent a manifest injustice. Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

(i) You cannot afford to repay the money to the agency;

(ii) You gave the agency timely and accurate information when required;

(iii) You did not know that the agency made a mistake;

(iv) You are free from fault; and

(v) The overpayment was caused solely by an agency mistake.

(e) The exercise of government functions is not impaired. For example, the use of equitable estoppel in your case will not result in circumstances that will impair agency functions.

(3) If the ALJ concludes that you have proven all of the elements of equitable estoppel in subsection (2) of this section with clear and convincing evidence, the agency is stopped or prevented from taking action or enforcing a claim against you.

NEW SECTION

WAC 388-526-0500 What may an administrative law judge do before the record is closed? Before the record is closed, the administrative law judge may:

(1) Set another hearing date;

(2) Enter orders to address limited issues if needed before writing and mailing a hearing decision to resolve all issues in the proceeding; or

(3) Give the parties more time to send in exhibits or written argument.

NEW SECTION

WAC 388-526-0505 When is the record closed? The record is closed:

(1) At the end of the hearing if the administrative law judge does not allow more time to send in evidence or argument; or

(2) After the deadline for sending in evidence or argument is over.

NEW SECTION

WAC 388-526-0510 What happens when the record is closed? No more evidence may be taken without good cause after the record is closed.

NEW SECTION

WAC 388-526-0512 What is included in the hearing record? (1) The administrative law judge must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing order;

(c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

NEW SECTION

WAC 388-526-0515 What happens after the record is closed? (1) After the record is closed, the administrative law judge (ALJ) must enter an initial or final order and send copies to the parties.

(2) The maximum time an ALJ has to send a decision is ninety calendar days after the record is closed, but many programs have earlier deadlines. Specific program rules may set the deadlines.

(3) The office of administrative hearings must send the official record of the proceedings to the board of appeals. The record must be complete when it is sent, and include all parts required by WAC 388-526-0512.

NEW SECTION

WAC 388-526-0520 What information must the administrative law judge include in the decision? The administrative law judge (ALJ) must include the following information in the decision:

(1) Identify the hearing decision as a health care authority case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the facts used to resolve the dispute based on the hearing record;

(4) Explain why evidence is credible when the facts or conduct of a witness is in question;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result and remedy ordered;

(9) Explain how to request changes in the decision and the deadlines for requesting them;

(10) State the date the decision becomes final according to WAC 388-526-0525; and

(11) Include any other information required by law or program rules.

NEW SECTION

WAC 388-526-0525 When do initial orders become final? If no one requests review of the initial order or if a review request is dismissed, the initial order is final twenty-one calendar days after it is mailed.

NEW SECTION

WAC 388-526-0530 What if a party disagrees with the administrative law judge's decision? (1) If a party disagrees with an administrative law judge's (ALJ) initial or final order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 388-526-0540 through 388-526-0555.

(2) If a party disagrees with an initial order and wants it changed, the party must request review by a review judge as provided in WAC 388-526-0560 through 388-526-0595. If a party wants to stay the agency action until review of the initial order is completed, the party must request a stay from a review judge.

(3) Final orders entered by ALJs may not be reviewed by a review judge.

(4) If a party disagrees with an ALJ's final order, the party may request reconsideration as provided in WAC 388-526-0605 through 388-526-0635. You may also petition for judicial review of the final order as stated in WAC 388-526-0640 through 388-526-0650. You do not need to file a request for reconsideration of the final order before petitioning for judicial review. The health care authority may not request judicial review of an ALJ's or review judge's final order.

NEW SECTION

WAC 388-526-0540 How are clerical errors in the administrative law judge's decision corrected? (1) A clerical error is a mistake that does not change the intent of the decision.

(2) The administrative law judge corrects clerical errors in hearing decisions by issuing a second decision referred to as a corrected decision or corrected order. Corrections may be made to initial orders and final orders.

(3) Some examples of clerical error are:

(a) Missing or incorrect words or numbers;

(b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or

(c) Math errors when adding the total of an overpayment.

NEW SECTION

WAC 388-526-0545 How does a party ask for a corrected administrative law judge decision? (1) A party may ask for a corrected administrative law judge (ALJ) decision by calling or writing the office of administrative hearings office that held the hearing.

(2) When asking for a corrected decision, please identify the clerical error you found.

NEW SECTION

WAC 388-526-0550 How much time do the parties have to ask for a corrected administrative law judge decision? (1) The parties must ask the administrative law judge (ALJ) for a corrected decision on or before the tenth calendar day after the order was mailed.

(2) If you ask the ALJ to correct a decision, the time period provided by this section for requesting a corrected decision of an initial order, and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline, if any, for a review judge to enter a final order.

NEW SECTION

WAC 388-526-0555 What happens when a party requests a corrected administrative law judge decision? (1) When a party requests a corrected initial or final order, the administrative law judge (ALJ) must either:

(a) Send all parties a corrected order; or

(b) Deny the request within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(3) If the ALJ denies a request for a corrected initial order and the party still wants the hearing decision changed, the party must request review by a review judge.

(4) Requesting an ALJ to correct the initial order does not automatically extend the deadline to request review of the initial order by a review judge. When a party needs more time to request review of an initial order, the party must ask for more time to request review as permitted by WAC 388-526-0580(2).

(5) If the ALJ denies a request for a corrected final order and you still want the hearing decision changed, you must request judicial review.

NEW SECTION

WAC 388-526-0560 What is review of an initial order by a review judge? (1) Review by a review judge is available to a party who disagrees with the administrative law judge's (ALJ) initial order.

(2) If a party wants the initial order changed, the party must request that a review judge review the initial order.

(3) If a request is made for a review judge to review an initial order, it does not mean there is another hearing conducted by a review judge.

(4) The review judge considers the request, the initial order, and the record, and may hear oral argument, before deciding if the initial order should be changed.

(5) Review judges may not review ALJ final orders.

NEW SECTION

WAC 388-526-0565 What evidence does the review judge consider in reviewing an initial order? (1) The review judge, in most cases, only considers evidence given at the original hearing before the administrative law judge.

(2) The review judge may allow the parties to make oral argument when reviewing initial orders.

NEW SECTION

WAC 388-526-0570 Who may request review of an initial order? (1) Any party may request a review judge to review the initial order.

(2) If more than one party requests review, each request must meet the deadlines in WAC 388-526-0580.

NEW SECTION

WAC 388-526-0575 What must a party include in the review request? A party must make the review request in writing and send it to the board of appeals. The party should identify the:

(1) Parts of the initial order with which the party disagrees; and

(2) Evidence supporting the party's position.

NEW SECTION

WAC 388-526-0580 What is the deadline for requesting review by a review judge? (1) The board of appeals (BOA) must receive the written review request on or before 5:00 p.m. on the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) If you ask a review judge to review an administrative law judge decision, the time period provided by this section for requesting review of an initial order, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

NEW SECTION

WAC 388-526-0585 Where does a party send the request for review by a review judge? (1) A party must send the request for review of the initial order to the board of appeals (BOA) at the address given in WAC 388-526-0030. A party should also send a copy of the review request to the other parties.

(2) After receiving a party's review request, BOA sends a copy to the other parties, their representatives, and the office of administrative hearings. The other parties and their representatives may respond as described in WAC 388-526-0590.

NEW SECTION

WAC 388-526-0590 How does the party that is not requesting review respond to the review request? (1) A party does not have to respond to the review request. A response is optional.

(2) If a party decides to respond, that party must send the response so that the board of appeals (BOA) receives it on or before the seventh business day after the date the other party's review request was mailed to the party by the BOA.

(3) The party should send a copy of the response to all other parties or their representatives.

(4) A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) If you ask for more time to respond, the time period provided by this section for responding to the review request, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order. A review judge may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

WAC 388-526-0595 What happens after the review response deadline? (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to review the initial order after the record is closed. To find out which judge is assigned, call the board of appeals.

(3) After the record is closed, the assigned review judge:

(a) Reviews the initial order; and

(b) Enters a final order that affirms, changes, dismisses or reverses the initial order; or

(c) Returns the case to the office of administrative hearings for further action.

NEW SECTION

WAC 388-526-0600 What is the authority of the review judge? (1) Review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the administrative law judge (ALJ). The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may return (remand) cases to the office of administrative hearings for further action.

(3) In cases where there is a consolidated hearing pursuant to WAC 388-526-0387, any party may request review of the initial order in accordance with the requirements contained in this chapter.

(4) A review judge conducts the hearing and enters the final order in cases covered by WAC 388-526-0218.

NEW SECTION

WAC 388-526-0605 What if a party does not agree with a final order entered by the office of administrative hearings or the board of appeals? (1) If a party does not agree with the final order and wants it reconsidered, the party must:

(a) Ask the administrative law judge (ALJ) to reconsider the decision, if the final order was entered by an ALJ; or

(b) Ask the review judge to reconsider the decision, if the final order was entered by a review judge.

(2) The final order or the reconsideration decision is the final agency decision. If you disagree with that decision, you must petition for judicial review to change it.

(3) You may ask the court to stay or stop the agency action after filing the petition for judicial review.

NEW SECTION

WAC 388-526-0610 What is reconsideration? (1) Reconsideration is:

(a) Asking an administrative law judge (ALJ) to reconsider a final order entered by the ALJ because the party believes the ALJ made a mistake; or

(b) Asking a review judge to reconsider a final order entered by a review judge because the party believes the review judge made a mistake.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before you request judicial review. However, you do not need to request reconsideration of a final order before you request judicial review.

NEW SECTION

WAC 388-526-0615 What must a party include in the reconsideration request? The party must make the request in writing and clearly state why the party wants the final order reconsidered.

NEW SECTION

WAC 388-526-0620 What is the deadline for requesting reconsideration? (1) If the office of administrative hearings (OAH) entered the final order, OAH must receive a written reconsideration request on or before the tenth calendar day after the final order was mailed.

(2) If the board of appeals (BOA) entered the final order, BOA must receive a written reconsideration request on or before the tenth calendar day after the final order was mailed.

(3) If a reconsideration request is received after the deadline, the final order will not be reconsidered and the deadline to ask for superior court review continues to run.

(4) OAH or BOA may extend its deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for the extension.

(5) If a party does not request reconsideration or ask for an extension within the deadline, the final order may not be reconsidered and it becomes the final agency decision.

NEW SECTION

WAC 388-526-0625 Where does a party send a reconsideration request? (1) A party must send a written reconsideration request to the office of administrative hear-

ings (OAH) if OAH entered the final order, or to the board of appeals (BOA) if BOA entered the final order.

(2) After receiving a reconsideration request, OAH or BOA sends a copy to the other parties and representatives and gives them time to respond.

NEW SECTION

WAC 388-526-0630 How does a party respond to a reconsideration request? (1) A party does not have to respond to a request. A response is optional.

(2) If a party responds, that party must send a response to the office of administrative hearings (OAH) if OAH entered the final order, or to the board of appeals (BOA) if BOA entered the final order, by or before the seventh business day after the date OAH or BOA mailed the request to the party.

(3) A party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, OAH or BOA may extend its deadline if the party gives a good reason within the deadline in subsection (2) of this section.

NEW SECTION

WAC 388-526-0635 What happens after a party requests reconsideration? (1) After the office of administrative hearings (OAH) or the board of appeals (BOA) receives a reconsideration request, an administrative law judge (ALJ) or review judge has twenty calendar days to send a reconsideration decision unless OAH or BOA sends notice allowing more time.

(2) After OAH or BOA receives a reconsideration request, the ALJ or review judge must either:

(a) Write a reconsideration decision; or

(b) Send all parties an order denying the request.

(3) If the ALJ or review judge does not send an order or notice granting more time within twenty days of receipt of the reconsideration request, the request is denied.

NEW SECTION

WAC 388-526-0640 What is judicial review? (1) Judicial review is the process of appealing a final order to a court.

(2) You may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. HCA may not request judicial review.

(3) You must consult RCW 34.05.510 to 34.05.598 for further details of the judicial review process.

NEW SECTION

WAC 388-526-0645 When must you ask for judicial review? (1) You must file your petition for judicial review with the superior court within thirty calendar days after the office of administrative hearings or the board of appeals mails its final order.

(2) Generally, you may file a petition for judicial review only after you have completed the administrative hearing process. However, you do not need to file a request for reconsideration of a final order before requesting judicial review.

NEW SECTION

WAC 388-526-0650 How do you serve your petition for judicial review? (1) You must file and serve the petition for judicial review of a final order within thirty days after the date it was mailed. You must file your petition for judicial review with the court. You must serve copies of your petition on health care authority (HCA), the office of the attorney general, and all other parties.

(2) To serve HCA, you must deliver a copy of the petition to the director of HCA or to the board of appeals (BOA). You may hand deliver the petition or send it by mail that gives proof of receipt. The physical location of the director is:

Director
Health Care Authority
626 8th Avenue SE
Olympia, WA 98501

The mailing address of the director is:

Director
Health Care Authority
P.O. Box 45502
Olympia, WA 98504-5502

The physical and mailing addresses for BOA are in WAC 388-526-0030.

(3) To serve the office of the attorney general and other parties, you may send a copy of the petition for judicial review by regular mail. You may send a petition to the address for the attorney of record to serve a party. You may serve the office of the attorney general by hand delivery to:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, Washington 98501

The mailing address of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-526-2610	Prehearing reviews for clients who request a fair hearing.

WSR 12-13-060
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 15, 2012, 1:33 p.m., effective June 16, 2012]

Effective Date of Rule: June 16, 2012.

Purpose: The text of the rules as WSR 12-05-074 has not changed. This filing extends the current language as the department is proceeding with filing the permanent rule for WAC 388-106-0210 as a public hearing was held on May 8, 2012. On July 1, 2012, the department anticipates filing an emergency rule for changes to WAC 388-106-0010.

This CR-103E supersedes WSR 12-05-074.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0020 and 388-106-0210.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 13, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-043, filed 10/27/11, effective 11/27/11)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet.)

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail

care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" means the client is functioning within typical developmental milestones. Proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of ((~~informal support~~)) assistance available for a task if ((~~the need~~)) status is coded partially met or shared benefit due to availability of other support. The department determines the amount of the assistance available using one of four categories:

(a) Less than one-fourth of the time;

(b) One-fourth to one-half of the time;

(c) Over one-half of the time to three-fourths of the time; or

(d) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

"Child" means an individual less than eighteen years of age.

"Chronic care management" means programs that provide care management and coordination activities for medical assistance clients receiving long-term care services and supports determined to be at risk for high medical costs.

"Health action plan" means an individual plan which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

"Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

"Department" means the state department of social and health services, aging and disability services administration or its designee.

"Designee" means area agency on aging.

"Developmental milestones" means a set of functional skills that most children achieve during a certain age range.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 388-500-0005.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Disability" is described under WAC 388-511-1105.

"Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older. Examples of informal supports include but are not limited to: family members, friends, neighbors, school, childcare, after school activities, adult day health, church or community programs.

"Institution" means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

"Medicaid" is defined under WAC 388-500-0005.

"Medically necessary" is defined under WAC 388-500-0005.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 388-500-0005.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"Shared benefit" means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

"SSI-related" is defined under WAC 388-475-0050.

"Status" means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; ((~~or~~))

(d) Shared benefit, which means:

(i) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

(e) Age appropriate, which means the client is functioning within typical developmental milestones. Other options under status may be chosen if a child is not within typical developmental milestones; or

(f) Client declines, which means you do not want assistance with the task.

"Supplemental Security Income (SSI)" means the federal program as described under WAC 388-500-0005.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"You/your" means the client.

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

WAC 388-106-0210 Am I eligible for MPC-funded services? You are eligible for MPC-funded services when the department assesses your ((~~needs~~)) functional ability and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC 388-500-0005. Categorically needy medical institutional programs described in chapter 388-513 WAC do not meet this criteria.

(2) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need for assistance with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self Performance, Status or Treatment Need is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: ■ Application of ointment or lotions; ■ Toenails trimmed; ■ Dry bandage changes; (■ = if you are over eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/Needs Need: coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (a) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

; or

(b) You have an unmet or partially met need for assistance or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance, Status or Treatment Need is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	((~~Limited Assistance~~)) Physical Help/part of bathing	One person physical assist
Dressing	Extensive Assistance	One person physical assist

	Self Performance, Status or Treatment Need is:	Support Provided is:
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Personal Hygiene	Extensive Assistance	One person physical assist
Body care which includes: ■ Application of ointment or lotions; ■ Toenails trimmed; ■ Dry bandage changes; (■ = if you are eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/Needs Need: coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.		

WSR 12-13-066
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed June 18, 2012, 10:50 a.m., effective June 18, 2012, 10:50 a.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply: WAC 458-20-19402 (Rule 19402) Single factor receipts apportionment—Generally, 458-20-19403 (Rule 19403) Single factor receipts apportionment—Royalties, and 458-20-19404 (Rule 19404) Financial institutions—Income apportionment.

There are no changes from the previous emergency rules filed January 13, 2012, under WSR 12-03-086.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Reasons for this Finding: An emergency adoption of these new rules is necessary because permanent rules cannot be adopted at this time.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: June 18, 2012.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19402 Single factor receipts apportionment—Generally. (1) **Introduction.**

(a) Section 105, chapter 23, Laws of 2010 1st sp. sess. establishes a new apportionment method for businesses engaged in apportionable activities and that have nexus with Washington. The new apportionment method explained in this rule only applies to business and occupation (B&O) tax liability incurred after May 31, 2010. This rule does not apply to the apportionment of income of financial institutions taxable under RCW 82.04.290, which is governed by WAC 458-20-19404, nor the receipt of royalty income from granting the right to use intangible property under WAC 458-20-19403.

(b) Taxpayers may also find helpful information in the following sections:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19403 Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment—Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for tax liability incurred prior to June 1, 2010.

(c) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances

(2) **Definitions.** The following definitions apply to this rule:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(i) Example 1. Corporation A received $2,000,000 in gross income from its world-wide apportionable activities, including $500,000 in world-wide bona fide initiation fees deductible under RCW 82.04.4282. Corporation A's apportionable income would be $1,500,000.

(b) "Apportionable activities" means only those activities subject to B&O tax under the following classifications:

(i) Service and other activities,

(ii) Royalties (see WAC 458-20-19403 for apportionment of royalties),

(iii) Travel agents and tour operators,

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(iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent,

(v) Stevedoring and associated activities,

(vi) Disposing of low-level waste,

(vii) Title insurance producers, title insurance agents, or surplus line brokers,

(viii) Public or nonprofit hospitals,

(ix) Real estate brokers,

(x) Research and development performed by nonprofit corporations or associations,

(xi) Inspecting, testing, labeling, and storing canned salmon owned by another person,

(xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW,

(xiii) Contests of chance,

(xiv) Horse races,

(xv) International investment management services,

(xvi) Room and domiciliary care to residents of a boarding home;

(xvii) Aerospace product development,

(xviii) Printing or publishing a newspaper (but only with respect to advertising income),

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income), and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xviii) of this subsection (2) if this special tax classification did not exist.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. The term includes personal income taxes if the gross income from apportionable activities is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

(e) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(f) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **Apportionment general:** Persons earning apportionable income subject to B&O tax and that are also taxable in another state are entitled to determine their taxable income for B&O

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tax purposes by using the apportionment method provided in this rule. Taxable income is determined by multiplying apportionable income from each apportionable activity by its receipts factor.

(4) **Receipts Factor.** The receipts factor is a fraction that applies to all apportionable income for each calendar year. Separate receipts factors must be calculated for each

apportionable activity taxed under a separate business and occupation tax classification.

(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the calendar year from engaging in an apportionable activity.

(b) The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year, less amounts that are attributed to states where the taxpayer is not taxable and at least some of the activity is performed in Washington.

(c) Example 2. XYZ Corp. is a Washington business, has no property or payroll outside of Washington, and performs all of its services inside this state. XYZ Corp. has gross income from apportionable activities that is attributed using the criteria listed in subsection (5) below as follows: Washington $500,000; Idaho $200,000; Oregon $100,000; and California $300,000. XYZ Corp. is subject to Oregon corporate income tax, but does not owe any California or Idaho business activities taxes. The $200,000 that would be attributed to Idaho is excluded from the denominator because XYZ Corp. performs the services in Washington, and it is not subject to actual Idaho business activities taxes and does not have substantial nexus with Idaho under Washington thresholds. Although California does not impose a business activities tax on XYZ Corp., XYZ Corp. does have substantial nexus with California using Washington thresholds (more than $250,000 in receipts). Therefore, the California attributed income is not excluded from the denominator. The Oregon receipts remain in the denominator because XYZ Corp. is subject to Oregon corporate income taxes. The receipts factor is 500,000/900,000 or 55.56%.

(d) Example 3. The same facts as Example 2 except all of XYZ's property and payroll are located in Oregon, and XYZ Corp. performs no activities in Washington related to the $200,000 attributed to Idaho. In this situation, the $200,000 is not excluded from the denominator. The receipts factor is 500,000/1,100,000 or 45.45%.

(5) **Attribution of income.** Income is attributed to states based on a cascading method. That is, each receipt is attributed to a state based on a series of rules. These rules are:

(a)(i) If a taxpayer can reasonably determine the amount of apportionable receipts related to the benefit of the services received in a state, that amount of apportionable receipts is attributable to that state. This may be shown by application of a reasonable method of proportionally assigning the benefit among states. The result determines the receipts attributed to each state. A taxpayer receives the benefit of a service in this state when:

(A) The service relates to real property that is located in this state;

(B) An apportionable service relates to tangible personal property that is located in this state at the time the service is received; or

(C) The service does not relate to real or tangible personal property, and:

(I) The service is provided to a person not engaged in business who is physically present in this state at the time the service is received; or

(II) The service is provided to a person engaged in business in this state, and the service relates to the person's business activities in this state.

(ii) Examples.

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(A) Example 4. Director serves on the board of directors of DEF, Inc. DEF, Inc. is commercially domiciled in State Z. DEF, Inc. is Director's customer. DEF is engaged in business in State Z, and the director's services relate to the management of DEF, Inc. Therefore, DEF, Inc. receives the benefit of Director's services in State Z.

(B) Example 5. ABC is headquartered outside of Washington and provides retail services to customers in Washington, Oregon, and Idaho. When those customers fail to pay ABC for its services, ABC contracts with Debt Collector located outside of Washington to collect the debt. ABC pays Debt Collector a percentage of the amount collected. ABC is engaged in business in Washington and the activities of Debt Collector relate to that business, therefore the benefit of the service is received by ABC in Washington when Debt Collector obtains payment from debtors located in Washington.

(C) Example 6. The same facts as Example 5, except Debt Collector is paid a fixed amount per month regardless of the total amount collected from debtors, and the debtors are located in Idaho and Washington. If Debt Collector can reasonably determine the proportion of the benefit received by ABC in each state, then that proportion of the fixed amount is the benefit received in each state. Depending on the circumstances, reasonable means to determine the proportion received in each state could be amounts recovered.

(b) If a taxpayer is unable to separately determine the benefit of the services in specific states under (a), and as a result the customer received the benefit of the service in multiple states, the apportionable receipts of the business is attributed to the state in which the benefit of the service was primarily received. Primarily means in this case more than 50%.

(i) Example 7. The same facts as Example 6, except Debt Collector cannot reasonably determine the portion of the benefit received in each state, Debt Collector will have to use the remaining rules in (c) through (g) of this subsection (5) to attribute the income from ABC.

(c) If the taxpayer is unable to attribute gross income of the business under (a) or (b) of this subsection (5), gross income of the business must be attributed to the state from which the customer ordered the service.

(d) If the taxpayer is unable to attribute gross income of the business under (a), (b), or (c) of this subsection (5), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(e) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), or (d) of this subsection (5), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(f) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), or (e) of this subsection (5), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (i) Shown in the taxpayer's business records

maintained in the regular course of business; or (ii) obtained during consummation of the sale or the negotiation of the contract for services, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) If the taxpayer is unable to attribute gross income of the business under (a), (b), (c), (d), (e) or (f) of this subsection (5), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(6) **Reporting methods.**

(a) Taxpayers required to use this rule's apportionment method may report their taxable income based on their apportionable income for the reporting period multiplied by the most recent receipts factor the taxpayer has.

(b) If a taxpayer does not calculate its taxable income using (a) of this subsection, the taxpayer must use actual current tax year information.

(c) Reconciliation. Regardless of how a taxpayer reports its taxable income under subsection (a) or (b) of this subsection, when the taxpayer has the information to determine the receipts factor for an entire calendar year, it must file a reconciliation and either obtain a refund or pay any additional tax due. The reconciliation must be filed on a form approved by the department. In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply to any additional tax that may be due.

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

NEW SECTION

WAC 458-20-19403 Single factor receipts apportionment—Royalties. (1) **Introduction.** Effective June 1, 2010, section 105, chapter 23, Laws of 2010 1st sp. sess. changed Washington's method of apportioning the gross income from royalties. This rule addresses how such gross income must be apportioned when the business receives royalty payments from both within and outside the state.

(a) This rule is limited to the apportionment of gross income from royalties. This rule does not apply to apportionment or allocation of income from any other business activity.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective June 1, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19404 Single factor receipts apportionment—Financial institutions. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(2) **Definitions for the purposes of this rule.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) "Apportionable activity" means those activities conducted by a person in the business of receiving gross income from royalties.

(b) "Apportionable income" means gross income of the business generated from engaging in apportionable activity, including income received from apportionable activity performed outside Washington if the income would be taxable under the business and occupation tax if received from activities in Washington less any allowable exemptions and deductions under chapter 82.04 RCW.

(c) "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state by a person. The term includes taxes measured in whole or in part on net income or gross income or receipts. In the case of sole proprietorships and pass-through entities, the term includes personal income taxes if the gross income from royalties is included in the gross income subject to the personal income tax. The term "business activities tax" does not include a sales tax, use tax, or similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not referred to as a gross receipts tax or a tax imposed on the privilege of doing business.

(d) "Customer" means a person who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

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(e) "Gross income from royalties" means compensation for the use of intangible property, including charges in the nature of royalties regardless of where the intangible property will be used. "Gross income from royalties" does not include compensation for any natural resources, the licensing of prewritten computer software to the end user, or the licensing of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

(f) "Intangible property" includes: copyrights, patents, licenses, franchises, trademarks, trade names and similar items.

(g) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(h) "Taxable in another state" means either:

(i) The taxpayer is actually subject to a business activities tax by another state on its income received from engaging in apportionable activity; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activity, but the other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(iii) "Not Taxable" with respect to a particular state means the taxpayer is not actually subject to a business activities tax by that state on its income received from engaging in apportionable activities and that state does not have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus thresholds described in WAC 458-20-19401.

(3) **How does a taxpayer apportion its gross income from royalties?** A taxpayer earning gross income from royalties generated on or after June 1, 2010, must apportion such income when the taxpayer is taxable in another state. Gross income is apportioned to Washington by multiplying apportionable income by the receipts factor. The resulting amount of taxable income is then multiplied by the applicable tax rate.

(4) **What is the receipts factor?** The "receipts factor" is a fraction with the following numerator and denominator:

(a) Numerator: is the total gross income from royalties attributable to Washington during the tax year. Generally, a tax year is the same as a calendar year. For the purposes of this rule, tax years will be referred to as calendar years.

(b) Denominator: is the total gross income from royalties attributable to everywhere in the world during the calendar year, less amounts that are attributed to states where the taxpayer is not taxable if at least some of the apportionable activity is performed in Washington.

(5) **How are royalty receipts attributed to Washington?** To compute the numerator of the receipts factor, gross income from royalties is attributable to states as follows:

(a) Place of use: where the customer used the taxpayer's intangible property. If a taxpayer can reasonably determine the amount of royalty receipts related to the use in a state, that amount of royalty receipts is attributable to that state. This may be shown by application of a reasonable method of proportionally assigning the use of the intangible property among states.

(b) If a taxpayer is unable to separately determine the use of the intangible property in specific states under (a), and as a result the customer used the intangible property in multiple states, the royalty receipts are attributed to the state in which the intangible property was primarily used. Primarily means in this case more than 50%.

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(c) Office of negotiation: if the taxpayer is unable to attribute gross income to a location under (a) or (b) of this subsection (5), then gross income must be attributed to the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(d) Billing state: if the taxpayer is unable to attribute gross income to a location under (a), (b), or (c) of this subsection (5), then gross income must be attributed to the state to which the billing statement or invoices are sent to the customer by the taxpayer.

(e) Payment state: if the taxpayer is unable to attribute gross income to a location under (a), (b), (c), or (d) of this subsection (5), then gross income must be attributed to the state from which the customer sends payment to taxpayer.

(f) Customer's address: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), or (e) of this subsection (5), then gross income must be attributed to the state where the customer is located as indicated by customer's address:

(i) As shown in the taxpayer's business records maintained in the regular course of business; or

(ii) Obtained during negotiation of the contract for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(g) Taxpayer's domicile: if the taxpayer is unable to attribute gross income under (a), (b), (c), (d), (e), or (f) of this subsection (5), then gross income must be attributed to the commercial domicile of the taxpayer.

(6) **Examples.** Examples included in this subsection identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(a) **Example 1:** Taxpayer has its domicile in California and runs a national restaurant franchising business. Taxpayer enters into a contract with Company A under which Taxpayer licenses the right to use its trademark to Company A's so that Company A can display that trademark on its restaurant, menus, marketing materials, etc. Company A has a single restaurant that is located in Washington. Company A pays Taxpayer $500,000 per calendar year for the right to use the trademark at its restaurant in Washington. Pursuant to the first sourcing rule, the intangibles (trademark) are used in Washington. Therefore, Taxpayer would attribute the $500,000 in receipts from Company A to Washington.

(b) **Example 2:** Same facts as Example 1 except Company A in a single contract receives the right to use Taxpayer's trademark in as many restaurants as it wants in Washington and Idaho and pays $500,000 for each restaurant when the restaurant opens and each calendar year thereafter. Company A opens two restaurants in Idaho and one in Washington. Taxpayer would attribute $500,000 it received from Company A to Washington and $1,000,000 to Idaho.

(c) **Example 3:** Same facts as Example 1 above, except that Company A now has many locations in Idaho but still only one in Washington. Further, Company A enters into a new contract with Taxpayer under which Company A must now pay $1,500,000 per calendar year for the exclusive and unlimited right to the use of the trademark in Idaho but only a single location in Washington. Because the intangible is used in more than one state, but is primarily used in Idaho, Taxpayer would attribute all receipts received from Company A, (i.e. $1,500,000) to Idaho pursuant to the second sourcing rule.

(7) **What data can be used for calculating the receipts factor?**

(a) Taxpayers required to use this rule's apportionment method may report their taxable income based on their apportionable income for the reporting period multiplied by the most recent receipts factor the taxpayer has.

(b) If a taxpayer does not calculate its taxable income using (a) of this subsection, the taxpayer must use actual current tax year information.

(c) Reconciliation. Regardless of how a taxpayer reports its taxable income under subsection (a) or (b) of this subsection, when the taxpayer has the information to determine the

receipts factor for an entire calendar year, it must file a reconciliation and either obtain a refund or pay any additional tax due. The reconciliation must be filed on a form approved by the department. In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments. If the reconciliation is completed prior to October 31st of the following year, no penalties will apply to any additional tax that may be due.

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

NEW SECTION

WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.

(a) Effective June 1, 2010, RCW 82.04.460 was amended to change Washington's method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus thresholds that are effective after May 31, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19403 Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the period January 1, 2006 through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property).

(2) **Apportionment and allocation.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must allocate and apportion its income taxable under RCW 82.04.290 as provided in this rule. Any other income from apportionable activities must be apportioned pursuant to WAC 458-20-19402 (Single factor receipts apportionment—Generally) or WAC 458-20-19403 (Single factor receipts apportionment—Royalties). "Apportionable income" means gross income taxable under RCW 82.04.290, including income taxable under RCW 82.04.290 attributed outside this state if the income would be taxable under RCW 82.04.290 if attributed to this state, less the exemptions and deductions allowable under chapter RCW 82.04. All gross income that is not apportioned must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the Federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods) for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the receipts factor to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection (2) apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) If the allocation and apportionment provisions of this rule do not fairly represent the extent of its business activity related to this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when

the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

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(c) "Commercial domicile" means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(d) "Credit card" means credit, travel or entertainment card.

(e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(f) "Department" means the department of revenue.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) Any corporation or other business entity chartered under Titles 30, 31, 32, or 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(i) "Gross income of the business," "gross income," or "income":

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, gains realized from trading in bonds or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. Provided, that for the purposes of this rule, gross income of the business is limited to income taxable under RCW 82.04.290; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of this subsection (3)(i) affiliated means the affiliated person and the financial institution are under common control. Common control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) "Income taxable under RCW 82.04.290" means the gross income of the business taxable under the service and other activities or international investment management services classifications.

(k) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. "Loan" includes participations, syndications, and leases treated as loans for federal income tax purposes. "Loan" does not include: futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.

(l) "Loan secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(m) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(n) "Participation" means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(o) "Person" has the meaning given in RCW 82.04.030.

(p) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(r) "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(s) "Taxable in another state" means either:

(i) The taxpayer is subject to business activities tax by another state on its income taxable under RCW 82.04.290; or

(ii) The taxpayer is not subject to a business activities tax by another state on its income taxable under RCW 82.04.290, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

For purposes of this subsection (3)(s), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a retail sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) "Taxable period" means the calendar year during which tax liability is incurred.

(4) **Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. Separate receipts factors must be determined for business and occupation tax under the service and other activities and the international investment management services classifications.

(b) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state. Interest and fees on loans secured by commercial aircraft that qualifies for the exemption from business and occupation tax under RCW 82.04.43391 are not included in either numerator or the denominator of the receipts factor.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(e) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(g) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts

factor pursuant to (e) of this subsection (4) and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(i) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection (4), the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (k)(i) of this subsection (4) that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(i)(A) and (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of this subsection (4)(k)(ii), the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection (4), the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a

regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection (4) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in (k)(ii)(A) or (B) of this subsection (4)), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection (4) by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection (4), it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010.

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

WSR 12-14-001
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-119—Filed June 20, 2012, 3:33 p.m., effective June 20, 2012, 3:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000H and 220-24-04000I; 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: Most of the quota has been taken, but a small portion of the 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 an in-season conference call as well as 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 2.

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

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

Date Adopted: June 20, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-24-04000I 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 through June 20, 2012, and then from June 22 through June 29, 2012.

(2) Landing and possession limit of 35 Chinook per boat per each entire open period for the entire catch areas 1, 2, 3 and 4 from June 22 through June 29, 2012.

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

(4) 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.

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

(6) 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.

(7) 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.

(8) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/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.

(9) The Mandatory Yelloweye Rockfish Conservation Area is defined as an area in Salmon Management and Catch Reporting 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.

(10) 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.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landings 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 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.

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:

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

The following section of the Washington Administrative Code is repealed effective July 1, 2012:

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

WSR 12-14-005
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-122—Filed June 21, 2012, 10:48 a.m., effective June 21, 2012, 10:48 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100S; and amending WAC 220-32-051.

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: Allows the sale of shad from experimental gear types and drift gill nets. Harvestable numbers of shad are available. Continues already adopted summer season targeting summer chinook and sockeye. Based on the preseason forecast and the *U.S. v. Oregon* Management Agreement, treaty fisheries are allocated 27,700 adult upriver summer chinook and 32,000 sockeye. The rules continue to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries in Zone 6 and downstream of Bonneville Dam consistent with tribal memorandums of understanding/memorandums of agreement. The rules continue to allow the sale of fish caught in Yakama Nation tributary fisheries, consistent with Yakama Nation regulations. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 14, June 13 and 20, 2012. Conforms state rules with

tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act (ESA). On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 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: June 21, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100T Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H, and in the Wind River, Klickitat River, Icicle River and Drano Lake and specific areas of SMCRA 1E, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: Immediately through 6:00 p.m. June 21, 2012
6:00 a.m. June 25 through 6:00 p.m. June 28, 2012

b. Gear: Gillnets.

c. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may retained for subsistence purposes only. Sales of fish caught during open gillnet periods are allowed after the end of the open period, as long as the fish were landed during the open period.

d. Sanctuaries: All sanctuaries for this gear type in effect, except Spring Creek.

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: Open until further notice.

b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

c. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only.

d. All Dam sanctuaries for these gear types are in effect.

3. Open Area: SMCRA 1F, 1G, 1H (Zone 6) outside of Boat Restricted Zones at Dams:

a. Season: June 21 through July 31. Experimental shad gear may not be fished during treaty Indian gill net seasons.

b. Gear: Experimental Shad drift gill nets (4 1/4" tangle net), Fish Wheels, Purse seines, beach seines.

c. Allowable Sales: Shad. Only shad may be kept and sold. All other fish must be immediately returned to the water unharmed.

4. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Open until further notice.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

5. Open Area: Columbia River Tributaries upstream of Bonneville Dam

a. Season: Open until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, Wind River, Klickitat River, and Icicle Creek.

c. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch.

6. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100S	Columbia River salmon seasons above Bonneville Dam. (12-113)

WSR 12-14-006
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-123—Filed June 21, 2012, 10:57 a.m., effective June 25, 2012]

Effective Date of Rule: June 25, 2012.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100R; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Daily landing limits for sea cucumbers have been requested by the industry in an effort to conserve harvest quota and maximize market opportunities. Prohibition of all diving from licensed sea cucumber harvest vessels within two days of scheduled openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. 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: June 21, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07100S Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective June 25, 2012, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes, except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2, 3 and 5 on Monday and Tuesday of each week.

(2) The maximum cumulative landing of sea cucumbers for each two-day fishery opening period is 1,600 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 1,600 pound total to be harvested during any legal harvest date so long as the cumulative total for the two-day opening does not exceed the maximum.

(3) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100R	Sea cucumbers. (12-116)

WSR 12-14-010
EMERGENCY RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 21, 2012, 1:06 p.m., effective June 21, 2012, 1:06 p.m.]

Effective Date of Rule: Immediately.

Purpose: This chapter requires updating to:

- Limit the FTE that can be claimed for running start students to 1.20 FTE,
- Address the new June enrollment reporting requirement,
- Change the noon intermission to meal intermission to clarify this enrollment exclusion, and
- Add city and county jails to list of institutional educational entities.

Citation of Existing Rules Affected by this Order: Amending chapter 392-121 WAC.

Statutory Authority for Adoption: RCW 28A.150.290.

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: Chapter 392-121 WAC requires updating to align with current requirements in passed legislation.

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 8, 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 0, Repealed 0.

Date Adopted: June 21, 2012.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

WAC 392-121-107 Definition—Course of study. As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320. Such participation may be counted as a course of study only by the school district which the individual last attended.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district, certificated contact time pursuant to RCW 28A.225.010 (4)(a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Work based learning - Training provided pursuant to WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188;

(h) Enrollment in the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

AMENDATORY SECTION (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

WAC 392-121-119 Definition—Enrollment count dates. As used in this chapter, "enrollment count dates" means the fourth school day of September and the first school day of each of the ((~~eight~~)) nine subsequent months of the school year for all school districts including districts which commence basic education programs prior to September 1st. Exceptions are limited to the following:

(1) In school districts where not every school or grade follows the same calendar of school days, the calendar of an individual school or an entire grade level within a school may determine the monthly enrollment count date for that school or grade level within the school.

(2) The nine count dates for running start enrollment shall be the first school day of each month of October through June.

AMENDATORY SECTION (Amending WSR 08-04-009, filed 1/24/08, effective 2/24/08)

WAC 392-121-122 Definition—Full-time equivalent student. As used in this chapter, "full-time equivalent student" means each enrolled student in the school district as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of ((~~noon~~)) meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as annual average hours for the purposes of compliance with this chapter.

(1) The minimum hours for each grade are as follows:

(a) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;

(b) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;

(c) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;

(d) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student equal to the student's hours of enrollment divided by the minimum hours for the student's grade level set forth in subsection (1) of this section.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

AMENDATORY SECTION (Amending WSR 09-01-173, filed 12/23/08, effective 1/23/09)

WAC 392-121-123 Nonstandard school year programs. A student participating in a program of education occurring during ((~~June, July, or August (~~)) the nonstandard school year((~~)~~)) on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through ((~~May~~)) June), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school or a running start program is not eligible for nonstandard school year funding.

(2) A district shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district may claim nonstandard school year FTE

based upon the student enrollment in the nonstandard school year school program.

AMENDATORY SECTION (Amending WSR 07-23-026, filed 11/9/07, effective 12/10/07)

WAC 392-121-124 Full-time equivalent enrollment for work based learning. For work based learning provided pursuant to WAC 392-410-315, a student's full-time equivalent shall be determined as follows:

(1) For cooperative work based learning experience, in accordance with WAC 392-410-315 (1)(g), divide the student's hours of work experience for the month by two hundred; for example: Forty hours of cooperative work experience equals two tenths of a full-time equivalent (40 ÷ 200 = 0.20). For instructional work based learning experience, in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent (20 ÷ 100 = 0.20). Enrollment exclusions in WAC 392-121-108 apply to instructional work based learning enrolled hours.

(2) Estimated or scheduled hours of cooperative work based learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative work based learning experience documented on the student's work records and maintained by the school district for audit purposes. ((~~Instructional and cooperative work based learning experience during June of the regular school year shall be included in the May enrollment count.~~))

(3) Work based learning provided as part of a state-approved vocational education program qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) No more than three hundred sixty hours of cooperative work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than one hundred eighty hours of instructional work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

(5) Funding may be claimed only for work based learning hours that occur after the work based learning plan, work based agreement, program orientation and new employee orientation, as defined in WAC 392-410-315, are completed.

AMENDATORY SECTION (Amending WSR 09-03-052, filed 1/13/09, effective 2/13/09)

WAC 392-121-133 Definition—Annual average full-time equivalent students. As used in this chapter, "annual average full-time equivalent students" means the sum of the following:

(1) The annual total of full-time equivalent students enrolled on the ((~~nine~~)) ten enrollment count dates of the school year and reported to the superintendent of public instruction pursuant to WAC 392-121-122 divided by ((~~nine~~)) ten;

(2) Annual hours of ancillary service to part-time, private school, and home-based students reported pursuant to WAC 392-121-107 divided by 720 for grades kindergarten through third and 900 for grades fourth through twelfth; and

(3) Annual hours of eligible enrollment in nonstandard school year programs pursuant to WAC 392-121-123 divided by 720 for grades kindergarten through third and 900 for grades fourth through twelfth.

AMENDATORY SECTION (Amending WSR 10-13-020, filed 6/4/10, effective 7/5/10)

WAC 392-121-136 Limitation on enrollment counts. Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session. Each district operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum ((~~2.0~~)) 1.8 FTE.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student. A student enrolled in running start during the regular school year may be claimed for up to a combined 1.2 full-time equivalent student. A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a 0.2 running start FTE.

Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a 1.0 full-time equivalent for running start and a maximum of a 1.0 full-time equivalent for the student's high school enrollment subject to the overall ((~~1.6~~)) combined FTE ((~~maximum~~)) limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time on Form SPI E-672 shall not be reported by a school district for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

(6) Districts providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim up to an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

WAC 392-121-187 Technical college direct-funded enrollment. Enrollment in a technical college pursuant to an interlocal agreement with a school district as provided in RCW 28B.50.533 may be counted as course of study generating state moneys payable directly to the technical college as provided in this section.

(1) The technical college shall submit a written request to the superintendent of public instruction and for each school district whose students are to be claimed by the college shall provide a copy of the interlocal agreement signed by the school district superintendent and the technical college president or authorized officials of the school district and college.

(2) The technical college shall report enrolled students monthly (((~~October~~)) September through June) to the superintendent of public instruction pursuant to this chapter and instructions provided by the superintendent. A separate report shall be submitted for each school district whose students are reported. Reports of students eligible for state basic education support shall show the total number of students served and total nonvocational and vocational FTE students on the monthly count date. Reports shall also show the name of each student, hours of enrollment per week on the monthly count date, and the nonvocational and vocational full-time equivalent reported for the student on the count date. Technical colleges claiming direct state handicapped funding under the interlocal agreement shall also report the number of enrolled handicapped students by handicapping category on the count dates of October through ((~~May~~)) June pursuant to WAC 392-122-160 and chapter 392-172A WAC.

(3) The technical college shall report monthly to each school district whose students are served pursuant to this section. The report shall include at a minimum the data reported to the superintendent of public instruction pursuant to subsection (2) of this section.

(4) The technical college shall report only students who:

(a) Were under twenty-one years of age at the beginning of the school year;

(b) Are enrolled tuition-free;

(c) Are enrolled in a school district with which the technical college has a signed interlocal agreement on file with the superintendent of public instruction pursuant to subsection (1) of this section;

(d) Are enrolled in the school district for the purpose of earning a high school diploma or certificate; and

(e) Have actually participated in instructional activity at the technical college during the current school year.

(5) Enrollments claimed for state basic education funding by the technical college:

(a) Shall be for courses for which the student is earning high school graduation credit through the school district or the technical college; and

(b) Shall not include:

(i) Enrollment which is claimed by the school district for state funding; or

(ii) Enrollment which generates state or federal moneys for higher education, adult education, or job training for the technical college.

(6) Full-time equivalent students reported by the technical college for state basic education funding shall be determined pursuant to WAC 392-121-106 through 392-121-183 except that the enrollment count dates shall be for the months of ((~~October~~)) September through June. If a student is enrolled in courses provided by the school district as well as courses provided by the technical college, the combined full-time equivalents reported by the school district and the technical college are limited by WAC 392-121-136.

(7) The superintendent of public instruction shall make quarterly payments to the technical college as follows:

(a) Basic education allocations shall be determined pursuant to chapter 392-121 WAC based on average enrollments reported by the technical college for each school district times the average allocation per full-time equivalent high school student of the school district: Provided, That allocations for students enrolled in school districts with no more than two high schools with enrollments of less than three hundred annual average full-time equivalent students shall be at the incremental rate generated by students in excess of sixty annual average full-time equivalent students. Allocations for nonvocational and vocational full-time equivalent enrollments shall be calculated separately.

(b) Handicapped allocations shall be determined pursuant to WAC 392-122-100 through 392-122-165 based on average handicapped enrollments and the school district's average allocation per handicapped student in each handicapping category.

(c) Quarterly payments shall provide the following percentages of the annual allocation:

December	30%
March	30%
June	20%
August	20%

WSR 12-14-011
EMERGENCY RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 21, 2012, 1:08 p.m., effective June 21, 2012, 1:08 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: WAC

392-169-005, requires joint agreement with the office of superintendent of public instruction, state board of community and technical colleges, and higher education coordinating board.

Purpose: This chapter requires updating to address the 1.20 FTE limitations for running start students and the provision for colleges to charge tuition when the 1.20 FTE is exceeded.

Citation of Existing Rules Affected by this Order: Amending WAC 392-169-060 and 392-169-115.

Statutory Authority for Adoption: RCW 28A.150.290.

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: WAC 392-169-060 and 392-169-115 require updating to align with current requirements in passed legislation.

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 2, 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 0, Repealed 0.

Date Adopted: June 21, 2012.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending Order 95-02, filed 4/14/95, effective 5/15/95)

WAC 392-169-060 Enrollment—Exception from tuition and fees. A running start student shall not be required by an institution of higher education to pay any tuition or other fee as a condition to the student's full participation in running start college or university course work and related activities, or as a condition to the award of credit therefor: Provided, That requiring a running start student to provide and pay for consumable supplies, textbooks, and other materials to be retained by the student does not constitute the assessment of tuition or a fee for purposes of this section: Provided further, That this limitation on the assessment of tuition and fees does not apply to a student's college and university enrollment ((~~above and~~)) beyond ((~~running start program enrollment limitations under this chapter (i.e., college and university enrollment in excess of one FTE and college and university summer enrollment may be conditioned upon the payment of regular tuition and fees~~)) the limitations which may be claimed for state basic education funding under running start in accordance with WAC 392-121-136.

AMENDATORY SECTION (Amending Order 95-02, filed 4/14/95, effective 5/15/95)

WAC 392-169-115 Finance—Limitations on enrollment counts. No running start student enrolled in one or more institutions of higher education reported under WAC 392-169-105 and 392-169-110 shall exceed one full-time equivalent running start student on any enrollment count date except for the month of January or more than one annual average full-time equivalent student in any school year. An exception is allowed for January when the change in high school semesters may result in students exceeding the FTE limitation until the high school begins a new term.

WSR 12-14-013
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Basic Health)

[Filed June 21, 2012, 2:11 p.m., effective June 23, 2012]

Effective Date of Rule: June 23, 2012.

Purpose: This filing corrects errors in the rule text of the current emergency rule adopted under WSR 12-06-004. WAC 182-22-320 (2)(c) clarifies that requests for continuation of benefits "should" be in writing rather than "must" be in writing and clarifies the cross references regarding which rules apply in WAC 182-22-320(2) as these rules are also under revision in an attempt to align agency processes.

Health care authority (HCA) intends to reform, align, and clarify the basic health processes as a result of the federal requirements contained in the section 1115 federal waiver and to align rules and processes as a portion of the implementation of chapter 15, Laws of 2011 (2E2SHB 1738, section 53), for the transition of the single state medicaid agency to the HCA.

Citation of Existing Rules Affected by this Order: Amending WAC 182-22-320.

Statutory Authority for Adoption: RCW 70.47.050.

Other Authority: 2E2SHB 1738, section 53.

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

Reasons for this Finding: On January 18, 2012, the HCA received confirmation from the Center for Medicare and Medicaid Services that HCA's grievance process is out of compliance with federal law. Without the immediate adoption of this rule, no viable hearing process exists to address members' grievances, thus endangering members' ability to access medical care and services. The lack of a grievance process has immobilized subsidized basic health operations. This emergency rule is necessary to continue the current

emergency rule adopted under WSR 12-06-004 while the permanent rule-making process is completed. The agency filed a CR-102 Proposed rule making under WSR 12-10-013 and held a public hearing on June 5, 2012. The agency is currently preparing to file the permanent rule adoption order.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 1, Repealed 0.

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

Date Adopted: June 21, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-22-320 How to appeal health care authority (HCA) decisions. (1) HCA decisions regarding the following may be appealed under this section:

(a) Eligibility;

(b) Premiums;

(c) Premium adjustments or penalties;

(d) Enrollment;

(e) Suspension;

(f) Disenrollment; or

(g) Selection of managed health care system (MHCS).

(2) ((~~To appeal an HCA decision, enrollees~~)) The hearing process described in chapter 388-526 or 182-526 WAC, whichever is in effect at the time of the appeal, applies to the **subsidized basic health program (BHP)** appeal process found in this subsection. Where conflict exists, the requirements in this chapter take precedence.

(a) To appeal an HCA decision, enrollees or applicants must send a written request for a hearing to the HCA. The written hearing request should be signed by the appealing party and must be received by the HCA within ninety calendar days of the date of the HCA notice. The request must be sent to:

Basic Health Appeals
P.O. Box 42690
Olympia, WA 98504-2690

(b) The hearing request should include:

(i) The name, mailing address, and BHP account number of the subscriber or applicant;

(ii) The name and address of the enrollee or applicant affected by the decision, if that person is not the subscriber on the account;

(iii) A copy of the HCA notice of the decision that is being appealed or, if the notice is not available, a statement of the decision being appealed;

(iv) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documentation; and

(v) If the appealing party is not an enrollee or the subscriber on the account, a signed agreement from the enrollee authorizing the appealing party to act on the enrollees behalf and authorizing the HCA to release otherwise confidential information to the appealing party's designated representative.

(c) HCA provides at least ten days advanced notice of any change in enrollment or premiums. An enrollee may continue receiving the same benefits under the same terms and conditions as received before the change, if a hearing is requested before the effective date of the agency action. This is called continuation of benefits. Requests for continuation of benefits should be in writing. To qualify for continuation of benefits, the appealing party must continue to pay all premiums when due as required by law and request the hearing in writing before the effective date of the agency's action.

(d) HCA reviews all appeals to determine whether the appeal can be resolved prior to sending the appeal to the office of administrative hearings (OAH) to schedule a hearing.

(i) If the parties can resolve the appeal to the satisfaction of the applicant or enrollee who requested the hearing and the applicant or enrollee chooses to withdraw the appeal before HCA sends the appeal to the OAH, the enrollee or applicant must submit a written request to withdraw the appeal to the HCA at:

Basic Health Appeals
P.O. Box 42690
Olympia, WA 98504-2690

(ii) If the parties cannot resolve the appeal or if the applicant or enrollee does not withdraw the appeal, HCA will forward the appeal to OAH so a hearing can be scheduled. The provisions of chapter 388-526 or 182-526 WAC, whichever is in effect at the time of the hearing, apply only if the appeal is sent to OAH for a hearing.

(3) This subsection applies only to Washington health (WH) program appeals. Enrollees or applicants must send a letter of appeal to the HCA. The letter of appeal should be signed by the appealing party and must be received by the HCA within thirty calendar days of the date of the decision.

(a) The letter of appeal should include:

(((~~(a)~~))) (i) The name, mailing address, and ((~~BHP or~~)) WHP account number of the subscriber or applicant;

(((~~(b)~~))) (ii) The name and address of the WH enrollee or applicant affected by the decision, if that person is not the subscriber on the account;

(((~~(c)~~))) (iii) A copy of the HCA notice of the decision that is being appealed or, if the notice is not available, a statement of the decision being appealed;

(((~~(d)~~))) (iv) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts

surrounding the decision and including supporting documentation; and

((~~(c)~~)) (v) If the appealing party is not an enrollee or the subscriber on the account, a signed agreement from the enrollee, authorizing the appealing party to act on his/her behalf.

((~~(3)~~)) (b) When an appeal is received, the HCA will send a notice to the appealing party, confirming that the appeal has been received and indicating when a decision can be expected. If the appealing party is not an enrollee on the affected account, the notice will also be sent to the subscriber.

((~~(4)~~)) (c) **Initial HCA decisions:** The HCA will conduct WH appeals according to RCW 34.05.485. The HCA appeals committee or a single presiding officer designated by the HCA will review and decide the appeal. The appealing party may request an opportunity to be present in person or by telephone to explain his or her view. If the appealing party does not request an opportunity to be present to explain, the HCA appeals committee or presiding officer will review and decide the appeal based on the information and documentation submitted.

((~~(5)~~)) (i) The HCA will give priority handling to appeals regarding a loss of coverage for an enrollee with an urgent medical need that could seriously jeopardize the enrollee's life, health, or ability to regain maximum function, provided:

((~~(a)~~)) (A) The appeal is received within ten business days of the effective date of the loss of coverage; and

((~~(b)~~)) (B) The enrollee has clearly stated in the letter of appeal or has otherwise notified the HCA that he or she has an urgent medical need.

((~~(6)~~)) (ii) For all other appeals, the HCA will send the appealing party written notice of the initial HCA decision within sixty days of receiving the letter of appeal. If the appealing party is not an enrollee on the affected account, the notice will also be sent to the subscriber. The notice will include the reasons for the initial decision and instructions on further appeal rights.

((~~(7)~~)) (d) **Review of initial HCA decision on WH appeal:** The initial HCA decision becomes the final agency decision unless the HCA receives a valid request for a review from the appealing party.

((~~(a)~~)) (i) To be a valid request for review, the appealing party's request may be either verbal or in writing, but must:

((~~(i)~~)) (A) Be received within thirty days of the date of the initial HCA decision.

((~~(ii)~~)) (B) Include a summary of the initial HCA decision being appealed and state why the appealing party believes the decision was incorrect; and

((~~(iii)~~)) (C) Provide any additional information or documentation that the appealing party would like considered in the review.

((~~(b)~~)) (ii) Requests for review of an initial HCA decision regarding a disenrollment for nonpayment will be reviewed by the office of administrative hearings through a hearing conducted under chapter 34.12 RCW and RCW 34.05.488 through 34.05.494.

((~~(c)~~)) (iii) All other requests for review of an initial HCA decision will be reviewed by a presiding officer designated by the HCA according to the requirements of RCW 34.05.488 through 34.05.494, with the following exception: These review decisions will be based on the record and documentation submitted, unless the presiding officer decides that an in-person or telephone hearing is needed. If an in-person or telephone hearing is needed, the presiding officer will decide whether to conduct the hearing as an informal hearing or formal adjudicative proceeding.

((~~(d)~~)) (iv) The presiding officer will issue a written notice of the review decision, giving reasons for the decision, within twenty-one days of receiving the request for review, unless the presiding officer finds that additional time is needed for the decision.

((~~(8)~~)) (e) Enrollees who appeal a disenrollment decision that was based on eligibility issues and not related to premium payments may remain enrolled during the appeal process, provided:

((~~(a)~~)) (i) The appeal was submitted according to the requirements of this section; and

((~~(b)~~)) (ii) The enrollee:

((~~(i)~~)) (A) Remains otherwise eligible;

((~~(ii)~~)) (B) Continues to make all premium payments when due; and

((~~(iii)~~)) (C) Has not demonstrated a danger or threat to the safety or property of the MHCS or health care authority or their staff, providers, patients or visitors.

((~~(9) Enrollees who appeal a disenrollment decision related to nonpayment of premium or any issue other than eligibility will remain disenrolled during the appeal process.~~

~~(10) If the appealing party disagrees with a review decision under subsection (6) of this section, the appealing party may request judicial review of the decision, as provided for in RCW 34.05.542. Request for judicial review must be filed with the court within thirty days of service of the final agency decision.~~)) (4) For both WH and the BHP, enrollees who appeal a disenrollment decision related to nonpayment of premium or any issue other than eligibility will remain disenrolled during the appeal process.

WSR 12-14-017
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-120—Filed June 21, 2012, 3:09 p.m., effective June 23, 2012]

Effective Date of Rule: June 23, 2012.

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 notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: A high percentage of Endangered Species Act listed spawning spring chinook are being

impacted by anglers that are trout fishing. There is evidence of very high prespawn mortality rates due to the associated handling. 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: June 21, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Kendall Slough, North Fork Nooksack River. Notwithstanding the provisions of WAC 232-28-619, effective June 23 through September 30, 2012, it is unlawful to fish in waters of Kendall Slough from the mouth of Kendall Creek (Kendall Creek Hatchery outlet) to markers at the mouth of Kendall Slough.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2012:

WAC 232-28-61900Q	Exceptions to statewide rules—Kendall Slough, North Fork Nooksack River.

WSR 12-14-018
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-121—Filed June 21, 2012, 3:11 p.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900R; 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: Several fish marking programs are currently being conducted by the Washington department of fish and wildlife (WDFW), the Yakama Nation, and the Colville Confederated Tribes that will study survival and migration patterns within the Columbia River system. Radio and/or acoustic tags will be placed inside chinook and sockeye salmon and will be identified by a colored external floy (anchor) tag below the dorsal fin. In addition, fish will also be identified with one or more round holes (approximately 1/4 inch in diameter) punched in the caudal (tail) fin. The success of these studies will be dependent upon the angler's ability to recognize these tags and to release the fish as quickly as possible. In addition, these fish are part of a study and have been anesthetized; the FDA requires a twenty-one day ban on consumption of these 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: June 21, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Columbia, Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 232-28-619, effective July 1 through October 15, 2012, in waters of the Columbia River from Priest Rapids Dam upstream to Chief Joseph Dam, including the Similkameen and Okanogan Rivers, release all chinook and sockeye with external floy tags and/or with one or more holes (round, approximately 1/4 inch diameter) punched in the caudal (tail) fin.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2012:

WAC 232-28-61900R	Exceptions to statewide rules—Columbia, Okanogan and Similkameen rivers.

WSR 12-14-035
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)
[Filed June 26, 2012, 12:39 p.m., effective June 29, 2012]

Effective Date of Rule: June 29, 2012.

Purpose: In meeting the requirements of E2SHB 2082, the agency is amending, repealing, and creating new rules to: (1) Eliminate references to General assistance—Unemployable and disability lifeline cash programs; and (2) establish the incapacity-based medical care services program.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-505-0110, 388-556-0500 [182-556-0500], 388-800-0020, 388-800-0025, 388-800-0030, 388-800-0035, 388-800-0048, 388-800-0110, 388-800-0115, 388-800-0130, 388-800-0135, 388-800-0140, 388-800-0145, 388-800-0150, 388-800-0155, 388-800-0160 and 388-800-0165; amending WAC 182-500-0070, 388-505-0270 and 182-538-063; and creating WAC 182-503-0520, 182-503-0532, 182-503-0555, 182-503-0560, 182-504-0030, 182-504-0040, 182-504-0100, 182-504-0125, 182-506-0020, 182-508-0001, 182-508-0005, 182-508-0010, 182-508-0015, 182-508-0020, 182-508-0030, 182-508-0035, 182-508-0040, 182-508-0050, 182-508-0060, 182-508-0070, 182-508-0080, 182-508-0090, 182-508-0100, 182-508-0110, 182-508-0120, 182-508-0130, 182-508-0150, 182-508-0160, 182-508-0220, 182-508-0230, 182-508-0305, 182-508-0310, 182-508-0315, 182-508-0320, 182-508-0375, 182-509-0005, 182-509-0015, 182-509-0025, 182-509-0030, 182-509-0035, 182-509-0045, 182-509-0055, 182-509-0065, 182-509-0080, 182-509-0085, 182-509-0095, 182-509-0100, 182-509-0110, 182-509-0135, 182-509-0155, 182-509-0165, 182-509-0175, 182-509-0200, 182-509-0205, and 182-509-0210.

Statutory Authority for Adoption: RCW 41.05.021, 74.09.035.

Other Authority: Chapter 36, Laws of 2011 (E2SHB 2082).

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

Reasons for this Finding: See Purpose above. This filing continues the emergency rule adopted under WSR 12-06-023 while the permanent rule process is completed. The permanent rule was proposed under WSR 11-23-164 and the public hearing was held on December 27, 2011. A supplemental proposal was filed under WSR 12-12-068 and a second public hearing is being held on July 10, 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 55, Amended 3, Repealed 17.

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 55, Amended 3, Repealed 17.

Date Adopted: June 26, 2012.

Kevin M. Sullivan
Rules Coordinator

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

WAC 182-500-0070 Medical assistance definitions—M. "Medicaid" is the federal aid Title XIX program of the Social Security Act under which medical care is provided to eligible persons.

"Medical assistance" for the purposes of chapters 388-500 through 388-561 WAC, means the various healthcare programs administered by the agency or the agency's designee that provide federally funded and/or state-funded healthcare benefits to eligible clients.

"Medical assistance administration (MAA)" is the former organization within the department of social and health services authorized to administer the federally funded and/or state-funded healthcare programs that are now administered by the agency, formerly the medicaid purchasing administration (MPA), of the health and recovery services administration (HRSA).

"Medical care services (MCS)" means the limited scope of care medical program financed by state funds ((~~and provided to disability lifeline and alcohol and drug addiction services clients~~)) for clients who meet the incapacity criteria defined in chapter 182-508 WAC or who are eligible for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program.

"Medical consultant" means a physician employed or contracted by the agency or the agency's designee.

"Medical facility" means a medical institution or clinic that provides healthcare services.

"Medical institution" See "institution" in WAC 388-500-0050.

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

"Medically needy (MN) or medically needy program (MNP)" is the state- and federally funded healthcare program available to specific groups of persons who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income and/or resources above the CN standard may also qualify for MN.

"Medicare" is the federal government health insurance program for certain aged or disabled persons under Titles II and XVIII of the Social Security Act. Medicare has four parts:

(1) **"Part A" -** Covers medicare inpatient hospital services, post-hospital skilled nursing facility care, home health services, and hospice care.

(2) **"Part B" -** The supplementary medical insurance benefit (SMIB) that covers medicare doctors' services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

(3) **"Part C" -** Covers medicare benefits for clients enrolled in a medicare advantage plan.

(4) **"Part D" -** The medicare prescription drug insurance benefit.

"Medicare assignment" means the process by which a provider agrees to provide services to a medicare beneficiary and accept medicare's payment for the services.

"Medicare cost-sharing" means out-of-pocket medical expenses related to services provided by medicare. For medical assistance clients who are enrolled in medicare, cost-sharing may include Part A and Part B premiums, co-insurance, deductibles, and copayments for medicare services. See chapter 388-517 WAC for more information.

Chapter 182-503 WAC

PERSONS ELIGIBLE FOR MEDICAL ASSISTANCE

NEW SECTION

WAC 182-503-0520 Residency requirements for medical care services (MCS). This section applies to medical care services (MCS).

(1) A resident is an individual who:

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

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

(c) Entered the state with a job commitment.

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

(3) An individual receiving MCS can temporarily be out of the state for more than one month. If so, the individual must provide the agency or the agency's designee with adequate information to demonstrate the intent to continue to reside in the state of Washington.

(4) An individual may not receive comparable benefits from another state for the MCS program.

(5) A former resident of the state can apply for MCS while living in another state if:

(a) The individual:

(i) Plans to return to this state;

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

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

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

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

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

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

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

(7) An individual is not a resident when the individual enters Washington state only for medical care. This individual is not eligible for any medical program. The only exception is described in subsection (8) of this section.

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

(9) An individual's residence is the state:

(a) Where the parent or legal guardian resides, if appointed, for an institutionalized individual twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one;

(b) Where an individual is residing if the individual becomes incapable of determining residential intent after reaching twenty-one years of age;

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

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

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

NEW SECTION

WAC 182-503-0532 Citizenship requirements for the medical care services (MCS) and ADATSA programs. (1) To receive medical care services (MCS) benefits, an individual must be ineligible for the temporary assistance for needy families (TANF) or the Supplemental Security Income (SSI) program for a reason other than failure to cooperate with program requirements, and belong to one of the following groups as defined in WAC 388-424-0001:

(a) A U.S. citizen;

(b) A U.S. national;

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

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

(e) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 182-503-0520.

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

(a) A U.S. citizen;

(b) A U.S. national;

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

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

(e) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 182-503-0520.

NEW SECTION

WAC 182-503-0555 Age requirement for MCS and ADATSA. To be eligible for medical care services (MCS) or the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program an individual must be:

(1) Eighteen years of age or older; or

(2) For MCS only, if under eighteen years of age, a member of a married couple:

(a) Residing together; or

(b) Residing apart solely because a spouse is:

(i) On a visit of ninety days or less;

(ii) In a public or private institution;

(iii) Receiving care in a hospital, long-term care facility, or chemical dependency treatment facility; or

(iv) On active duty in the uniformed military services of the United States.

NEW SECTION

WAC 182-503-0560 Impact of fleeing felon status on eligibility for medical care services (MCS). This section applies to medical care services (MCS).

(1) An individual is considered a **fleeing felon** if the individual is fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which the individual is fleeing.

(2) If the individual is a fleeing felon, or who is violating a condition of probation or parole as determined by an administrative body or court that has the authority to make this decision, is not eligible for MCS benefits.

Chapter 182-504 WAC

CERTIFICATION PERIODS AND CHANGE OF CIRCUMSTANCES

NEW SECTION

WAC 182-504-0030 Medical certification periods for recipients of medical care services (MCS). (1) The certification period for medical care services (MCS) begins:

(a) The date the agency or the agency's designee has enough information to make an eligibility decision; or

(b) No later than the forty-fifth day from the date the agency or the agency's designee received the application unless the applicant is confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a) on the forty-fifth day, in which case MCS coverage will start on the date of release from confinement.

(2) The certification period may or may not run concurrently with the incapacity review; and

(3) MCS coverage may end before the certification period ends when the incapacity review and financial review do not run concurrently.

NEW SECTION

WAC 182-504-0040 Requirements for a midcertification review for medical care services (MCS). (1) A **midcertification review (MCR)** is a form sent by the agency or the agency's designee to gather information about the MCS recipient's current circumstances. The answers provided are used to determine if the individual remains eligible for medical coverage.

(2) A recipient of MCS must complete a midcertification review unless the review period is six months or less.

(3) The review form is sent in the fifth month of the MCS certification or review period and must be completed by the tenth day of month six.

(4) If the individual is required to complete a midcertification review, it can be completed in one of the following ways:

(a) **Complete the form and return it to the DSHS office.** The MCR will be considered complete if all of the following steps are taken:

(i) The form is completed in full and any changes in circumstances for the household are indicated;

(ii) The form is signed and dated;

(iii) Proof is provided of any changes that are reported; and

(iv) The form is returned to DSHS by mail or in person along with any required proof by the due date on the review.

(b) **Complete the midcertification review over the phone.** The MCR will be considered complete over the phone if all of the following steps are taken:

(i) DSHS is contacted at the phone number on the review form and told about any changes in the household's circumstances;

(ii) Proof is provided of any changes that are reported, and DSHS may be able to verify some information over the phone; and

(iii) Required proof is returned to DSHS by the due date on the review.

(c) **Complete the application process for another program.** If the agency or the agency's designee approves an application for another program in the month the MCR is due, the application is used to complete the review when the same individual is head of household for the application and the midcertification review.

(5) If eligibility for medical coverage ends because of the information provided in the midcertification review, the change takes effect the next month even if this does not give ten days notice before the effective date of the termination.

(6) If the required midcertification review is not completed, medical coverage under the MCS program stops at the end of the month the review was due.

(7) **Late reviews.** If the midcertification review is completed after the last day of the month the review was due, the agency or the agency's designee will process the review as described below based on when the review is received:

(a) **Midcertification reviews that are completed by the last day of the month after the month the review was due:** The agency or the agency's designee determines the MCS recipient's eligibility for ongoing medical coverage. If the individual is determined to be eligible, coverage is reinstated based on the information in the review, unless there is a wait list due to an enrollment cap under WAC 182-508-0150;

(b) **Midcertification reviews completed after the last day of the month after the month the review was due:** The agency or the agency's designee treats the review as a request to send an application. In order to determine eligibility for ongoing MCS medical coverage, the application process as described in chapter 388-406 WAC must be completed.

NEW SECTION

WAC 182-504-0100 Changes of circumstances—Changes that must be reported by a recipient of medical care services (MCS). (1) An individual who receives medical care services (MCS) coverage must report the following changes:

(a) A change in address;

(b) A change in who lives in the home with the individual;

(c) When the individual's total gross monthly income goes over the eligibility standards for MCS and ADATSA as listed in WAC 182-508-0230;

(d) When liquid resources are more than four thousand dollars;

(e) When the individual has a change in employment. The individual must notify the agency or the agency's designee if they:

(i) Get a job or change employers;

(ii) Change from part-time to full-time employment or from full-time to part-time employment;

(iii) Have a change in hourly wage rate or salary; or

(iv) Stop working.

(2) Changes listed in subsection (1) of this section must be reported to the agency or the agency's designee by the tenth day of the month following the month the change happened.

(3) When the change is a change in income, the date a change happened is the date the individual first received the income, e.g., the date of receipt of the first paycheck for a new job or the date of a paycheck showing a change in the amount of the individual's wage or salary.

(4) Changes that are reported late may result in receiving medical benefits to which the individual is not entitled.

NEW SECTION

WAC 182-504-0125 Effect of changes on medical program eligibility. (1) An individual continues to be eligible for medical assistance until the agency or the agency's designee completes a review of the individual's case record and determines the individual is ineligible for medical assistance or is eligible for another medical program. This applies to all individuals who, during a certification period, become ineligible for, or are terminated from, or request termination from:

(a) A categorically needy (CN) medicaid program;

(b) A program included in apple health for kids; or

(c) Any of the following cash grants:

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

(ii) Supplemental Security Income (SSI); or

(iii) Aged, blind, disabled (ABD) cash assistance. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If CN medical coverage ends under one program and the individual meets all the eligibility requirements to be eligible under a different CN medical program, coverage is approved under the new program. If the individual's income exceeds the standard for CN medical coverage, the agency or the agency's designee considers eligibility under the medically needy (MN) program where appropriate.

(3) If CN medical coverage ends and the individual does not meet the eligibility requirements to be eligible under a different medical program, the redetermination process is complete and medical assistance is terminated giving advance and adequate notice with the following exception:

(a) An individual who claims to have a disability is referred to the division of disability determination services for a disability determination if that is the only basis under which the individual is potentially eligible for medical assistance. Pending the outcome of the disability determination, medical eligibility is considered under the SSI-related medical program described in chapter 388-475 WAC.

(b) An individual with countable income in excess of the SSI-related CN medical standard is considered for medically needy (MN) coverage or medically needy (MN) with spenddown pending the final outcome of the disability determination.

(4) An individual who becomes ineligible for refugee cash assistance is eligible for continued refugee medical assistance through the eight-month limit, as described in WAC 388-400-0035(4).

(5) An individual who receives a TANF cash grant or family medical is eligible for a medical extension, as described under WAC 388-523-0100, when the cash grant or family medical program is terminated as a result of:

(a) An increase in earned income; or

(b) Collection of child or spousal support.

(6) Changes in income during a certification period affects eligibility for all medical programs except:

(a) Pregnant women's CN medical programs;

(b) A program included in apple health for kids, except as specified in subsection (5) of this section; or

(c) The first six months of the medical extension benefits described under chapter 388-523 WAC.

(7) A child who receives premium-based coverage under a program included in apple health for kids described in WAC 388-505-0210 and chapter 388-542 WAC must be redetermined for a nonpremium-based coverage when the family reports:

(a) Family income has decreased to less than two hundred percent federal poverty level (FPL);

(b) The child becomes pregnant;

(c) A change in family size; or

(d) The child receives SSI.

(8) An individual who receives SSI-related CN medical coverage and reports a change in earned income which exceeds the substantial gainful activity (SGA) limit set by Social Security Administration no longer meets the definition of a disabled individual as described in WAC 388-475-0050, unless the individual continues to receive a Title 2 cash benefit, e.g., SSDI, DAC, or DWB. The agency or the agency's designee redetermines eligibility for such an individual under the health care for workers with disabilities (HWD) program

which waives the SGA income test. The HWD program is a premium-based program and the individual must approve the premium amount before the agency or the agency's designee can authorize ongoing CN medical benefits under this program.

Chapter 182-506 WAC

MEDICAL FINANCIAL RESPONSIBILITY

NEW SECTION

WAC 182-506-0020 Assistance units for medical care services (MCS). (1) An adult who is incapacitated as defined in WAC 182-508-0010 can be in a medical care services assistance unit (AU).

(2) For an incapacitated adult who is married and lives with their spouse, the agency or the agency's designee decides who to include in the AU based on who is incapacitated:

(a) If both spouses are incapacitated as defined in WAC 182-508-0010, then the agency or the agency's designee includes both spouses in the AU.

(b) If only one spouse is incapacitated, then the agency or the agency's designee includes only the incapacitated spouse in the AU. Some of the income of the spouse not in the AU is counted as income to the AU as determined according to WAC 388-450-0135.

Chapter 182-508 WAC

ADULT MEDICAL AND CHEMICAL DEPENDENCY

NEW SECTION

WAC 182-508-0001 Medical assistance coverage for adults not covered under family medical programs. (1) An adult who does not meet the institutional status requirements as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for categorically needy (CN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for CN coverage when the individual:

(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 388-503-0505; and

(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 388-478-0080; and

(c) Is sixty-five years of age or older, or meets the blind and/or disability criteria of the federal SSI program.

(2) An adult not meeting the conditions of subsection (1)(b) of this section is eligible for CN medical coverage if the individual:

(a) Is a current beneficiary of Title II of the Social Security Act (SSA) benefits who:

(i) Was a concurrent beneficiary of Title II and Supplemental Security Income (SSI) benefits;

(ii) Is ineligible for SSI benefits and/or state supplementary payments (SSP); and

(iii) Would be eligible for SSI benefits if certain cost-of-living (COLA) increases are deducted from the client's current Title II benefit amount:

(A) All Title II COLA increases under P.L. 94-566, section 503 received by the individual since their termination from SSI/SSP; and

(B) All Title II COLA increases received during the time period in (d)(iii)(A) of this subsection by the individual's spouse or other financially responsible family member living in the same household.

(b) Is an SSI beneficiary, no longer receiving a cash benefit due to employment, who meets the provisions of section 1619(b) of Title XVI of the SSA;

(c) Is a currently disabled individual receiving widow's or widower's benefits under section 202 (e) or (f) of the SSA if the disabled individual:

(i) Was entitled to a monthly insurance benefit under Title II of the SSA for December 1983;

(ii) Was entitled to and received a widow's or widower's benefit based on a disability under section 202 (e) or (f) of the SSA for January 1984;

(iii) Became ineligible for SSI/SSP in the first month in which the increase provided under section 134 of P.L. 98-21 was paid to the individual;

(iv) Has been continuously entitled to a widow's or widower's benefit under section 202 (e) or (f) of the SSA;

(v) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent COLA increases provided under section 215(i) of the SSA, were disregarded;

(vi) Is fifty through fifty-nine years of age; and

(vii) Filed an application for medicaid coverage before July 1, 1988.

(d) Was receiving, as of January 1, 1991, Title II disabled widow or widower benefits under section 202 (e) or (f) of the SSA if the individual:

(i) Is not eligible for the hospital insurance benefits under medicare Part A;

(ii) Received SSI/SSP payments in the month before receiving such Title II benefits;

(iii) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and

(iv) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under section 202 (e) or (f) of the SSA, and any subsequent COLA increases provided under section 215(i) of the act were disregarded.

(e) Is a disabled or blind individual receiving Title II Disabled Adult Childhood (DAC) benefits under section 202(d) of the SSA if the individual:

(i) Is at least eighteen years old;

(ii) Lost SSI/SSP benefits on or after July 1, 1988, due to receipt of or increase in DAC benefits; and

(iii) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under section 202(d) of the DAC and any subsequent COLA increases provided under section 215(i) of the SSA were disregarded.

(f) Is an individual who:

(i) In August 1972, received:

(A) Old age assistance (OAA);

(B) Aid to blind (AB);

(C) Aid to families with dependent children (AFDC); or

(D) Aid to the permanently and totally disabled (APTD); and

(ii) Was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or

(iii) Is eligible for OAA, AB, AFDC, SSI, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(3) An adult who does not meet the institutional status requirement as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for medically needy (MN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for MN coverage when the individual:

(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 388-503-0505; and

(b) Has MN countable income that does not exceed the income standards in WAC 388-478-0080, or meets the excess income spenddown requirements in WAC 388-519-0110; and

(c) Meets the countable resource standards in WAC 388-478-0070; and

(d) Is sixty-five years of age or older or meets the blind and/or disability criteria of the federal SSI program.

(4) MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 388-519-0100 for additional information.

(5) An adult may be eligible for the alien emergency medical program as described in WAC 388-438-0110.

(6) An adult is eligible for the aged, blind, disabled program when the individual:

(a) Meets the requirements of the aged, blind, disabled program in WAC 388-400-0060 and 388-478-0033; or

(b) Meets the SSI-related disability standards but cannot get the SSI cash grant due to immigration status or sponsor deeming issues. Adults may be eligible for aged, blind, disabled cash benefits and CN medical coverage due to different sponsor deeming requirements.

(7) An adult is eligible for the state-funded medical care services (MCS) program when the individual:

(a) Meets the requirements under WAC 182-508-0005; or

(b) Meets the aged, blind, or disabled requirements of WAC 388-400-0060 and is a qualified alien as defined in WAC 388-424-0001 who is subject to the five-year bar as described in WAC 388-424-0006(3); or a nonqualified alien as defined in WAC 388-424-0001; or

(c) Meets the requirements of the ADATSA program as described in WAC 182-508-0320.

(8) An adult receiving MCS who resides in a county designated as a mandatory managed care plan county must enroll in a plan, pursuant to WAC 182-538-063.

NEW SECTION

WAC 182-508-0005 Eligibility for medical care services. (1) An individual is eligible for medical care services (MCS) benefits to the extent of available funds if the individual:

(a) Is incapacitated as required under WAC 182-508-0010 through 182-508-0120;

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

(c) Is in financial need according to MCS' income and resource rules in chapter 182-509 WAC. The agency or the agency's designee determines who is in the individual's assistance unit according to WAC 182-506-0020;

(d) Meets the medical care services citizenship/alien status requirements under WAC 182-503-0532;

(e) Provides a Social Security number as required under WAC 388-476-0005;

(f) Resides in the state of Washington as required under WAC 182-503-0520;

(g) Reports changes of circumstances as required under WAC 182-504-0100; and

(h) Completes a midcertification review and provides proof of any changes as required under WAC 182-504-0040.

(2) An individual is not eligible for MCS benefits if the individual:

(a) Is eligible for temporary assistance for needy families (TANF) benefits.

(b) Refuses or fails to meet a TANF rule.

(c) Refuses to or fails to cooperate in obtaining federal aid assistance without good cause.

(d) Refuses or fails to participate in drug or alcohol treatment as required in WAC 182-508-0220.

(e) Is eligible for Supplemental Security Income (SSI) benefits.

(f) Is an ineligible spouse of an SSI recipient.

(g) Fails to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated the individual's benefits.

(h) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 182-503-0560.

(i) Is eligible for the aged, blind, disabled (ABD) program under WAC 388-400-0060.

(3) An individual who resides in a public institution and meets all other requirements may be eligible for MCS depending on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) An individual may be eligible for MCS if the individual is:

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

(ii) A patient in a public mental institution and is sixty-five years of age or older.

(b) An individual is not eligible for MCS when the individual is in the custody of or confined in a public institution such as a state penitentiary or county jail, including placement:

(i) In a work release program; or

(ii) Outside of the institution including home detention.

(4) If an enrollment cap exists under WAC 182-508-0150, a waiting list of persons may be established.

NEW SECTION

WAC 182-508-0010 Incapacity requirements for medical care services (MCS). Eligibility for the medical care services (MCS) program is based on an individual being incapacitated from working. For an individual to receive MCS program benefits, the agency or the agency's designee must determine the individual is incapacitated.

"Incapacitated" means that an individual cannot be gainfully employed as a result of a physical or mental impairment that is expected to continue for at least ninety days from the date the individual applies.

"Mental impairment" means a diagnosable mental disorder. The agency or the agency's designee excludes any diagnosis of or related to alcohol or drug abuse or addiction.

"Physical impairment" means a diagnosable physical illness.

(1) The agency or the agency's designee determines the individual is incapacitated if the individual is:

(a) Disabled based on Social Security Administration (SSA) disability criteria;

(b) Eligible for services from the division of developmental disabilities (DDD);

(c) Diagnosed as having mental retardation based on a full scale score of seventy or lower on the Wechsler adult intelligence scale (WAIS);

(d) At least sixty-four years and seven months old;

(e) Eligible for long-term care services from aging and disability services administration; or

(f) Approved through the progressive evaluation process (PEP).

(2) The agency or the agency's designee considers an individual to be incapacitated for ninety days after:

(a) The individual is released from inpatient treatment for a mental impairment if:

(i) The release from inpatient treatment was not against medical advice; and

(ii) There is no break in the individual's participation between inpatient and outpatient treatment of their mental impairment.

(b) The individual is released from a medical institution where the individual received long-term care services from the aging and disability services administration.

NEW SECTION

WAC 182-508-0015 Determining if an individual is incapacitated. When an individual applies for medical care services (MCS) program benefits, the individual must provide medical evidence to the agency or the agency's designee that shows the individual is unable to work.

If an individual is gainfully employed at the time of application for MCS, the agency or the agency's designee denies incapacity. "Gainful employment" means an individual is performing, in a regular and predictable manner, an activity usually done for pay or profit.

(1) The agency or the agency's designee doesn't consider work to be gainful employment when the individual is working:

(a) Under special conditions that go beyond the employer providing reasonable accommodation, such as in a sheltered workshop the agency or the agency's designee has approved; or

(b) Occasionally or part-time because the individual's impairment limits the hours the individual is able to work compared to unimpaired workers in the same job as verified by the individual's employer.

(2) The agency or the agency's designee determines if the individual is incapacitated when the individual:

(a) Applies for medical benefits;

(b) Becomes employed;

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

(d) The agency or the agency's designee receives new information that indicates the individual may be employable.

(3) Unless the individual meets the other incapacity criteria in WAC 182-508-0010, the agency or the agency's designee decides incapacity by applying the progressive evaluation process (PEP) to the medical evidence that the individual provides that meets WAC 182-508-0030. The PEP is the sequence of eight steps described in WAC 182-508-0035 through 182-508-0110.

(4) If the individual has a physical or mental impairment and the individual is impaired by alcohol or drug addiction and does not meet the other incapacity criteria in WAC 182-508-0010, the agency or the agency's designee decides if the individual is eligible for MCS by applying the PEP described in WAC 182-508-0035 through 182-508-0110. The individual isn't eligible for MCS benefits if the individual is incapacitated primarily because of alcoholism or drug addiction.

(5) In determining incapacity, the agency or the agency's designee considers only the individual's ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, seeing, hearing, communicating, and understanding and following instructions.

NEW SECTION

WAC 182-508-0020 Acceptable medical evidence. The agency or the agency's designee accepts medical evidence from these sources:

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

(a) A physician, which for medical care services (MCS) program purposes, includes:

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

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

(iii) Doctor of optometry (O.D.) to evaluate visual acuity impairments;

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

(v) Doctor of dental surgery (D.D.S.) or doctor of medical dentistry (D.M.D.) for tooth abscesses or temporomandibular joint (TMJ) disorders.

(b) An advanced registered nurse practitioner (ARNP) for physical impairments that are within the ARNP's area of certification to treat;

(c) The chief of medical administration of the Veterans' Administration, or their designee, as authorized in federal law; or

(d) A physician assistant when the report is cosigned by the supervising physician.

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

(a) A psychiatrist;

(b) A psychologist;

(c) An advanced registered nurse practitioner certified in psychiatric nursing; or

(d) At the agency's or the agency's designee's discretion:

(i) A person identified as a mental health professional within the regional support network mental health treatment system provided the person's training and qualifications at a minimum include having a master's degree and two years of mental health treatment experience; or

(ii) The physician who is currently treating the individual for a mental impairment.

(3) **"Supplemental medical evidence"** means information from a health professional not listed in subsection (1) or (2) of this section and who can provide supporting medical evidence for impairments identified by any of the professionals listed in subsection (1) or (2) of this section. The agency includes as supplemental medical evidence sources:

(a) A health professional who has conducted tests on or provides ongoing treatment to the individual, such as a physical therapist, chiropractor, nurse, physician assistant;

(b) Workers at state institutions and agencies who are not health professionals and are providing or have provided medical or health-related services to the individual; or

(c) Chemical dependency professionals (CDPs) when requesting information on the effects of alcohol or drug abuse.

NEW SECTION

WAC 182-508-0030 Required medical evidence. An individual must provide medical evidence that clearly shows if that individual has an impairment and how that impairment prevents the individual from being capable of gainful employment. Medical evidence must be in writing and be clear, objective and complete.

(1) Objective evidence for physical impairments means:

(a) Laboratory test results;

(b) Pathology reports;

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

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

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

(f) Other medical history and physical reports related to the individual's current impairments.

(2) Objective evidence for mental impairments means:

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

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

(c) Hospital, outpatient and other treatment records related to the individual's current impairments.

(d) Testing results, if any, including:

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

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

(3) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 182-508-0020 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed within twelve months of application;

(b) A clear description of how the impairment relates to the individual's ability to perform the work-related activities listed in WAC 182-508-0015(5);

(c) Documentation of how the impairment, or impairments, is currently limiting the individual's ability to work based on an examination performed within the ninety days of the date of application or the forty-five days before the month of incapacity review; and

(d) Facts in addition to objective evidence to support the medical provider's opinion that the individual is unable to be gainfully employed, such as proof of hospitalization.

(4) When making an incapacity decision, the agency or the agency's designee does not use the individual's report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.

(5) The agency or the agency's designee doesn't use symptoms related to substance abuse or a diagnosis of addiction or chemical dependency when determining incapacity when the only impairment supported by objective medical evidence is drug or alcohol addiction.

(6) The agency or the agency's designee considers diagnoses that are independent of addiction or chemical dependency when determining incapacity.

(7) The agency or the agency's designee determines the individual has a diagnosis that is independent of addiction or chemical dependency if the impairment will persist at least ninety days after the individual stops using drugs or alcohol.

(8) If the individual can't obtain medical evidence of an impairment that prevents the individual from working without cost to the individual and the individual meets the eligibility conditions other than incapacity in WAC 182-508-0005, the agency pays the costs to obtain objective evidence based on the agency's published payment limits and fee schedules.

(9) The agency or the agency's designee decides incapacity based solely on the objective information it receives. The agency or the agency's designee is not obligated to accept a

decision that the individual is incapacitated or unemployable made by another agency or person.

(10) The agency or the agency's designee can't use a statement from a medical professional to determine that the individual is incapacitated unless the statement is supported by objective medical evidence.

NEW SECTION

WAC 182-508-0035 How severity ratings of impairment are assigned. (1) **"Severity rating"** means a rating of the extent of the individual's incapacity, and how severely it impacts the individual's ability to perform the basic work activities. Severity ratings are assigned in Steps II through IV of the PEP. The following chart provides a description of levels of limitations on work activities and the severity ratings that would be assigned to each.

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

(2) The agency or the agency's designee uses the description of how the individual's condition impairs their ability to perform work activities given by the medical evidence provider to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews the individual's medical evidence and the ratings assigned to the individual's impairment when the individual's impairment has lasted, or is expected to last, twelve months or more.

(4) The contracted doctor reviews the individual's medical evidence, severity ratings, and functional assessment to determine whether:

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

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

(c) Severity rating and assessment of functional limitations assigned by the agency or the agency's designee are consistent with the medical evidence.

(5) If the medical evidence provider's description of the individual's impairments is not consistent with other objective evidence the agency or the agency's designee has obtained, the agency or the agency's designee takes the following action:

(a) If the individual's limitations are more severe than the impairments described, the agency or the agency's designee assigns a higher severity rating; or

(b) If the individual's limitations are less severe than the impairments described, the agency or the agency's designee assigns a lower severity rating; and

(c) The agency or the agency's designee gives clear and convincing reasons for rejecting the medical evidence provider's opinion.

NEW SECTION

WAC 182-508-0040 PEP Step I—Review of medical evidence required for eligibility determination. When the agency or the agency's designee receives the individual's medical evidence, the agency or the agency's designee reviews it to see if it is sufficient to decide whether the individual's circumstances meet incapacity requirements.

(1) The agency or the agency's designee requires a written medical report to determine incapacity. The report must:

(a) Contain sufficient information as described under WAC 182-508-0030;

(b) Be written by an authorized medical professional described in WAC 182-508-0020;

(c) Document the existence of a potentially incapacitating condition; and

(d) Indicate an impairment is expected to last ninety days or more from the application date.

(2) If the information received isn't clear, the agency or the agency's designee may require more information before the agency or the agency's designee decides the individual's ability to be gainfully employed. As examples, the agency or the agency's designee may require the individual to get more medical tests or be examined by a medical specialist.

(3) The agency or the agency's designee denies incapacity if:

(a) There is only one impairment and the severity rating is less than three;

(b) A reported impairment isn't expected to last ninety days (twelve weeks) or more from the date of application;

(c) The only impairment supported by objective medical evidence is drug or alcohol addiction; or

(d) The agency or the agency's designee doesn't have clear and objective medical evidence to approve incapacity.

NEW SECTION

WAC 182-508-0050 PEP Step II—Determining the severity of mental impairments. If the individual is diagnosed with a mental impairment by a professional described in WAC 182-508-0020, the agency or the agency's designee uses information from the provider to determine how the impairment limits work-related activities.

(1) The agency or the agency's designee reviews the following psychological evidence to determine the severity of the individual's mental impairment:

(a) Psychosocial and treatment history records;

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

(c) Results of psychological tests; and

(d) Symptoms observed by the examining practitioner that show how the individual's impairment affects their ability to perform basic work-related activities.

(2) The agency or the agency's designee excludes diagnosis and related symptoms of alcohol or substance abuse or addiction when the only impairment supported by objective medical evidence is drug or alcohol addiction.

(3) If the individual is diagnosed with mental retardation, the diagnosis must be based on the Wechsler adult intelligence scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	1
71 to 84	3
70 or lower	5

(4) If the individual is diagnosed with a mental impairment with physical causes, the agency or the agency's designee assigns a severity rating based on the most severe of the following four areas of impairment:

(a) Short term memory impairment;

(b) Perceptual or thinking disturbances;

(c) Disorientation to time and place; or

(d) Labile, shallow, or coarse affect.

(5) The agency or the agency's designee bases the severity of an impairment diagnosed as a mood, thought, memory, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

(a) Affect the individual's ability to perform basic work-related activities; and

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

(6) The agency or the agency's designee bases the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5)(a) of this section as follows:

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

(7) If the individual is diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, the agency or the agency's designee assigns a severity rating as follows:

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

(8) The agency or the agency's designee denies incapacity when the individual hasn't been diagnosed with a significant physical impairment and the individual's overall mental severity rating is one or two;

(9) The agency or the agency's designee approves incapacity when the individual has an overall mental severity rating of severe (5).

NEW SECTION

WAC 182-508-0060 PEP Step III—Determining the severity of physical impairments. The agency or the

agency's designee must decide if the individual's physical impairment is serious enough to limit the individual's ability to be gainfully employed. "Severity of a physical impairment" means the degree that an impairment restricts the individual from performing basic work-related activities (see WAC 182-508-0015). Severity ratings range from one to five, with five being the most severe. The agency or the agency's designee will assign severity ratings according to the table in WAC 182-508-0035.

(1) The agency or the agency's designee assigns to each physical impairment a severity rating that is supported by medical evidence.

(2) If the individual's physical impairment is rated two, and there is no mental impairment or a mental impairment that is rated one, the agency or the agency's designee denies incapacity.

(3) If the individual's physical impairment is consistent with a severity rating of five, the agency or the agency's designee approves incapacity.

NEW SECTION

WAC 182-508-0070 PEP Step IV—Determining the severity of multiple impairments. (1) If an individual has more than one impairment, the agency or the agency's designee decides the overall severity rating by deciding if the individual's impairments have a combined effect on their ability to be gainfully employed. Each diagnosis is grouped by affected organ or function into one of thirteen "body systems." The thirteen body systems consist of:

(a) Musculo-skeletal;

(b) Special senses and speech;

(c) Respiratory;

(d) Cardiovascular;

(e) Digestive;

(f) Genito-urinary;

(g) Hemic and lymphatic;

(h) Skin;

(i) Endocrine and obesity;

(j) Neurological;

(k) Mental disorders;

(l) Neoplastic; and

(m) Immune systems.

(2) The agency or the agency's designee follows these rules when there are multiple impairments:

(a) The agency or the agency's designee groups each diagnosis by body system.

(b) When an individual has two or more diagnosed impairments that limit work activities, the agency or the agency's designee assigns an overall severity rating as follows:

Client Condition		Severity Rating
(i)	All impairments are in the same body system, are rated two and there is no cumulative effect on basic work activities.	2
(ii)	All impairments are in the same body system, are rated two and there is a cumulative effect on basic work activities.	3
(iii)	All impairments are in different body systems, are rated two and there is a cumulative effect on basic work activities.	
(iv)	Two or more impairments are in different body systems and are rated three.	4
(v)	Two or more impairments are in different body systems; one is rated three and one is rated four.	
(vi)	Two or more impairments in different body systems are rated four.	5

(c) The agency or the agency's designee denies incapacity when the overall severity rating is two.

(d) The agency or the agency's designee approves incapacity when the overall severity rating is five.

NEW SECTION

WAC 182-508-0080 PEP Step V—Determining level of function of mentally impaired individuals in a work environment. If an individual has a mental impairment, the agency or the agency's designee evaluates the individual's cognitive and social functioning in a work setting. "Functioning" means an individual's ability to perform typical tasks that would be required in a routine job setting and the individual's ability to interact effectively while working.

(1) The agency or the agency's designee evaluates cognitive and social functioning by assessing the individual's ability to:

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

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

(c) Learn new tasks.

(d) Perform routine tasks without undue supervision.

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

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

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

(h) Maintain appropriate behavior in a work setting.

(2) The agency or the agency's designee approves incapacity when it has objective medical evidence, including a mental status exam (MSE) per WAC 182-508-0050, that demonstrates the individual is:

(a) At least moderately impaired in their ability to understand, remember, and persist in tasks following simple instructions, and at least moderately limited in their ability to:

(i) Learn new tasks;

(ii) Be aware of normal hazards and take appropriate precautions; and

(iii) Perform routine tasks without undue supervision; or

(b) At least moderately impaired in the ability to understand, remember, and persist in task following complex instructions; and

(c) Markedly impaired in the ability to learn new tasks, be aware of normal hazards and take appropriate precautions, and perform routine tasks without undue supervision.

(3) The agency or the agency's designee approves incapacity when the individual is moderately (rated three) impaired in their ability to:

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

(b) Communicate and perform effectively in a work setting with limited public contact; and

(c) Markedly (rated four) impaired in their ability to maintain appropriate behavior in a work setting.

NEW SECTION

WAC 182-508-0090 PEP Step VI—Determining level of function of physically impaired individuals in a work environment. In Step VI of the PEP, the agency or the agency's designee reviews the medical evidence provided and determines how an individual's physical impairment prevents that individual from working. This determination is then used in Steps VII and VIII of the PEP to determine the individual's ability to perform either work they have done in the past or other work.

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

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

If an individual is able to:	Then the individual is assigned this exertion level
(a) Lift no more than two pounds or unable to stand or walk.	Severely limited
(b) Lift ten pounds maximum and frequently lift or carry lightweight articles. Walking or standing only for brief periods.	Sedentary
(c) Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday. Sitting and using pushing or pulling arm or leg movements most of the day.	Light
(d) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(e) Lift one hundred pounds maximum and frequently lift or carry up to fifty pounds.	Heavy

(2) **"Exertionally related limitation"** means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. If an individual has exertionally related limitations, then the agency or the agency's designee considers them in determining the individual's ability to work.

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

(4) **"Nonexertional physical limitation"** means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:

(a) Environmental restrictions which could include, among other things, an individual's inability to work in an area where they would be exposed to chemicals; and

(b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments an individual could work in.

NEW SECTION

WAC 182-508-0100 PEP Step VII—Evaluating a client's capacity to perform relevant past work. If the individual's overall severity rating is moderate (three) or marked (four) at this stage of the PEP and the agency or the agency's designee has not approved or denied the individual's application, then the agency or the agency's designee will decide if the individual can do the same or similar work as they have done in the past. The agency or the agency's designee looks

at the individual's current physical and/or mental limitations from cognitive, social, and vocational factors to make this decision. Vocational factors are education, relevant work history, and age.

(1) The agency or the agency's designee evaluates education in terms of formal schooling or other training that would enable the individual to meet job requirements. Education is classified as:

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

(2) The agency or the agency's designee evaluates the individual's work experience to determine if they have relevant past work. "Relevant past work" means work that:

(a) Is defined as gainful employment per WAC 182-508-0015;

(b) Has been performed in the past five years; and

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

(3) For each relevant past work situation that the individual had, the agency or the agency's designee determines:

(a) The exertion or skill requirements of the job; and

(b) Current cognitive, social, or nonexertion factors that significantly limit the individual's ability to perform past work.

(4) After considering vocational factors, the agency or the agency's designee denies incapacity when the individual has:

(a) The physical and mental ability to perform past work, and there is no significant cognitive, social or exertion limitation that would prevent the individual from performing past work; or

(b) Recently acquired specific work skills through completion of schooling or training, for jobs within the individual's current physical or mental capacities.

(5) The agency or the agency's designee approves incapacity when the individual is fifty-five years of age or older and doesn't have the physical or mental ability to perform past work.

NEW SECTION

WAC 182-508-0110 PEP Step VIII—Evaluating a client's capacity to perform other work. If the individual decides they cannot do work that they've done before, then the agency or the agency's designee decides if the individual can do any other work.

(1) The agency or the agency's designee approves incapacity if the individual has a physical impairment and meets the vocational factors below:

Highest Work Level Assigned by the Practitioner	Age	Education Level	Other Vocational Factors
Sedentary	Any age	Any level	Does not apply
Light	50 and older	Any level	Does not apply
Light	35 and older	Illiterate or LEP	Does not apply
Light	18 and older	Limited Education	Does not have any past work
Medium	50 and older	Limited Education	Does not have any past work

(2) The agency or the agency's designee approves incapacity when the individual has a moderate (three) or marked (four) mental health impairment and the agency or the agency's designee has objective medical evidence, including a mental status exam (MSE) per WAC 182-508-0050, that demonstrates social or cognitive factors described in WAC 182-508-0080, interfere with working as follows:

Social Limitation	Age
(a) Moderately impaired (rated three) in the individual's ability to: (i) Communicate and perform effectively in a work setting with limited public contact; and (ii) Maintain appropriate behavior in a work setting.	50 years and older
(b) The individual has a severe (five) impairment in their ability to: (i) Communicate and perform effectively in a work setting with public contact; or (ii) Communicate and perform effectively in a work setting with limited public contact.	Any age

Social Limitation	Age
(c) A mental disorder of marked severity (rated four): (i) One or more severe (rated five) mental impairment symptoms; and (ii) Moderately impaired (rated three) in the ability to communicate and perform effectively in a work setting with public or limited public contact.	Any age

(3) The agency or the agency's designee approves incapacity when the individual has both mental and physical impairments and the agency or the agency's designee has objective medical evidence, including a mental status exam (MSE) per WAC 182-508-0050, that demonstrate social or cognitive factors, as described in WAC 182-508-0080 interfere with working as follows:

Age	Education	Other Restrictions
Any age	Any level	(a) The individual is moderately impaired in their ability to communicate and perform effectively in a work setting with limited public contact; and (b) The individual is markedly impaired in their ability to communicate and perform effectively in a work setting with public contact.
50 or older	Limited education	(c) Restricted to medium work level or less.
Any age	Limited education	(d) Restricted to light work level.

(4) The agency or the agency's designee denies incapacity if the agency or the agency's designee decides the individual doesn't meet the criteria listed above.

NEW SECTION

WAC 182-508-0120 Deciding how long a client is incapacitated. The agency or the agency's designee decides how long an individual is incapacitated, up to the maximum period set by WAC 182-508-0160, using medical evidence on the expected length of time needed to heal or recover from the incapacitating disorder(s).

NEW SECTION

WAC 182-508-0130 Medical care services—Limited coverage. (1) The agency covers only the medically necessary services within the applicable program limitations listed in WAC 182-501-0060.

(2) The agency does not cover medical services received outside the state of Washington unless the medical services are provided in a border city listed in WAC 182-501-0175.

NEW SECTION

WAC 182-508-0150 Enrollment cap for medical care services (MCS). (1) Enrollment in medical care services (MCS) coverage is subject to available funds.

(2) The agency may limit enrollment into MCS coverage by implementing an enrollment cap and waiting list.

(3) If an individual is denied MCS coverage due to an enrollment cap:

(a) The individual is added to the MCS waiting list based on the date the individual applied.

(b) Applicants with the oldest application date will be the first to receive an opportunity for enrollment when MCS coverage is available.

(4) An individual is exempted from the enrollment cap and wait list rules when:

(a) MCS was terminated due to agency error;

(b) The individual is in the thirty-day reconsideration period for incapacity reviews under WAC 182-508-0160(4); or

(c) The individual is being terminated from a CN medical program and was receiving and eligible for CN coverage prior to the date a wait list was implemented and the following conditions are met:

(i) The individual met financial and program eligibility criteria for MCS at the time their CN coverage ended; and

(ii) The individual met the incapacity criteria for MCS at the time their CN coverage ended.

(d) The individual applied for medical coverage and an eligibility decision was not completed prior to the enrollment cap effective date.

(5) If the individual is sent an offer for MCS enrollment, the individual must submit a completed application no later than the last day of the month following the month of enrollment offer. The individual must reapply within this time period and subsequently be determined eligible before MCS coverage can begin. The individual must reapply and requalify even if the individual was previously determined eligible for MCS.

(6) The individual is removed from the MCS wait list if the individual:

(a) Is not a Washington resident;

(b) Is deceased;

(c) Requests removal from the wait list;

(d) Fails to submit an application after an enrollment offer is sent as described in subsection (5) of this section;

(e) Reapplies as described in subsection (5) of this section, but does not qualify for MCS; or

(f) Is found eligible for categorically or medically needy coverage.

NEW SECTION

WAC 182-508-0160 When medical care services benefits end. (1) The maximum period of eligibility for medical

care services (MCS) is twelve months before the agency or the agency's designee must review incapacity. The agency or the agency's designee uses current medical evidence and the expected length of time before the individual will be capable of gainful employment to decide when MCS benefits will end.

(2) The individual's benefits stop at the end of the individual's incapacity period unless the individual provides additional medical evidence that demonstrates during the current incapacity period that there was no material improvement in the individual's impairment. No material improvement means that the individual's impairment continues to meet the progressive evaluation process criteria in WAC 182-508-0015 through 182-508-0110, excluding the requirement that the individual's impairment(s) prevent employment for ninety days.

(3) The medical evidence must meet all of the criteria defined in WAC 182-508-0030.

(4) The agency or the agency's designee uses medical evidence received after the individual's incapacity period had ended when:

(a) The delay was not due to the individual's failure to cooperate; and

(b) The agency or the agency's designee receives the evidence within thirty days of the end of the individual's incapacity period; and

(c) The evidence meets the progressive evaluation process criteria in WAC 182-508-0015 through 182-508-0110.

(5) Even if the individual's condition has not improved, the individual isn't eligible for MCS when:

(a) The agency or the agency's designee receives current medical evidence that doesn't meet the progressive evaluation process criteria in WAC 182-508-0035 through 182-508-0110; and

(b) The agency's or the agency designee's prior decision that the individual's incapacity met the requirements was incorrect because:

(i) The information the agency or the agency's designee had was incorrect or not enough to show incapacity; or

(ii) The agency or the agency's designee didn't apply the rules correctly to the information it had at that time.

NEW SECTION

WAC 182-508-0220 How alcohol or drug dependence affects an individual's eligibility for medical care services (MCS). (1) An individual who gets medical care services (MCS) must complete a chemical dependency assessment when the agency or the agency's designee has information that indicates the individual may be chemically dependent.

(2) An individual must accept an assessment referral and participate in drug or alcohol treatment if a certified chemical dependency counselor indicates a need for treatment, unless the individual meets one of the following good cause reasons:

(a) The agency or the agency's designee determines that the individual's physical or mental health impairment prevents them from participating in treatment.

(b) The outpatient chemical dependency treatment the individual needs isn't available in the county they live in.

(c) The individual needs inpatient chemical dependency treatment at a location that they can't reasonably access.

(3) If an individual refuses or fails to complete an assessment or treatment without good cause, the individual's MCS coverage will end following advance notification rules under WAC 388-458-0030.

NEW SECTION

WAC 182-508-0230 Eligibility standards for medical care services and ADATSA. Effective November 1, 2011, the eligibility standards for medical care services (MCS) and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Eligibility Standard
1	$339
2	$428

The eligibility standards for MCS and ADATSA assistance units with shelter provided at no cost are:

Assistance Unit Size	Eligibility Standard
1	$206
2	$261

The eligibility standards for MCS assistance units in medical institutions and group living facilities are:

Facility Type	Assistance Unit Size	Eligibility Standard
Medical institutions (includes nursing homes and hospitals)	1	41.62
Adult family homes	1	339.00
Boarding homes (includes assisted living, enhanced residential centers (EARC), and adult residential centers (ARC))	1	38.84
DDD group home	1	38.84
Mental Health adult residential treatment facilities (ARTF)	1	38.84

NEW SECTION

WAC 182-508-0305 Detoxification—Covered services. (1) The agency or the agency's designee only pays for services that are:

(a) Provided to eligible individuals as described in subsection (5) of this section;

(b) Directly related to detoxification; and

(c) Performed by a certified detoxification center or by a general hospital that has a contract with the department of social and health services to provide detoxification services.

(2) The agency limits on paying for detoxification services are:

(a) Three days for an acute alcoholic condition; or

(b) Five days for acute drug addiction.

(3) The agency only pays for detoxification services when notified within ten working days of the date detoxification began and all eligibility factors are met.

(4) To apply for detoxification services, an individual must complete an application for benefits. An interview is not required when applying for medical assistance. However, additional documentation may be needed to prove or confirm the information provided in the application form.

(5) An individual is eligible for detoxification services if the individual receives benefits under one of the following programs:

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

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

(c) Supplemental Security Income (SSI);

(d) Medical care services program (MCS);

(e) Alcohol and Drug Addiction Treatment and Support Act (ADATSA); or

(f) A medical assistance program.

(6) An individual who is not eligible for one of the programs listed in subsection (5) of this section is eligible for the detoxification program if they meet the following criteria:

(a) Nonexempt countable income does not exceed the eligibility standards for MCS and ADATSA as described in WAC 182-508-0230; and

(b) Nonexempt countable resources do not exceed one thousand dollars.

(7) The following expenses are deducted from income when determining countable income:

(a) Mandatory expenses of employment;

(b) Support payments paid under a court order; and

(c) Payments to a wage earner specified by a court in bankruptcy proceedings, or previously contracted major household repairs, when failure to make such payments will result in garnishment of wages or loss of employment.

(8) The following resources are not counted when determining countable resources:

(a) A home;

(b) Household furnishings and personal clothing essential for daily living;

(c) Other personal property used to reduce need for assistance or for rehabilitation;

(d) A used and useful automobile; and

(e) All income and resources of a noninstitutionalized SSI beneficiary.

(9) The following resources are counted when determining countable resources:

(a) Cash and other liquid assets;

(b) Marketable securities; and

(c) Any other resource not specifically exempted that can be converted to cash.

(10) If an individual receives detoxification services, the individual will not incur a deductible as a factor of eligibility for the covered period of detoxification.

(11) Once an individual has been determined eligible for detoxification services, the individual is eligible from the date detoxification begins through the end of the month in which the detoxification is completed.

NEW SECTION

WAC 182-508-0310 ADATSA—Purpose. (1) The Alcohol and Drug Addiction Treatment and Support Act (ADATSA) is a legislative enactment providing state-funded treatment and support to chemically dependent indigent individuals.

(2) ADATSA provides eligible individuals with treatment if they are chemically dependent and would benefit from it.

NEW SECTION

WAC 182-508-0315 ADATSA—Covered services. If an individual qualifies for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) they may be eligible for:

(1) Alcohol/drug treatment services and support based on an individual assessment of alcohol/drug involvement and treatment needs in accordance with RCW 70.96A.100.

(2) Medical care services (MCS) as described under WAC 182-508-0005, 182-501-0060, and 182-501-0065.

NEW SECTION

WAC 182-508-0320 ADATSA—Eligible individuals. (1) To be eligible for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) services, an individual must:

(a) Be eighteen years of age or older;

(b) Be a resident of Washington as defined in WAC 182-503-0520;

(c) Meet citizenship requirements as described in WAC 182-503-0532;

(d) Provide their Social Security number; and

(e) Meet the same income and resource criteria for the medical care services (MCS) program (unless subsection (2) of this section applies), or receive federal assistance under Supplemental Security Income (SSI) or temporary assistance for needy families (TANF).

(2) An individual with nonexcluded countable income higher than the MCS eligibility standard described in WAC 182-508-0230 may qualify for inpatient only residential treatment if total countable income is below the projected monthly cost of care in the treatment center based on the state daily reimbursement rate.

NEW SECTION

WAC 182-508-0375 ADATSA—Eligibility for state-funded medical care services (MCS). To be eligible for state-funded medical care services (MCS), one of the following situations must exist:

(1) The individual meets the requirements in WAC 182-508-0320 and be waiting to receive the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) services;

(2) The individual is participating in ADATSA residential or outpatient treatment; or

(3) The individual has chosen opiate dependency (methadone maintenance) chemical dependency treatment services instead of other ADATSA treatment, but only if these treatment services are from a state-approved, publicly funded opiate dependency/methadone maintenance program.

Chapter 182-509 WAC

INCOME AND RESOURCES

NEW SECTION

WAC 182-509-0005 MCS income—Ownership and availability. This section applies to medical care services (MCS) program.

(1) The agency or the agency's designee counts all available income owned or held by persons in the assistance unit under WAC 182-506-0020 to decide if the individual is eligible for benefits when:

(a) The individual gets or expects to get income in the month.

(b) The agency or the agency's designee must count the income based on rules under this chapter.

(c) The individual owns the income. The agency or the agency's designee uses state and federal laws about who owns property to decide if the individual actually owns the income. If the individual is married, the agency or the agency's designee decides if the income is separate or community income according to chapter 26.16 RCW.

(d) The individual has control over the income, which means the income is actually available to the individual. If the individual has a representative payee, protective payee, or other person who manages the individual's income, the agency or the agency's designee considers this as the individual having control over this income.

(e) The individual can use the income to meet their current needs. The agency or the agency's designee counts the gross amount of available income in the month the individual's assistance unit gets it. If the individual normally gets the income:

(i) On a specific day, the agency or the agency's designee counts it as available on that date.

(ii) Monthly or twice monthly and the pay date changes due to a reason beyond the individual's control, such as a weekend or holiday, the agency or the agency's designee counts it in the month the individual would normally get it.

(iii) Weekly or every other week and the pay date changes due to a reason beyond the individual's control, the agency or the agency's designee counts it in the month the individual would normally get it.

(2) If income is legally the individual's designee, the agency or the agency's designee considers the income as available to the individual even if it is paid to someone else for the individual.

(3) The agency or the agency's designee:

(a) May count the income of certain people who live in the individual's home, even if they are not getting or applying for benefits. Their income counts as part of the individual's income.

(b) Counts the income of ineligible, disqualified, or financially responsible people as defined in WAC 182-509-0100.

(4) If the individual has a joint bank account with someone who is not in the individual's assistance unit (AU), the agency or the agency's designee counts any money deposited into that account as the individual's income unless:

(a) The individual can show that all or part of the funds belong **only** to the other account holder and are held or used **only** for the benefit of that holder; or

(b) Social Security Administration (SSA) used that money to determine the other account holder's eligibility for SSI benefits.

(5) Potential income is income the individual may be able to get that can be used to lower their need for assistance. If the agency or the agency's designee determines that the individual has a potential source of income, the individual must make a reasonable effort to make the income available in order to get MCS. The agency or the agency's designee does not count that income until the individual actually gets it.

(6) If the individual's AU includes a sponsored immigrant, the agency or the agency's designee considers the income of the immigrant's sponsor as available to the immigrant under the rules of this chapter. The agency or the agency's designee uses this income when deciding if the individual's AU is eligible for benefits and to calculate the individual's monthly benefits.

(7) The individual may give the agency or the agency's designee proof about a type of income at anytime, including when the agency or the agency's designee asks for it or if the individual disagrees with a decision the agency or the agency's designee made, about:

(a) Who owns the income;

(b) Who has legal control of the income;

(c) The amount of the income; or

(d) If the income is available.

NEW SECTION

WAC 182-509-0015 MCS income—Excluded income types. There are some types of income that do not count when determining if an individual is eligible for medical care services (MCS) coverage. Examples of income that do not count are:

(1) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 182-509-0035;

(2) Federal earned income tax refunds and earned income tax credit (EITC) payments for up to twelve months from the date of receipt;

(3) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(4) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(5) Title IV-E and state foster care maintenance payments if the individual chooses not to include the foster child in the assistance unit;

(6) Energy assistance payments;

(7) Educational assistance that is not counted under WAC 182-509-0035;

(8) Native American benefits and payments that are not counted under WAC 388-450-0040;

(9) Income from employment and training programs that is not counted under WAC 182-509-0045;

(10) Money withheld from a benefit to repay an overpayment from the same income source;

(11) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as voluntary agency (VOLAG) payments;

(12) Payments we are directly told to exclude as income under state or federal law; and

(13) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household.

NEW SECTION

WAC 182-509-0025 MCS income—Unearned income. This section applies to medical care services (MCS).

(1) Unearned income is income an individual gets from a source other than employment or self-employment. Some examples of unearned income are:

(a) Railroad retirement;

(b) Unemployment compensation;

(c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);

(d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or

(e) Veteran Administration benefits.

(2) The agency or the agency's designee counts unearned income before any taxes are taken out.

NEW SECTION

WAC 182-509-0030 MCS income—Earned income. This section applies to medical care services (MCS).

(1) Earned income money received from working. This includes:

(a) Wages;

(b) Tips;

(c) Commissions;

(d) Profits from self-employment activities as described in WAC 182-509-0080; and

(e) One-time payments for work performed over a period of time.

(2) Income received for work performed for something other than money, such as rent, is considered earned income. The amount that is counted when determining the individual's eligibility for MCS is the amount received before any taxes are taken out (gross income).

NEW SECTION

WAC 182-509-0035 MCS income—Educational benefits. This section applies to medical care services (MCS).

(1) Educational benefits that do not count are:

(a) Educational assistance in the form of grants, loans or work study, issued from Title IV of the Higher Education Amendments (Title IV - HEA) and Bureau of Indian Affairs (BIA) education assistance programs. Examples of Title IV - HEA and BIA educational assistance include, but are not limited to:

(i) College work study (federal and state);

(ii) Pell grants; and

(iii) BIA higher education grants.

(b) Educational assistance in the form of grants, loans or work study made available under any program administered by the Department of Education (DOE) to an undergraduate student. Examples of programs administered by DOE include, but are not limited to:

(i) Christa McAuliffe Fellowship Program;

(ii) Jacob K. Javits Fellowship Program; and

(iii) Library Career Training Program.

(2) For assistance in the form of grants, loans or work study under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-391:

(a) If the individual is attending school half time or more, the following expenses are subtracted:

(i) Tuition;

(ii) Fees;

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;

(iv) Books;

(v) Supplies;

(vi) Transportation;

(vii) Dependent care; and

(viii) Miscellaneous personal expenses.

(b) If the individual is attending school less than half time, the following expenses are subtracted:

(i) Tuition;

(ii) Fees; and

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(c) The MCS eligibility standard based on one person is also subtracted.

(d) Any remaining income is unearned income and budgeted using the appropriate budgeting method for the assistance unit.

(3) If the individual is participating in a work study that is not excluded in subsection (1) of this section, that work study income is counted as earned income under the following conditions:

(a) The individual is allowed the earned income work incentive deduction described in WAC 182-509-0175; and

(b) The remaining income is budgeted using the appropriate budgeting method for the assistance unit.

(4) If the individual receives Veteran's Administration Educational Assistance:

(a) All applicable attendance costs are subtracted; and

(b) The remaining unearned income is budgeted using the appropriate budgeting method for the assistance unit.

NEW SECTION

WAC 182-509-0045 MCS income—Employment and training programs. This section applies to medical care services (MCS).

(1) All payments issued under the Workforce Investment Act (WIA) are excluded.

(2) All payments issued under the National and Community Service Trust Act of 1993 are excluded. This includes payments made through the AmeriCorps program.

(3) All payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps Vista, university year for action, and urban crime prevention program are excluded.

(4) All payments issued under Title II of the Domestic Volunteer Act of 1973 are excluded. These include:

(a) Retired senior volunteer program (RSVP);

(b) Foster grandparents program; and

(c) Senior companion program.

(5) Training allowances from vocational and rehabilitative programs are counted as earned income when:

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

(b) The allowance is not a reimbursement.

(6) When an MCS client receives training allowances, the following is allowed:

(a) The earned income incentive and work expense deduction specified under WAC 182-509-0175, when applicable; and

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

NEW SECTION

WAC 182-509-0055 MCS income—Needs-based assistance from other agencies or organizations. (1) Needs-based assistance given to the individual by other agencies or organizations is not counted if the assistance is given for reasons other than ongoing living expenses which do not duplicate the purpose of DSHS cash assistance programs. Ongoing living expenses include the following items:

(a) Clothing;

(b) Food;

(c) Household supplies;

(d) Medical supplies (nonprescription);

(e) Personal care items;

(f) Shelter;

(g) Transportation; and

(h) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(2) **"Needs-based"** means eligibility is based on an asset test of income and resources relative to the federal poverty level (FPL). This definition excludes such incomes as retirement benefits or unemployment compensation which are not needs-based.

(3) If the needs-based assistance is countable, it is treated as unearned income under WAC 182-509-0025.

NEW SECTION

WAC 182-509-0065 MCS income—Gifts—Cash and noncash. This section applies to medical care services. A gift is an item furnished to an individual without work or cost on the individual's part.

(1) A cash gift is a gift that is furnished as money, cash, checks or any other readily negotiable form. Cash gifts totaling no more than thirty dollars per calendar quarter for each assistance unit member are disregarded as income.

(2) A noncash gift is treated as a resource.

(a) If the gift is a countable resource, its value is added to the value of the individual's existing countable resources and a determination is made on the impact to continue the individual's eligibility for MCS, per WAC 182-509-0005.

(b) If the gift is an excluded or noncountable resource, it does not affect the individual's eligibility or benefit level.

NEW SECTION

WAC 182-509-0080 MCS income—Self-employment income. This section applies to medical care services (MCS).

(1) Self-employment income is income that is earned by an individual from running a business, performing a service, selling items that are made by the individual or by reselling items to make a profit.

(2) An individual is self-employed if the individual earns income without having an employer/employee relationship with the person who pays for the goods or services. This includes, but is not limited to, when:

(a) The individual has primary control of the way they do their work; or

(b) Income is reported by the individual using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) An individual usually is considered to have an employer/employee relationship when:

(a) The person the individual provides services for has primary control of how the individual does their work; or

(b) The individual gets an IRS form W-2 to report their income.

(4) Self-employment does not have to be a licensed business for the individual's business or activity to qualify as self-employment. Some examples of self-employment include:

(a) Childcare that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;

(e) Running a lodging for roomers and/or boarders. Roomer income includes money paid to the individual for shelter costs by someone not in your assistance unit who lives with the individual when:

(i) The individual owns or is buying their own residence; or

(ii) The individual rents all or a part of their residence and the total rent charges to all others living in the home is more than the individual's total rent.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling items that are home-made or items that are supplied to the individual;

(j) Selling or donating biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(l) Running a business or trade either as a sole proprietorship or in a partnership.

(5) If the individual is an employee of a company or person who does the activities listed in subsection (2) of this section as a part of their job, the agency or the agency's designee does not count the work that is performed by the individual as self-employment.

(6) Self-employment income is counted as earned income as described in WAC 182-509-0030 except as described in subsection (7) of this section.

(7) There are special rules about renting or leasing out property or real estate that is owned by the individual. If the individual does not spend at least twenty hours per week managing the property, the income is counted as unearned income.

NEW SECTION

WAC 182-509-0085 MCS income—Self-employment income—Calculation of countable income. This section applies to medical care services (MCS). The agency or the agency's designee decides how much of an individual's self-employment income to count by:

(1) Counting actual income in the month of application. This is done by:

(a) Adding together the individual's gross self-employment income and any profit the individual made from selling their business property or equipment;

(b) Subtracting the individual's business expenses as described in subsection (2) of this section; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) Subtracting one hundred dollars as a business expense even if the individual's costs are less than this. If the individual's costs are more than one hundred dollars, the agency or the agency's designee may subtract the individual's actual costs if the individual provides proof of their expenses. The following expenses are never allowed:

(a) Federal, state, and local income taxes;

(b) Money set aside for retirement purposes;

(c) Personal work-related expenses (such as travel to and from work);

(d) Net losses from previous periods;

(e) Depreciation; or

(f) Any amount that is more than the payment the individual gets from a boarder for lodging and meals.

(3) If the individual has worked at their business for less than a year, figuring the individual's gross self-employment income by averaging:

(a) The income over the period of time the business has been in operation; and

(b) The monthly amount is estimated to be the amount the individual will get for the coming year.

(4) If the individual's self-employment expenses are more than their self-employment income, not using this "loss" to reduce income from other self-employment businesses or other sources of income to the assistance unit.

NEW SECTION

WAC 182-509-0095 MCS income—Allocating income—General. This section applies to medical care services (MCS).

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

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

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

NEW SECTION

WAC 182-509-0100 MCS income—Allocating income—Definitions. The following definitions apply to the allocation rules for medical care services (MCS):

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

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

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

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

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

(a) Ineligible for MCS due to the citizenship/alien status requirements in WAC 182-503-0532;

(b) Ineligible to receive MCS under WAC 182-503-0560 for fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime; or

(c) Ineligible to receive MCS under WAC 182-503-0560 for violating a condition of probation or parole which was imposed under federal or state law as determined by an administrative body or court of competent jurisdiction.

NEW SECTION

WAC 182-509-0110 MCS income—Allocating income to legal dependents. This section applies to medical care services (MCS).

(1) The income of an individual is reduced by the following:

(a) The MCS earned income work incentive deduction as specified in WAC 182-509-0175; and

(b) An amount not to exceed the ordered amount paid for court or administratively ordered current or back support for legal dependents living outside the home.

(2) When an individual resides in a medical institution, alcohol or drug treatment center, boarding home, or adult

family home and has income, the individual retains an amount equal to:

(a) The eligibility standard amount for the nonapplying spouse living in the home; and

(b) The standard of assistance or personal needs allowance the individual is eligible for based upon their living arrangement.

(3) An individual with countable income remaining after the allocation in subsection (2)(a) and (b) of this section is not eligible for medical care services (MCS).

NEW SECTION

WAC 182-509-0135 MCS income—Allocating income of an ineligible spouse to a medical care services (MCS) client. This section applies to medical care services (MCS). When an individual is married and lives with the nonapplying spouse, the following income is available to the individual:

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

(a) The MCS earned income work incentive deduction as specified in WAC 182-509-0175; and

(b) An amount not to exceed the ordered amount paid for court or administratively ordered current or back support for legal dependents living outside the home.

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

(a) An amount not to exceed the ordered amount paid for court or administratively ordered current or back support for legal dependents living outside the home, when the order is a separate order from the applying individual's order; and

(b) The one-person eligibility standard amount as specified under WAC 182-508-0230 which includes ineligible assistance unit members.

(3) One-half of all other community income, as provided in WAC 182-509-0005.

NEW SECTION

WAC 182-509-0155 MCS income—Exemption from sponsor deeming for medical care services (MCS). This section applies to medical care services (MCS).

(1) An individual who meets any of the following conditions is permanently exempt from deeming and none of a sponsor's income or resources are counted when determining eligibility for MCS:

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

(i) Refugee;

(ii) Parolee;

(iii) Asylee;

(iv) Cuban/Haitian entrant; or

(v) Special immigrant from Iraq or Afghanistan.

(b) The sponsor is an organization or group as opposed to an individual;

(c) The individual does not meet the alien status requirements to be eligible for benefits under WAC 182-503-0532;

(d) The individual has worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. If the individual worked during a quarter in which they received TANF, Basic Food, SSI, CHIP, or nonemergency medicaid benefits, a quarter of work is not counted towards the forty quarters. A quarter of work by the following people is also counted toward the forty qualifying quarters:

(i) The individual;

(ii) The individual's parents for the time they worked before the individual turned eighteen years old (including the time they worked before the individual was born); and

(iii) The individual's spouse if still married or if the spouse is deceased.

(e) The individual becomes a United States (U.S.) citizen;

(f) The individual's sponsor is dead; or

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

(i) The individual no longer lives with the sponsor; and

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

(2) While the individual is in the same assistance unit (AU) as their sponsor, they are exempt from the deeming process. An individual is also exempt from the deeming process if:

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

(b) The sponsor becomes permanently incapacitated; or

(c) The individual is a qualified alien according to WAC 388-424-0001 and:

(i) Is on active duty with the U.S. armed forces or the individual is the spouse or unmarried dependent child of someone on active duty;

(ii) Is an honorably discharged veteran of the U.S. armed forces or the individual is the spouse or unmarried dependent child of an honorably discharged veteran;

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

(iv) Is a victim of domestic violence and the individual has petitioned for legal status under the Violence Against Women Act.

(3) If the individual, their child, or their parent was a victim of domestic violence, the individual is exempt from the deeming process for twelve months if:

(a) The individual no longer lives with the person who committed the violence; and

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

(4) If the AU has income at or below one hundred thirty percent of the federal poverty level (FPL), the individual is exempt from the deeming process for twelve months. This is called the "indigence exemption." For this rule, the following is counted as income to the AU:

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

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

(5) If the individual chooses to use the indigence exemption, and is eligible for a state program, this information is not reported to the United States Attorney General.

(6) If the individual chooses not to use the indigence exemption:

(a) The individual could be found ineligible for benefits for not verifying the income and resources of the sponsor; or

(b) The individual will be subject to regular deeming rules under this section.

NEW SECTION

WAC 182-509-0165 MCS income—Income calculation. This section applies to medical care services (MCS).

(1) Countable income is all income that is available to the assistance unit (AU) after the following is subtracted:

(a) Excluded or disregarded income under WAC 182-509-0015;

(b) The earned income work incentive deduction under WAC 182-509-0175;

(c) Income that is allocated to someone outside of the AU under WAC 182-509-0110 through 182-509-0135.

(2) Countable income includes all income that must be counted because it is deemed or allocated from financially responsible persons who are not members of the AU under WAC 182-509-0110 through 182-509-0165.

(3) Countable income is compared to the eligibility standards under WAC 182-508-0230.

(4) If countable income available to the AU is equal to or greater than the eligibility standard, the individual is not eligible for medical care services (MCS).

NEW SECTION

WAC 182-509-0175 MCS income—Earned income work incentive deduction. This section applies to medical care services (MCS).

(1) When determining eligibility for MCS, the agency or the agency's designee allows an earned income work incentive deduction of fifty percent of an individual's gross earned income.

(2) This deduction is used to reduce countable income before comparing the income to the eligibility standard for the program.

NEW SECTION

WAC 182-509-0200 MCS resources—How resources affect eligibility for medical care services (MCS). This section applies to medical care services (MCS).

(1) The following definitions apply to this chapter:

(a) **"Equity value"** means the fair market value (FMV) minus any amount you owe on the resource.

(b) **"Community property"** means a resource in the name of the husband, wife, or both.

(c) **"Separate property"** means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) A resource is counted towards the resource limit described in subsection (6) of this section when:

(a) It is a resource that must be counted under WAC 182-509-0205;

(b) The individual owns the resource. Ownership means:

(i) The individual's name is on the title to the property; or

(ii) The individual has property that doesn't have a title; and

(c) The individual has control over the resource, which means the resource is actually available to the individual; and

(d) The individual could legally sell the resource or convert it into cash within twenty days.

(3) The individual must try to make their resources available even if it will take more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) A court must be petitioned to release part or all of a resource.

(4) Resources are counted as of the date of application for MCS coverage.

(5) If total countable resources are over the resource limit in subsection (6) of this section, the individual is not eligible for MCS.

(6) Countable resources must be below the standards listed below based on the equity value of all countable resources.

(a) Applicants can have countable resources up to one thousand dollars.

(b) Recipients can have an additional three thousand dollars in a savings account.

(7) If the individual owns a countable resource with someone who is not included in the assistance unit (AU), only the portion of the resource that is owned by the individual is counted. If ownership of the funds cannot be determined, an equal portion of the resource is presumed to be owned by the individual and all other joint owners.

(8) It is assumed an individual has control of community property and is legally able to sell the property or convert it to cash unless evidence is provided to show the individual does not have control of the property.

(9) An item may not be considered separate property if the individual used both separate and community funds to buy or improve it.

(10) The resources of victims of family violence are not counted when:

(a) The resource is owned jointly with member of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the individual at risk of harm.

(11) An individual may provide proof about a resource anytime, including when asked for proof by the agency or the agency's designee, or if the individual disagrees with a decision made about:

(a) Who owns a resource;

(b) Who has legal control of the resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property owned by the individual or another person(s).

(12) Resources of certain people who live in the home with the individual are countable, even if they are not getting assistance. Resources that count toward the resource limit in subsection (6) of this section include the resources of ineligible or financially responsible people as defined in WAC 182-509-0100.

NEW SECTION

WAC 182-509-0205 MCS resources—How resources count toward the resource limits for medical care services (MCS). This section applies to medical care services (MCS).

(1) The following resources count toward the resource limit described in WAC 182-509-0200:

(a) Liquid resources not specifically excluded in subsection (2) of this section. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits, less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts;

(vii) Lump sum payments as described in chapter 388-455 WAC; or

(viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(e) Any real property like a home, land, or buildings not specifically excluded in subsection (3) of this section.

(f) The equity value of vehicles as described in WAC 182-509-0210.

(g) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of "great sentimental value," due to personal attachment or hobby interest.

(h) Resources of a sponsor as described in WAC 388-470-0060.

(i) Sales contracts.

(2) The following types of liquid resources are not counted toward the resource limit described in WAC 182-509-0200 when determining eligibility for MCS:

(a) Bona fide loans, including student loans;

(b) Basic food benefits;

(c) Income tax refunds for twelve months from the date of receipt;

(d) Earned income tax credit (EITC) in the month received and for up to twelve months;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

(h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

(i) Underpayments received under chapter 388-410 WAC;

(j) Educational benefits that are excluded as income under WAC 182-509-0035;

(k) The income and resources of an SSI recipient;

(l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

(m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

(n) Adoption support payments;

(o) Self-employment accounts receivable that the individual has billed to the customer but has been unable to collect;

(p) Resources specifically excluded by federal law; and

(q) Receipts from exercising federally protected rights or extracted exempt resources (fishing, shell fishing, timber sales, etc.) during the month of receipt for a member of a federally recognized tribe.

(3) The following types of real property are not counted when determining eligibility for MCS coverage:

(a) A home where the individual, their spouse, or their dependents live, including the surrounding property;

(b) A house the individual does not live in but plans to return to, and the individual is out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty.

(c) Property that:

(i) The individual is making a good faith effort to sell;

(ii) The individual intends to build a home on, if they do not already own a home;

(iii) Produces income consistent with its fair market value (FMV), even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If the individual deposits excluded liquid resources into a bank account with countable liquid resources, the excluded liquid resources are not counted for six months from the date of deposit.

(5) If the individual sells their home, the individual has ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If the individual does not reinvest within ninety days, the agency or the agency's designee will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on a new home is taking longer than anticipated;

(ii) The individual is unable to find a new home that is affordable;

(iii) Someone in the household is receiving emergent medical care; or

(iv) The individual has children or dependents that are in school and moving would require them to change schools.

(b) If good cause is determined, more time will be allowed based on the individual's circumstances.

(c) If good cause is not determined, the money received from the sale of the home is considered a countable resource.

NEW SECTION

WAC 182-509-0210 MCS resources—How vehicles count toward the resource limit for medical care services (MCS). This rule applies to medical care services (MCS).

(1) A vehicle is any device for carrying persons and objects by land, water, or air.

(2) The entire value of a licensed vehicle needed to transport a physically disabled assistance unit (AU) member is excluded.

(3) The equity value of one vehicle up to five thousand dollars is excluded when the vehicle is used by the AU or household as a means of transportation.

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

WAC 182-538-063 ((~~GAU~~)) MCS clients residing in a designated mandatory managed care plan county. (1) In Laws of 2007, chapter 522, section 209 (13) and (14), the legislature authorized the department to provide coverage of certain medical and mental health benefits to clients who:

(a) ((~~Receive~~)) Are eligible for medical care services (MCS) under ((~~the general assistance unemployable (GAU) program~~)) WAC 182-508-0005; and

(b) Reside in a county designated by the ((~~department~~)) agency as a mandatory managed care plan county.

(2) The only sections of chapter ((~~388-538~~)) 182-538 WAC that apply to ((~~GAU~~)) MCS clients described in this section are incorporated by reference into this section.

(3) ((~~GAU~~)) MCS clients who reside in a county designated by the department as a mandatory managed care plan county must enroll in a managed care plan as required by WAC ((~~388-505-0110(7)~~)) 182-508-0001 to receive ((~~department-paid~~)) agency-paid medical care. ((~~A GAU~~)) An MCS client enrolled in an MCO plan under this section is defined as ((~~a GAU~~)) an MCS enrollee.

(4) ((~~GAU~~)) MCS clients are exempt from mandatory enrollment in managed care if they are American Indian or Alaska Native (AI/AN) and meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants.

(5) The ((~~department~~)) agency exempts ((~~a GAU~~)) an MCS client from mandatory enrollment in managed care:

(a) If the ((~~GAU~~)) MCS client resides in a county that is not designated by the ((~~department~~)) agency as a mandatory MCO plan county; or

(b) In accordance with WAC ((~~388-538-130~~)) 182-538-130(3).

(6) The ((~~department~~)) agency ends ((~~a GAU~~)) an MCS enrollee's enrollment in managed care in accordance with WAC ((~~388-538-130~~)) 182-538-130(4).

(7) On a case-by-case basis, the ((~~department~~)) agency may grant ((~~a GAU~~)) an MCS client's request for exemption from managed care or ((~~a GAU~~)) an MCS enrollee's request to end enrollment when, in the ((~~department's~~)) agency's judgment:

(a) The client or enrollee has a documented and verifiable medical condition; and

(b) Enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(8) The ((~~department~~)) agency enrolls ((~~GAU~~)) MCS clients in managed care effective on the earliest possible date, given the requirements of the enrollment system. The ((~~department~~)) agency does not enroll clients in managed care on a retroactive basis.

(9) Managed care organizations (MCOs) that contract with the ((~~department~~)) agency to provide services to ((~~GAU~~)) MCS clients must meet the qualifications and requirements in WAC ((~~388-538-067~~)) 182-538-067 and ((~~388-538-095~~)) 182-538-095 (3)(a), (b), (c), and (d).

(10) The ((~~department~~)) agency pays MCOs capitated premiums for ((~~GAU~~)) MCS enrollees based on legislative allocations for the ((~~GAU~~)) MCS program.

(11) ((~~GAU~~)) MCS enrollees are eligible for the scope of care as described in WAC ((~~388-501-0060~~)) 182-501-0060 for medical care services (MCS) programs.

(a) ((~~A GAU~~)) An MCS enrollee is entitled to timely access to medically necessary services as defined in WAC ((~~388-500-0005~~)) 182-500-0070;

(b) MCOs cover the services included in the managed care contract for ((~~GAU~~)) MCS enrollees. MCOs may, at their discretion, cover services not required under the MCO's contract for ((~~GAU~~)) MCS enrollees;

(c) The ((~~department~~)) agency pays providers on a fee-for-service basis for the medically necessary, covered medical care services not covered under the MCO's contract for ((~~GAU~~)) MCS enrollees;

(d) ((~~A GAU~~)) An MCS enrollee may obtain:

(i) Emergency services in accordance with WAC ((~~388-538-100~~)) 182-538-100; and

(ii) Mental health services in accordance with this section.

(12) The ((~~department~~)) agency does not pay providers on a fee-for-service basis for services covered under the

MCO's contract for ((~~GAU~~)) MCS enrollees, even if the MCO has not paid for the service, regardless of the reason. The MCO is solely responsible for payment of MCO-contracted healthcare services that are:

(a) Provided by an MCO-contracted provider; or

(b) Authorized by the MCO and provided by nonparticipating providers.

(13) The following services are not covered for ((~~GAU~~)) MCS enrollees unless the MCO chooses to cover these services at no additional cost to the ((~~department~~)) agency:

(a) Services that are not medically necessary;

(b) Services not included in the medical care services scope of care, unless otherwise specified in this section;

(c) Services, other than a screening exam as described in WAC ((~~388-538-100~~)) 182-538-100(3), received in a hospital emergency department for nonemergency medical conditions; and

(d) Services received from a nonparticipating provider requiring prior authorization from the MCO that were not authorized by the MCO.

(14) A provider may bill ((~~a GAU~~)) an MCS enrollee for noncovered services described in subsection (12) of this section, if the requirements of WAC ((~~388-502-0160~~)) 182-502-0160 and ((~~388-538-095~~)) 182-538-095(5) are met.

(15) Mental health services and care coordination are available to ((~~GAU~~)) MCS enrollees on a limited basis, subject to available funding from the legislature and an appropriate delivery system.

(16) A care coordinator (a person employed by the MCO or one of the MCO's subcontractors) provides care coordination to ((~~a GAU~~)) an MCS enrollee in order to improve access to mental health services. Care coordination may include brief, evidenced-based mental health services.

(17) To ensure ((~~a GAU~~)) an MCS enrollee receives appropriate mental health services and care coordination, the ((~~department~~)) agency requires the enrollee to complete at least one of the following assessments:

(a) A physical evaluation;

(b) A psychological evaluation;

(c) A mental health assessment completed through the client's local community mental health agency (CMHA) and/or other mental health agencies;

(d) A brief evaluation completed through the appropriate care coordinator located at a participating community health center (CHC);

(e) An evaluation by the client's primary care provider (PCP); or

(f) An evaluation completed by medical staff during an emergency room visit.

(18) ((~~A GAU~~)) An MCS enrollee who is screened positive for a mental health condition after completing one or more of the assessments described in subsection (17) of this section may receive one of the following levels of care:

(a) **Level 1.** Care provided by a care coordinator when it is determined that the ((~~GAU~~)) MCS enrollee does not require Level 2 services. The care coordinator will provide the following, as determined appropriate and available:

(i) Evidenced-based behavioral health services and care coordination to facilitate receipt of other needed services.

(ii) Coordination with the PCP to provide medication management.

(iii) Referrals to other services as needed.

(iv) Coordination with consulting psychiatrist as necessary.

(b) **Level 2.** Care provided by a contracted provider when it is determined that the ((~~GAU~~)) MCS enrollee requires services beyond Level 1 services. A care coordinator refers the ((~~GAU~~)) MCS enrollee to the appropriate provider for services:

(i) A regional support network (RSN) contracted provider; or

(ii) A contractor-designated entity.

(19) Billing and reporting requirements and payment amounts for mental health services and care coordination provided to ((~~GAU~~)) MCS enrollees are described in the contract between the MCO and the ((~~department~~)) agency.

(20) The total amount the ((~~department~~)) agency pays in any biennium for services provided pursuant to this section cannot exceed the amount appropriated by the legislature for that biennium. The ((~~department~~)) agency has the authority to take whatever actions necessary to ensure the ((~~department~~)) agency stays within the appropriation.

(21) Nothing in this section shall be construed as creating a legal entitlement to any ((~~GAU~~)) MCS client for the receipt of any medical or mental health service by or through the ((~~department~~)) agency.

(22) An MCO may refer enrollees to the ((~~department's~~)) agency's patient review and coordination (PRC) program according to WAC ((~~388-501-0135~~)) 182-501-0135.

(23) The grievance and appeal process found in WAC ((~~388-538-110~~)) 182-538-110 applies to ((~~GAU~~)) MCS enrollees described in this section.

(24) The hearing process found in chapter ((~~388-02~~)) 182-526 WAC and WAC ((~~388-538-112~~)) 182-538-112 applies to ((~~GAU~~)) MCS enrollees described in this section.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-556-0500	Medical care services under state-administered cash programs.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-505-0110	Medical assistance coverage for adults not covered under family medical programs.

AMENDATORY SECTION (Amending WSR 09-06-029, filed 2/24/09, effective 3/27/09)

WAC 388-505-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by medicaid. (1) Individuals admitted to Eastern or Western

State Hospital for inpatient psychiatric treatment may qualify for categorically needy (CN) medicaid coverage and ((~~general assistance (GA)~~)) aged, blind, disabled (ABD) cash benefits to cover their personal needs allowance (PNA).

(2) To be eligible under this program, individuals must:

(a) Be eighteen through twenty years of age or sixty-five years of age or older;

(b) Meet institutional status under WAC 388-513-1320;

(c) Be involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW;

(d) Meet the general eligibility requirements for the ((~~GA~~)) ABD cash program as described in WAC ((~~388-400-0025~~)) 388-400-0060;

(e) Have countable income below the payment standard described in WAC 388-478-0040; and

(f) Have countable resources below one thousand dollars. Individuals eligible under the provisions of this section may not apply excess resources towards the cost of care to become eligible. An individual with resources over the standard is not eligible for assistance under this section.

(3) ((~~GA~~)) ABD clients who receive active psychiatric treatment in Eastern or Western State Hospital at the time of their twenty-first birthday continue to be eligible for medicaid coverage until the date they are discharged from the facility or until their twenty-second birthday, whichever occurs first.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-800-0020	What detoxification services will the department pay for?
WAC 388-800-0025	What information does the department use to decide if I am eligible for the detoxification program?
WAC 388-800-0030	Who is eligible for detoxification services?
WAC 388-800-0035	How long am I eligible to receive detoxification services?
WAC 388-800-0048	Who is eligible for ADATSA?
WAC 388-800-0110	What cash benefits am I eligible for through ADATSA if I am in residential treatment?
WAC 388-800-0115	What cash benefits can I receive through ADATSA if I am in outpatient treatment?
WAC 388-800-0130	What are ADATSA shelter services?
WAC 388-800-0135	When am I eligible for ADATSA shelter services?
WAC 388-800-0140	What incapacity criteria must I meet to be eligible for ADATSA shelter services?
WAC 388-800-0145	How does the department review my eligibility for ADATSA shelter services?
WAC 388-800-0150	Who is my protective payee?
WAC 388-800-0155	What are the responsibilities of my protective payee?
WAC 388-800-0160	What are the responsibilities of an intensive protective payee?
WAC 388-800-0165	What happens if my relationship with my protective payee ends?

WSR 12-14-037
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-124—Filed June 26, 2012, 3:00 p.m., effective June 27, 2012, 12:01 a.m.]

Effective Date of Rule: June 27, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100I; and amending WAC 220-52-051.

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) closes SMA 2W to spot shrimp fishing, as the quota has been reached; (2) reduces the spot shrimp weekly limits in SMA 2E and Catch Area 26B-2; and (3) opens the 1B-20B beam trawl area. 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: June 26, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100J 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 (SMA) 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 2W, Catch Areas 23A-S and 23D, are closed to the harvest of spot shrimp.

iii) All waters of SMA 2E are closed to the harvest of all shrimp species other than spot shrimp.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, with the following exceptions:

i) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 225 pounds per week in SMA 2E, and 250 pounds per week in Catch Area 26B-2.

(d) It is unlawful to pull shellfish pots in more than one catch area per day.

(e) 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) 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) Those portions of Catch Areas 20B and 22A within SMA 1B are open, effective immediately until further notice.

(c) Effective 6:00 a.m. July 1, 2012, that portion of Catch Area 21A within SMA 1B is open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 27, 2012:

WAC 220-52-05100I	Puget Sound shrimp beam trawl fishery—Season. (12-112)

WSR 12-14-044
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-125—Filed June 27, 2012, 2:43 p.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S; 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: 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 the 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: June 27, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619 and WAC 220-55-220, effective immediately until further notice, it is unlawful to violate the following pro-

visions, provided that unless otherwise amended, all permanent rules remain in effect:

Anglers may fish with two poles, provided they have a two pole endorsement, July 1 through August 31, 2012, in waters of the Columbia River from the Highway 173 Bridge at Brewster to Chief Joseph Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2012:

WAC 232-28-61900S	Exceptions to statewide rules—Columbia River.

WSR 12-14-045
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-126—Filed June 27, 2012, 2:44 p.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25000R; and amending WAC 220-56-250.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This rule is intended to protect yelloweye and canary rockfish, two species managed under rebuilding plans by the Pacific Fishery Management Council. The closure will reduce the amount of yelloweye and canary rockfish that are incidentally caught when anglers are targeting lingcod in deeper water. This rule conforms to measures approved through the Pacific Fishery Management Council and federal rules adopted by the National Marine Fisheries Service. 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: June 27, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25000R Lingcod—Areas and seasons. Notwithstanding the provisions of WAC 220-56-250, effective July 1 through August 31, 2012, in waters of Marine Area 2, it is unlawful to fish for, retain or possess lingcod south of 46º58 N. Latitude and seaward of 30 fathoms on Fridays and Saturdays.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2012:

WAC 220-56-25000R	Lingcod—Areas and seasons.

WSR 12-14-053
EMERGENCY RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-18—Filed June 28, 2012, 1:58 p.m., effective June 28, 2012, 1:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: Establish minimum standards for carrier prescription drug benefit design and administration for health plans, confirming notice of the commissioner's standards for approval of policy, contract and agreement forms for health benefit plans that include a prescription drug benefit.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.140, 48.21.200, 48.44.050, 48.46.060.

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: Prescription drug benefits, when offered as part of a health plan, provide necessary treatment for medical conditions covered by the policy. Because some health carriers seek approval of a prescription drug benefit that covers only generic drugs, and does not provide enrollees with an avenue to request nongeneric, brand-name, or nonformulary drugs when there is not a therapeutically equivalent generic or formulary alternative, or for which the generic alternative is not efficacious based on an enrollee's clinical response, a generic-only drug benefit prevents an enrollee from being able to use their purchased health benefit plan to help pay for medically necessary medicine or drugs, unreasonably restricting their treatment. Therefore, the commissioner finds that if an enrollee buys a health benefit plan with a prescription drug benefit where the benefit strictly limits its covered drugs to generic products, they are purchasing a plan that offers an illusory benefit. An emergency rule is nec-

essary because some health carriers are continuing to apply a generic-only benefit in this way, and have not refiled their product for the commissioner's approval to correct the problem.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: June 28, 2012.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-816 General prescription drug benefit requirements. Effective August 1, 2012, a health carrier must not offer, renew, or issue a health benefit plan providing a prescription drug benefit, including a formulary, which the commissioner determines results or can reasonably be expected to result in an unreasonable restriction on the treatment of patients. A carrier may restrict prescription drug coverage based on contract or plan terms and conditions that otherwise limit coverage, such as a pre-existing condition waiting period, or medical necessity.

(1) A carrier must ensure that a prescription drug benefit covers prescribed drugs, medications or therapies that are the sole prescription available for a covered medical condition.

(2) A prescription drug benefit that only covers generic drugs constitutes an unreasonable restriction on the treatment of patients.

(3) Nothing in this chapter is intended to limit or deter the use of "Dispense as Written" prescriptions, subject to the terms and conditions of the health plan.

NEW SECTION

WAC 284-43-817 Prescription drug benefit design (1) A carrier may design its prescription drug benefit to include cost control measures, including requiring preferred drug substitution in a given therapeutic class, if the restriction is for a less expensive, equally therapeutic alternative generic product available to treat the condition.

(2) A carrier may include elements in its prescription drug benefit design that, where clinically feasible, create incentives for the use of generic drugs. Examples of permitted incentives include, but are not limited to, requiring step therapy, protocols requiring clinical documentation that a preferred or generic drug is not therapeutically efficacious for the enrollee, (sometimes referred to as a fail first protocol), establishing a preferred brand and nonpreferred brand formulary, or otherwise limiting the benefit to the use of a generic drug in lieu of brand name drugs, subject to a substitution process as set forth in (3) of this section.

(3) A carrier must establish a process that a provider and enrollee may use to request a substitution for a covered prescribed therapy, drug or medication. The process must not unreasonably restrict a patient's access to non-formulary or alternate medications for refractory conditions. Used in this context, "refractory" means "not responsive to treatment." A carrier's substitution process must not result in delay in treating a patient's emergency fill or urgent care needs, or expedited requests for authorization. Subject to the terms and conditions of the policy that otherwise limit coverage, the carrier must permit substitution of a covered generic drug or formulary drug if:

(a) An enrollee does not tolerate the covered generic or formulary drug; or

(b) An enrollee's provider determines that the covered generic or formulary drug is not therapeutically efficacious for an enrollee. A carrier may require the provider to submit specific clinical documentation as part of the substitution request; or

(c) The provider determines that a dosage is required for clinically efficacious treatment that differs from a carrier's formulary dosage limitation for the covered drug.

(4) A carrier may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over the counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.

(a) Neither the substitution process criteria nor the type or volume of documentation required to support a substitution request may be unreasonably burdensome to the enrollee or their provider.

(b) The substitution process must be administered consistently, and include a documented consultation with the prescribing provider prior to any decision.

(5) This section is effective August 1, 2012.

WSR 12-14-054
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-127—Filed June 28, 2012, 3:11 p.m., effective June 28, 2012, 3:11 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900I, 232-28-61900R and 232-28-61900S; 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: 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. 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 3.

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: June 28, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900U Freshwater exceptions to statewide rules—2012 North of Falcon Eastern Washington rivers and Columbia River. Notwithstanding the provisions of WAC 232-28-619 and WAC 220-55-255, 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:

a. North Jetty: Barbed hooks allowed for salmon 7 days per week when Marine Area 1 or Buoy 10 are open for salmon.

b. The Columbia River from the Megler-Astoria Bridge upstream to Bonneville Dam: Effective immediately through July 31, 2012: Open to retention of Chinook and sockeye. Daily salmonid limit is 6 fish. Up to 2 may be adult salmon or hatchery steelhead, or 1 of each. Release all salmon other than hatchery Chinook and sockeye. July 2 - July 31, release adult Chinook and sockeye. Salmon minimum size is 12 inches.

c. The Columbia River from Bonneville Dam upstream to the Highway 395 Bridge in Pasco: Effective immediately through July 31, 2012: Open to retention of salmon and steelhead. Daily salmonid limit is 6 fish. Up to 2 may be adult salmon or hatchery steelhead, or 1 of each. Release all salmon other than hatchery Chinook and sockeye Salmon minimum size is 12 inches.

d. From the Highway 395 Bridge at Pasco to Priest Rapids Dam, except Ringold Spring Creek (Hatchery Creek): Salmon: Effective immediately through July 31: Daily limit 6 fish, of which no more than 2 may be adult hatchery Chinook. Release wild Chinook.

e. 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): Immediately until further notice, same rules as the adjoining Columbia River.

f. 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.

g. 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.

h. 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.

i. From Priest Rapids Dam to Chief Joseph Dam: Effective July 1 through October 15, release all Chinook and sockeye with external floy tags and/or with one or more holes (round, approximately 1/4 inch diameter) punched in the caudal (tail) fin.

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 Kuhnis 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. 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. From mouth

to railroad bridge, anglers in possession of a valid two-pole endorsement may use up to two lines while fishing, effective immediately through June 30.

7. 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, effective immediately through June 30.

8. White Salmon River (Klickitat/Skamania counties):

a) From county road bridge below powerhouse to Northwestern Lake Road Bridge: Closed waters.

b) 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 immediately, catch and release only, except up to 2 hatchery steelhead may be retained. Selective gear rules in effect.

9. Okanogan River (Okanogan County):

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. Effective July 1 through October 15, release all Chinook and sockeye with external floy tags and/or with one or more holes (round, approximately 1/4 inch diameter) punched in the caudal (tail) fin.

10. 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. Effective July 1 through October 15, release all Chinook and sockeye with external floy tags and/or with one or more holes (round, approximately 1/4 inch diameter) punched in the caudal (tail) fin.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-28-61900I	Freshwater exceptions to statewide rules—2012 North of Falcon Eastern Washington rivers and Columbia River. (12-105)
WAC 232-28-61900R	Exceptions to statewide rules—Columbia, Okanogan and Similkameen rivers. (12-121)
WAC 232-28-61900S	Exceptions to statewide rules—Columbia River. (12-125)

WSR 12-14-056
EMERGENCY RULES
DEPARTMENT OF EARLY LEARNING

[Filed June 29, 2012, 8:39 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: To implement certain bills enacted by the 2012 legislature and signed by the governor:

- Regarding raising the cutoff of eligibility for working connections child care (WCCC) subsidies from one hundred seventy-five percent of the federal poverty level (FPL), to two hundred percent of the FPL.
- Regarding increasing the authorization period for WCCC from six months to twelve months.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0005, 170-290-0012, 170-290-0031, 170-290-0075, 170-290-0082, 170-290-0200, 170-290-0205, 170-290-0225, and 170-290-0230.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Other Authority: SB 6226, 3ESHB 2127.

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

Reasons for this Finding: 3ESHB 2127 directs the department to raise the cutoff eligibility for WCCC subsidies from one hundred seventy-five percent of the FPL to two hundred percent of the FPL. SSB 6226 directs the department to increase the authorization period for WCCC from six to twelve months.

Correcting typographical errors regarding ages of children whose families are eligible to receive WCCC subsidies is necessary for the preservation of the general welfare of the public.

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 6, 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 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

Date Adopted: June 29, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0005 Eligibility. (1) **Parents.** To be eligible for WCCC, the person applying for benefits must:

(a) Have parental control of one or more eligible children;

(b) Live in the state of Washington;

(c) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Nephew or niece;

(vi) Aunt;

(vii) Uncle;

(viii) Grandparent;

(ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or

(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;

(d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;

(f) Have countable income at or below ((~~one~~)) two hundred ((~~seventy-five~~)) percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than ((~~one~~)) two hundred ((~~seventy-five~~)) percent of the FPG;

(g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;

(h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

(i) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) **Children.** To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

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

(b) Live in Washington state, and be:

(i) Less than age thirteen; or

(ii) Less than age nineteen, and:

(A) Have a verified special need, according WAC 170-290-0220; or

(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0012 Verifying consumers' information. (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:

(a) The consumer initially applies for benefits; or

(b) The consumer reapplies for benefits.

(2) A consumer must provide verification to DSHS to determine if he or she continues to qualify for benefits during his or her eligibility period when there is a change of circumstances under WAC 170-290-0031.

(3) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) A current WorkFirst IRP for consumers receiving TANF;

(b) Employer name, address, and phone number;

(c) State business registration and license, if self-employed;

(d) Work, school, or training schedule (when requesting child care for non-TANF activities);

(e) Hourly wage or salary;

(f) Either the:

(i) Gross income for the last three months;

(ii) Federal income tax return for the preceding calendar year; or

(iii) DSHS employment verification form;

(g) Monthly unearned income the consumer receives, such as child support or Supplemental Security Income (SSI) benefits;

(h) If the other parent is in the household, the same information for them;

(i) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

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

(j) ((~~Proof of child enrollment in a head start, early head start or early childhood education and assistance program for twelve-month eligibility;~~

~~(k)~~)) Name and phone number of the licensed child care provider; and

(((~~l~~))) (k) For the in-home/relative child care provider, a:

(i) Completed and signed criminal background check form;

(ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(iii) Legible copy of the proposed providers' valid Social Security card; and

(iv) All other information required by WAC 170-290-0135.

(6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

(7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

(8) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0031 Notification of changes. When a consumer applies for or receives WCCC benefits, he or she must:

(1) Notify DSHS, within five days, of any change in providers;

(2) Notify the consumer's provider within ten days when DSHS changes his or her child care authorization;

(3) Notify DSHS within ten days of any significant change ((~~in~~)) related to the consumer's copayment or eligibility, including:

(a) The number of child care hours the consumer needs (more or less hours);

(b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;

(c) The consumer's household size such as any family member moving in or out of his or her home;

(d) Employment, school or approved TANF activity (starting, stopping or changing);

(e) The address and telephone number of the consumer's in-home/relative provider;

(f) The consumer's home address and telephone number; and

(g) The consumer's legal obligation to pay child support;

(4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and

(5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0075 Determining income eligibility and copayment amounts. (1) DSHS takes the following steps to determine a consumer's eligibility and copayment:

(a) Determine the consumer's family size (under WAC 170-290-0015); and

(b) Determine the consumer's countable income (under WAC 170-290-0065).

(2) Before February 1, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$50
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding $50
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(3) Effective February 1, 2011, through February 28, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$60
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding $60
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(4) ((~~On or after~~)) Effective March 1, 2011, through June 30, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$65
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 50%, then adding $65
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(5) On or after July 1, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$65
(c) Above 137.5% of the FPG through 200% of the FPG.	The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding $65.
(d) Above 200% of the FPG, a consumer is not eligible for WCCC benefits.	

(6) DSHS does not prorate the copayment when a consumer uses care for part of a month.

(((~~(6)~~))) (7) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0082 Eligibility period. (1) ((~~**Six-month eligibility.**~~

~~(a)~~)) A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for ((~~six~~)) twelve months before having to redetermine his or her income eligibility((~~, except as provided in subsection (2) of this section~~)). The ((~~six month~~)) twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1). Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

(((~~(b)~~))) (2) A consumer's eligibility may be for less than ((~~six~~)) twelve months if:

(((~~(i)~~))) (a) Requested by the consumer; or

(((~~(ii)~~))) (b) A TANF consumer's individual responsibility plan indicates child care is needed for less than ((~~six~~)) twelve months.

(((~~(c)~~))) (3) A consumer's eligibility may end sooner than ((~~six~~)) twelve months if:

(((~~(i)~~))) (a) The consumer no longer wishes to participate in WCCC; or

(((~~(ii)~~))) (b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

(((~~(2) **Twelve-month eligibility.**~~

~~(a) A consumer who meets all of the requirements of part II of this chapter, and has a child receiving services from head start (HS), early head start (EHS), or an early childhood education and assistance program (ECEAP), is eligible for WCCC subsidies for twelve months.~~

~~(b) A consumer's eligibility may be for less than twelve months if:~~

~~(i) Requested by the consumer; or~~

~~(ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.~~

~~(c) The consumer's eligibility may end sooner than twelve months if:~~

~~(i) The consumer no longer wishes to participate in WCCC; or~~

~~(ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.~~

~~(d)~~))) (4) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(((~~(e)~~))) (5) The twelve-month eligibility period begins:

(((~~(i)(A)~~))) (a) When benefits begin under WAC 170-290-0095; or

(((~~(B)~~))) (b) Upon reapplication under WAC 170-290-0109(4)((~~; and~~

~~(ii) When DSHS verifies that the child is receiving services from HS, EHS, or ECEAP.~~

~~(f) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP.~~

~~(g) During a consumer's twelve-month eligibility period, parent education and family development classes offered by HS, EHS, or ECEAP are approved activities. As funds are available, other DEL-approved parent education and family development classes may be authorized.~~

~~(h) Each child who is receiving services from HS, EHS, or ECEAP and is receiving WCCC subsidies will be assigned a unique early learning student identifier. Student information may be merged with information from the office of superintendent of public instruction, the education research and data center, or both, to measure the child's educational progress from preschool through grade twelve~~)).

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	$28.53	$23.99	$22.67	$21.34
	Half-Day	$14.28	$12.00	$11.34	$10.67
Spokane	Full-Day	$29.18	$24.54	$23.19	$21.83
County	Half-Day	$14.61	$12.28	$11.61	$10.91
Region 2	Full-Day	$28.81	$24.05	$22.30	$19.73
	Half-Day	$14.41	$12.03	$11.15	$9.88
Region 3	Full-Day	$38.13	$31.79	$27.46	$26.67
	Half-Day	$19.07	$15.89	$13.73	$13.34
Region 4	Full-Day	$44.38	$37.06	$31.09	$28.00
	Half-Day	$22.63	$18.54	$15.55	$14.00
Region 5	Full-Day	$32.54	$28.00	$24.65	$21.88
	Half-Day	$16.26	$14.00	$12.32	$10.95
Region 6	Full-Day	$31.99	$27.46	$23.99	$23.46
	Half-Day	$16.01	$13.73	$12.00	$11.74

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five ((~~to~~)) through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - ((~~11~~)) 12 yrs)
Region 1	Full-Day	$24.29	$24.29	$21.12	$21.12	$18.78
	Half-Day	$12.14	$12.14	$10.56	$10.56	$9.39
Spokane County	Full-Day	$24.84	$24.84	$21.60	$21.60	$19.21
	Half-Day	$12.42	$12.42	$10.80	$10.80	$9.60
Region 2	Full-Day	$25.65	$25.65	$22.30	$19.95	$19.95
	Half-Day	$12.82	$12.82	$11.15	$9.97	$9.97
Region 3	Full-Day	$34.03	$34.03	$29.33	$25.81	$23.46
	Half-Day	$17.02	$17.02	$14.67	$12.91	$11.74
Region 4	Full-Day	$40.04	$40.04	$34.81	$29.33	$28.16
	Half-Day	$20.03	$20.03	$17.42	$14.67	$14.08
Region 5	Full-Day	$26.99	$26.99	$23.46	$22.30	$19.95
	Half-Day	$13.50	$13.50	$11.74	$11.15	$9.97
Region 6	Full-Day	$26.99	$26.99	$23.46	$23.46	$22.30
	Half-Day	$13.50	$13.50	$11.74	$11.74	$11.15

(2) The family home child care WAC ((~~170-296-0020~~)) 170-296A-0010 and ((~~170-296-1350~~)) 170-296A-5550 allows providers to care for children from birth up to and including the day before their ((~~twelfth~~)) thirteenth birthday. ((~~The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on their license. If the provider has an exception to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) of this section, and the five to eleven year age range column is used for comparison.~~))

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five ((~~to eleven~~)) through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0225 Special needs rates—Licensed or certified child care centers and seasonal day camps. (1) In addition to the base rate for licensed or certified child care centers and seasonal day camps listed in WAC 170-290-0200, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	$7.30	$6.14	$5.80	$5.45
	Half-Day	$3.65	$3.07	$2.90	$2.73
Region 2	Full-Day	$7.36	$6.15	$5.70	$5.05
	Half-Day	$3.68	$3.08	$2.85	$2.52
Region 3	Full-Day	$9.75	$8.13	$7.02	$6.82
	Half-Day	$4.88	$4.06	$3.51	$3.41
Region 4	Full-Day	$11.35	$9.48	$7.95	$7.16
	Half-Day	$5.67	$4.74	$3.98	$3.58
Region 5	Full-Day	$8.32	$7.16	$6.30	$5.59
	Half-Day	$4.16	$3.58	$3.15	$2.80
Region 6	Full-Day	$8.18	$7.02	$6.14	$6.00
	Half-Day	$4.09	$3.51	$3.07	$3.00

(i) Centers in Clark County are paid Region 3 rates;

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed $15.89 per hour; or

(c) **Level 3.** A rate that exceeds $15.89 per hour.

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

(a) Be at least eighteen years of age; and

(b) Meet the requirements for being an assistant under chapter 170-295 WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who:

(a) Is thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five ((~~to~~)) through twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0230 Special needs rates—Licensed or certified family home child care providers. (1) In addition to the base rate for licensed or certified family home child care providers listed in WAC 170-290-0205, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - ((~~11~~)) 12 yrs)
Region 1	Full-Day	$6.00	$5.40	$5.40	$4.80
	Half-Day	$3.00	$2.70	$2.70	$2.40
Region 2	Full-Day	$6.00	$5.70	$5.10	$5.10
	Half-Day	$3.00	$2.85	$2.55	$2.55
Region 3	Full-Day	$8.70	$7.50	$6.60	$6.00
	Half-Day	$4.35	$3.75	$3.30	$3.00
Region 4	Full-Day	$9.00	$8.90	$7.50	$7.20
	Half-Day	$4.50	$4.45	$3.75	$3.60
Region 5	Full-Day	$6.60	$6.00	$5.70	$5.10
	Half-Day	$3.30	$3.00	$2.85	$2.55
Region 6	Full-Day	$6.60	$6.00	$6.00	$5.70
	Half-Day	$3.30	$3.00	$3.00	$2.85

(b) **Level 2.** A rate greater than Level 1, not to exceed $15.89 per hour; or

(c) **Level 3.** A rate that exceeds $15.89 per hour.

(2) If the provider has an exception to care for a child who:

(a) Is ((~~twelve~~)) thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five ((~~to eleven~~)) through twelve year age range for comparison.

(3) If a provider is requesting one-on-one supervision/direct care for the child with special needs, the person providing the one-on-one care must:

(a) Be at least eighteen years old; and

(b) Meet the requirements for being an assistant under chapter ((~~170-296~~)) 170-296A WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

WSR 12-14-057
EMERGENCY RULES
PUBLIC DISCLOSURE COMMISSION

[Filed June 29, 2012, 9:30 a.m., effective June 30, 2012]

Effective Date of Rule: June 30, 2012.

Purpose: To adjust campaign contribution limits for school board candidates, enacted by chapter 202, Laws of 2012, effective June 7, 2012, consistent with the commission's January 2012 adjustments contribution limits in effect at that time.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-400.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.125.

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

Reasons for this Finding: At the beginning of every even-numbered year, the commission is required to increase or decrease all dollar amounts found in RCW 42.17A.405, 42.17A.410, and other sections of law enacted by Initiative 134 based on economic conditions. These dollar amounts include contribution limits found in RCW 42.17A.405. To accomplish these adjustments for 2012, the commission began permanent rule making in September 2011 and the changes went into effect January 13, 2012. Chapter 202, Laws of 2012, effective June 7, 2012, amended RCW 42.1A.405 [42.17A.405] to place contribution limits on school board candidates, however, the limit imposed was the amount in place prior to the commission's pre-January 2012 adjustment. Adjusting the newly imposed limit will eliminate candidates' confusion that would result from having an "old" limit in place for some candidates. To preserve the general welfare and given the timing restriction for rule making in RCW 42.17A.110(1), the commission has adjusted the newly imposed limits on an emergency basis.

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 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 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 24, 2012.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-10-041, filed 4/27/12, effective 5/28/12)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
.005	Definition of "Independent Expenditure"	$800	$900
.445(3)	Reimbursement of candidate for loan to own campaign	$4,700	$5,000
.630(1)	Report—		
	Applicability of provisions to		
	Persons who made contributions	$16,000	$18,000
	Persons who made independent expenditures	$800	$900
.405(2)	Contribution Limits—		
	Candidates for state leg. office	$800	$900
	Candidates for county office	$800	$900
	Candidates for other state office	$1,600	$1,800
	Candidates for special purpose districts	$1,600	$1,800
	Candidates for city council office	$800	$900
	Candidates for mayoral office	$800	$900
	Candidates for school board office	$800	$900
.405(3)	Contribution Limits—		
	State official up for recall or pol comm. supporting recall—		
	State Legislative Office	$800	$900
	Other State Office	$1,600	$1,800
.405(4)	Contribution Limits—		
	Contributions made by political parties and caucus committees		
	State parties and caucus committees	.80 per voter	.90 per registered voter
	County and leg. district parties	.40 per voter	.45 per registered voter
	Limit for all county and leg. district parties to a candidate	.40 per voter	.45 per registered voter
.405(5)	Contribution Limits—		
	Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	.80 per voter	.90 per registered voter
	County and leg. district parties	.40 per voter	.45 per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm.		

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
	supporting recall	.40 per voter	.45 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	$800	$900
	To political party	$4,000	$4,500
.410(1)	Candidates for judicial office	$1,600	$1,800
.475	Contribution must be made by written instrument	$80	$90

WSR 12-14-058
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 29, 2012, 9:49 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: The department is amending rules to revise the assessment process for allocating personal care hours as a result of the Washington state supreme court decision in *Samantha A. v. Department of Social and Health Services*. Authorization for additional personal care hours for clients who have off-site laundry and living more than forty-five minutes from essential services is reinstated to make efficient use of allocated funds. The department is in the process of adopting these rules as permanent rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that 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: See Purpose above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 27, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-15 issue of the Register.

WSR 12-14-059
EMERGENCY RULES
PUBLIC DISCLOSURE COMMISSION
[Filed June 29, 2012, 10:09 a.m., effective June 30, 2012]

Effective Date of Rule: June 30, 2012.

Purpose: Implement HB 2499, effective June 7, 2012, by incorporating into existing clarifying rules the newly enacted disclosure requirement for political advertising supporting or opposing ballot measures sponsored by a political committee at a cost of $1,000 or more.

Citation of Existing Rules Affected by this Order: Amending WAC 390-18-025.

Statutory Authority for Adoption: RCW 42.17A.110.

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: Given the rule-making instruction and timing instruction in RCW 42.17A.110 and in order to preserve the general welfare for the 2012 election season, WAC 390-18-025 needs to be amended to clarify that ell [all] political committees are subject to the new disclosure requirements enacted by HB 2499.

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 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 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 24, 2012.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-18-025 Advertising—Identification of "top five contributors." (1) For purposes of RCW 42.17A.320 (2), (4) ((~~and~~)), (5) and (6), "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions exceeding seven hundred dollars during the twelve-month period preceding the date on which the advertisement is published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding seven hundred dollars and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

(2) For independent expenditure advertisements or electioneering communications, the "top five contributors" identification requirement of RCW 42.17A.320 applies to all political committees that make independent expenditures, including continuing political committees and out-of-state political committees subject to chapter 42.17A RCW other than a bona fide political party committee.

(3) For political advertisements supporting or opposing ballot measures costing one thousand dollars, the "top five contributors" identification requirement of RCW 42.17A.320 applies to all political committees.

(4) If a political committee keeps records necessary to track contributions according to the use intended by contributors, and the committee subsequently makes independent expenditures for advertisements supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose, as opposed to identifying the overall top five contributors to the committee as is otherwise required by RCW 42.17A.320 and this section.

However, a contributor's contributions earmarked for independent expenditures supporting or opposing a specific candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used with respect to a different candidate or slate of candidates without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure.

WSR 12-14-060
EMERGENCY RULES
PUBLIC DISCLOSURE COMMISSION

[Filed June 29, 2012, 10:15 a.m., effective June 30, 2012]

Effective Date of Rule: June 30, 2012.

Purpose: Implement HB 2499, effective June 7, 2012, by incorporating into existing clarifying rules the newly enacted disclosure requirement for political advertising supporting or opposing ballot measures sponsored by a political committee at a cost of $1,000 or more.

Citation of Existing Rules Affected by this Order: Amending WAC 390-18-010.

Statutory Authority for Adoption: RCW 42.17A.110.

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: Given the rule-making instruction and timing instruction in RCW 42.17A.110 and in order to preserve the general welfare for the 2012 election season, WAC 390-18-010 needs to be amended to clarify how sponsors of printed and broadcast advertising will comply with the new disclosure requirements enacted by HB 2499.

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 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 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: June 28, 2012.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expen-

ditures. (1) For the purposes of chapter 42.17A RCW and Title 390 WAC:

(a) "Sponsor of an electioneering communication, independent expenditure or political advertising" is defined in RCW 42.17A.005.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, electioneering communications, or independent expenditures that are for political advertising and/or electioneering communications subject to the provisions of chapter 42.17A RCW and as defined in RCW 42.17A.005 or 42.17A.255.

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor provided the contribution is reported in accordance with applicable provisions of chapter 42.17A RCW and Title 390 WAC.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). ((~~However,~~))

(a) Political committees that sponsor political advertising costing one thousand dollars or more supporting or opposing a ballot measure must clearly state the "top five contributors" to that political committee pursuant to WAC 390-18-025.

(b) Printed advertising undertaken as an independent expenditure or electioneering communication shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17A.320 and provide this information in an area set apart from any other printed matter.

(c) Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to provide the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

(5)(a) Advertising consisting of more than one page but intended to be presented as a single item (e.g., 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) Advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or television advertising shall be clearly spoken or identified as required in RCW 42.17A.320.

(a) Political committees that sponsor political advertising costing one thousand dollars or more supporting or opposing a ballot measure shall comply with the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320. The "top five" contributors shall be identified pursuant to WAC 390-18-025.

(b) All radio, telephone and television advertising undertaken as an independent expenditure as defined in RCW 42.17A.005 shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320.

((~~(b)~~)) (c) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17A.005 shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320.

((~~(c)~~)) (d) Political committees that sponsor independent expenditure or electioneering communication radio and television advertising are required to clearly speak or otherwise identify the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

WSR 12-14-061
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)

[Filed June 29, 2012, 10:29 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: To adjust the rate table in accordance with the 2012 supplemental budget. This emergency rule will replace and supersede WSR 12-10-048. A CR-101 has been filed, WSR 12-10-090. Since the last emergency rule, the proposed permanent rule has gone out for internal draft review.

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: The 2012 supplemental budget makes changes to the assisted living facility and adult family home rates. The training rate add-on authorized in the supplemental budget is being adjusted to an ongoing rate. This emergency rule will replace and supersede WSR 12-10-048. A CR-101 has been filed, WSR 12-10-090. Since the last emergency rule, the proposed permanent rule has gone out for internal draft review.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 22, 2012.

Katherine I. Vasquez
Rules Coordinator

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 Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	$((~~66.52~~)) 65.58	$((~~71.94~~)) 71.00	$((~~47.06~~)) 46.51	$((~~47.06~~)) 46.51	$((~~46.61~~)) 47.45
A Med	$((~~72.02~~)) 70.97	$((~~77.44~~)) 76.39	$((~~53.39~~)) 52.71	$((~~53.39~~)) 52.71	$((~~52.86~~)) 53.70
A High	$((~~80.81~~)) 79.58	$((~~86.23~~)) 85.00	$((~~58.63~~)) 57.85	$((~~58.63~~)) 57.85	$((~~59.12~~)) 59.96
B Low	$((~~66.52~~)) 65.58	$((~~71.94~~)) 71.00	$((~~47.06~~)) 46.51	$((~~47.06~~)) 46.51	$((~~46.84~~)) 47.68
B Med	$((~~74.22~~)) 73.13	$((~~79.64~~)) 78.55	$((~~59.72~~)) 58.92	$((~~59.72~~)) 58.92	$((~~59.41~~)) 60.25
B Med-High	$((~~84.05~~)) 82.76	$((~~89.47~~)) 88.18	$((~~63.50~~)) 62.62	$((~~63.50~~)) 62.62	$((~~63.64~~)) 64.48
B High	$((~~88.48~~)) 87.10	$((~~93.90~~)) 92.52	$((~~72.58~~)) 71.52	$((~~72.58~~)) 71.52	$((~~72.73~~)) 73.57
C Low	$((~~72.02~~)) 70.97	$((~~77.44~~)) 76.39	$((~~53.39~~)) 52.71	$((~~53.39~~)) 52.71	$((~~52.86~~)) 53.70
C Med	$((~~80.81~~)) 79.58	$((~~86.23~~)) 85.00	$((~~67.00~~)) 66.05	$((~~67.00~~)) 66.05	$((~~67.44~~)) 68.28
C Med-High	$((~~100.58~~)) 98.96	$((~~106.00~~)) 104.38	$((~~89.29~~)) 87.89	$((~~89.29~~)) 87.89	$((~~88.28~~)) 89.12
C High	$((~~101.58~~)) 99.94	$((~~107.00~~)) 105.36	$((~~90.14~~)) 88.73	$((~~90.14~~)) 88.73	$((~~89.51~~)) 90.35
D Low	$((~~74.22~~)) 73.13	$((~~79.64~~)) 78.55	$((~~72.14~~)) 71.09	$((~~72.14~~)) 71.09	$((~~68.74~~)) 69.58
D Med	$((~~82.46~~)) 81.20	$((~~87.88~~)) 86.62	$((~~83.57~~)) 82.29	$((~~83.57~~)) 82.29	$((~~84.09~~)) 84.93

D Med-High	$((~~106.61~~)) 104.87	$((~~112.03~~)) 110.29	$((~~106.26~~)) 104.52	$((~~106.26~~)) 104.52	$((~~101.14~~)) 101.98
D High	$((~~114.88~~)) 112.97	$((~~120.30~~)) 118.39	$((~~114.88~~)) 112.97	$((~~114.88~~)) 112.97	$((~~115.12~~)) 115.96
E Med	$((~~138.82~~)) 136.43	$((~~144.24~~)) 141.85	$((~~138.82~~)) 136.43	$((~~138.82~~)) 136.43	$((~~139.06~~)) 139.90
E High	$((~~162.76~~)) 159.89	$((~~168.18~~)) 165.31	$((~~162.76~~)) 159.89	$((~~162.76~~)) 159.89	$((~~163.01~~)) 163.85

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE

METROPOLITAN COUNTIES*

CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	$((~~61.02~~)) 60.19	$((~~65.94~~)) 65.11	$((~~47.06~~)) 46.51	$((~~47.06~~)) 46.51	$((~~46.61~~)) 47.45
A Med	$((~~64.33~~)) 63.43	$((~~69.25~~)) 68.35	$((~~51.28~~)) 50.64	$((~~51.28~~)) 50.64	$((~~50.77~~)) 51.61
A High	$((~~78.61~~)) 77.43	$((~~83.53~~)) 82.35	$((~~55.91~~)) 55.18	$((~~55.91~~)) 55.18	$((~~55.98~~)) 56.82
B Low	$((~~61.02~~)) 60.19	$((~~65.94~~)) 65.11	$((~~47.06~~)) 46.51	$((~~47.06~~)) 46.51	$((~~46.84~~)) 47.68
B Med	$((~~69.81~~)) 68.80	$((~~74.73~~)) 73.72	$((~~56.56~~)) 55.82	$((~~56.56~~)) 55.82	$((~~56.26~~)) 57.10
B Med-High	$((~~79.07~~)) 77.88	$((~~83.99~~)) 82.80	$((~~60.14~~)) 59.33	$((~~60.14~~)) 59.33	$((~~60.32~~)) 61.16
B High	$((~~86.29~~)) 84.95	$((~~91.21~~)) 89.87	$((~~70.53~~)) 69.51	$((~~70.53~~)) 69.51	$((~~70.68~~)) 71.52
C Low	$((~~64.33~~)) 63.43	$((~~69.25~~)) 68.35	$((~~51.49~~)) 50.85	$((~~51.49~~)) 50.85	$((~~51.15~~)) 51.99
C Med	$((~~78.61~~)) 77.43	$((~~83.53~~)) 82.35	$((~~66.14~~)) 65.21	$((~~66.14~~)) 65.21	$((~~65.80~~)) 66.64
C Med-High	$((~~97.27~~)) 95.71	$((~~102.19~~)) 100.63	$((~~82.96~~)) 81.69	$((~~82.96~~)) 81.69	$((~~82.04~~)) 82.88
C High	$((~~98.24~~)) 96.67	$((~~103.16~~)) 101.59	$((~~88.24~~)) 86.87	$((~~88.24~~)) 86.87	$((~~87.03~~)) 87.87
D Low	$((~~69.81~~)) 68.80	$((~~74.73~~)) 73.72	$((~~71.15~~)) 70.12	$((~~71.15~~)) 70.12	$((~~67.23~~)) 68.07
D Med	$((~~80.21~~)) 79.00	$((~~85.13~~)) 83.92	$((~~81.90~~)) 80.65	$((~~81.90~~)) 80.65	$((~~81.83~~)) 82.67
D Med-High	$((~~103.11~~)) 101.44	$((~~108.03~~)) 106.36	$((~~103.63~~)) 101.95	$((~~103.63~~)) 101.95	$((~~98.06~~)) 98.90
D High	$((~~111.72~~)) 109.88	$((~~116.64~~)) 114.80	$((~~111.72~~)) 109.88	$((~~111.72~~)) 109.88	$((~~111.38~~)) 112.22
E Med	$((~~134.51~~)) 132.21	$((~~139.43~~)) 137.13	$((~~134.51~~)) 132.21	$((~~134.51~~)) 132.21	$((~~134.17~~)) 135.01

E High	$((~~157.30~~)) 154.54	$((~~162.22~~)) 159.46	$((~~157.30~~)) 154.54	$((~~157.30~~)) 154.54	$((~~156.96~~)) 157.80

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
NONMETROPOLITAN COUNTIES**

CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	$((~~59.94~~)) 59.13	$((~~65.18~~)) 64.37	$((~~47.06~~)) 46.51	$((~~47.06~~)) 46.51	$((~~46.61~~)) 47.45
A Med	$((~~64.33~~)) 63.43	$((~~69.57~~)) 68.67	$((~~50.23~~)) 49.62	$((~~50.23~~)) 49.62	$((~~49.74~~)) 50.58
A High	$((~~78.61~~)) 77.43	$((~~83.85~~)) 82.67	$((~~55.01~~)) 54.30	$((~~55.01~~)) 54.30	$((~~54.95~~)) 55.79
B Low	$((~~59.94~~)) 59.13	$((~~65.18~~)) 64.37	$((~~47.06~~)) 46.51	$((~~47.06~~)) 46.51	$((~~46.84~~)) 47.68
B Med	$((~~69.81~~)) 68.80	$((~~75.05~~)) 74.04	$((~~55.51~~)) 54.79	$((~~55.51~~)) 54.79	$((~~55.22~~)) 56.06
B Med-High	$((~~79.07~~)) 77.88	$((~~84.31~~)) 83.12	$((~~59.01~~)) 58.22	$((~~59.01~~)) 58.22	$((~~59.14~~)) 59.98
B High	$((~~86.29~~)) 84.95	$((~~91.53~~)) 90.19	$((~~66.71~~)) 65.77	$((~~66.71~~)) 65.77	$((~~66.86~~)) 67.70
C Low	$((~~64.33~~)) 63.43	$((~~69.57~~)) 68.67	$((~~50.23~~)) 49.62	$((~~50.23~~)) 49.62	$((~~49.74~~)) 50.58
C Med	$((~~78.61~~)) 77.43	$((~~83.85~~)) 82.67	$((~~62.52~~)) 61.66	$((~~62.52~~)) 61.66	$((~~63.29~~)) 64.13
C Med-High	$((~~97.27~~)) 95.71	$((~~102.51~~)) 100.95	$((~~79.79~~)) 78.58	$((~~79.79~~)) 78.58	$((~~78.92~~)) 79.76
C High	$((~~98.24~~)) 96.67	$((~~103.48~~)) 101.91	$((~~83.41~~)) 82.13	$((~~83.41~~)) 82.13	$((~~82.32~~)) 83.16
D Low	$((~~69.81~~)) 68.80	$((~~75.05~~)) 74.04	$((~~67.26~~)) 66.30	$((~~67.26~~)) 66.30	$((~~63.59~~)) 64.43
D Med	$((~~80.21~~)) 79.00	$((~~85.45~~)) 84.24	$((~~77.42~~)) 76.26	$((~~77.42~~)) 76.26	$((~~77.39~~)) 78.23
D Med-High	$((~~103.11~~)) 101.44	$((~~108.35~~)) 106.68	$((~~97.95~~)) 96.38	$((~~97.95~~)) 96.38	$((~~92.74~~)) 93.58
D High	$((~~105.60~~)) 103.88	$((~~110.84~~)) 109.12	$((~~105.60~~)) 103.88	$((~~105.60~~)) 103.88	$((~~105.32~~)) 106.16
E Med	$((~~127.14~~)) 124.99	$((~~132.38~~)) 130.23	$((~~127.14~~)) 124.99	$((~~127.14~~)) 124.99	$((~~126.86~~)) 127.70
E High	$((~~148.68~~)) 146.10	$((~~153.92~~)) 151.34	$((~~148.68~~)) 146.10	$((~~148.68~~)) 146.10	$((~~148.41~~)) 149.25

** 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 12-14-063
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-128—Filed June 29, 2012, 11:37 a.m., effective June 29, 2012, 11:37 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100T; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets additional set net commercial fishing periods [for] Columbia River treaty tribes. The rules continue to allow the sale of shad from experimental gear types and drift gillnets. Harvestable numbers of shad are available. The rules continue to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries in Zone 6 and downstream of Bonneville Dam consistent with tribal memorandum of understandings/memorandum of agreements. The rules continue to allow the sale of fish caught in Yakama Nation tributary fisheries, consistent with Yakama Nation regulations. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 14, June 20, and June 28, 2012. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 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 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: June 29, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100U Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, Icicle River and Drano Lake and specific areas of SMCRA 1E, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: 6 AM Tuesday, July 3, to 6 PM Friday, July 6, 2012.

6 AM Monday, July 9, to 6 PM Wednesday, July 11, 2012.

b. Gear: Gillnets.

c. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may retained for subsistence purposes only. Sales of fish caught during open gillnet periods are allowed after the end of the open period, as long as the fish were landed during the open period.

d. Sanctuaries: All sanctuaries for this gear type in effect, except Spring Creek.

2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):

a. Season: Open until further notice.

b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

c. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only.

d. All dam sanctuaries for these gear types are in effect.

3. Open Area: SMCRA 1F, 1G, 1H (Zone 6) outside of Boat Restricted Zones at dams:

a. Season: Immediately through July 31. Experimental shad gear may not be fished during treaty Indian gillnet seasons.

b. Gear: Experimental Shad drift gillnets (4 1/4" tangle net), fish wheels, purse seines, and beach seines.

c. Allowable Sales: Shad. Only shad may be kept and sold. All other fish must be immediately returned to the water unharmed.

4. Open Area:SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: Open until further notice.

c. Gear:Hoop nets, dip bag nets and rod and reel with hook and line.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon retention is prohibited, and sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

5. Open Area: Columbia River Tributaries upstream of Bonneville Dam

a. Season: Open until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

b. Area: Drano Lake, Wind River, Klickitat River, and Icicle Creek.

c. Gear: Hoop nets, dip bag nets and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

d. Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch.

6. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100T	Columbia River salmon seasons above Bonneville Dam. (12-122)

WSR 12-14-066
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-129—Filed June 29, 2012, 12:38 p.m., effective June 29, 2012, 12:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900K; 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: The estuary sturgeon fishery was originally scheduled to continue through July 8. Angling effort and catch have exceeded expectations, and the catch guideline of white sturgeon is projected to be reached by July 4, 2012. Sturgeon sanctuary: The current language for the sturgeon angling closure below Bonneville Dam during May 1-August 31 references the "upstream exposed end of Skamania Island." Due to high flows over the past few years, Skamania Island has eroded and is no longer an accurate reference point. The updated language provides reference to existing markers on both sides' shores and removes the reference to Skamania Island. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of June 28, 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; 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: June 29, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately through August 31, 2012, it is unlawful to fish for sturgeon from Bonneville Dam downstream 9 miles to a line crossing the Columbia River from navigation marker 82 on the Oregon shore, westerly to the boundary marker on the Washington shore upstream of Fir Point.

(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.

(3) Effective immediately 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.

(4) Effective July 5, 2012, it is unlawful 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900K	Exceptions to statewide rules—Columbia River sturgeon. (12-76)

WSR 12-14-093
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-132—Filed July 2, 2012, 4:31 p.m., effective July 5, 2012]

Effective Date of Rule: July 5, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900R; 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: The closure will reduce incidental hooking mortality on Endangered Species Act listed chinook salmon. Anglers are abusing the game fish rules and specifically targeting chinook salmon leading to increased mortality. 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: July 2, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Skagit River. Notwithstanding the provisions of WAC 232-28-619, selective gear rules, with a maximum hook gap of 1/2 inch required in the following waters:

(1) The Skagit River from the mouth to the Highway 536 Bridge at Mt Vernon (Memorial Highway Bridge, July 5 through August 31, 2012.

(2) The Skagit River from the Highway 536 Bridge to Gilligan Creek, July 16 through August 31, 2012.

(3) The Skagit River from Gilligan Creek to The Dalles Bridge at Concrete, July 5 through September 15, 2012.

(4) The Skagit River from the Dalles Bridge at Concrete to Highway 530 Bridge at Rockport July 5 through September 15, 2012.

(5) The Skagit River from Highway 530 Bridge to Cascade River Road (Marblemount Bridge), July 16 through September 15, 2012.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective September 16, 2012:

WAC 232-28-61900R	Exceptions to statewide rules—Skagit River.

WSR 12-14-107
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-134—Filed July 3, 2012, 3:04 p.m., effective July 11, 2012, 9:00 p.m.]

Effective Date of Rule: July 11, 2012, 9:00 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500D and 220-56-32500E; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state recreational share of spot shrimp has been taken in Marine Area 6; in addition, the spot shrimp fishery in Marine Areas 4 and 5 will be closed 9:00 p.m. September 15, 2012, to protect spot shrimp during the onset of the egg-bearing period. Harvestable amounts of nonspot shrimp are available in several marine areas, and the depth restrictions and area closures are in effect to protect 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 1, Amended 0, Repealed 2.

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

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

Date Adopted: July 3, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-32500E Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 6 and Marine Area 7, except as provided for in this section:

a. Marine Area 6, and Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary:

i. Open to the harvest of all shrimp species except spot shrimp. It is unlawful to possess spot shrimp, and all spot shrimp must immediately be returned to the water unharmed.

ii. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

2) Effective immediately until further notice, all waters equal to or less than 150 feet in depth in Marine Areas 8-1, 8-2, 9 and 11 are open to the harvest of all shrimp species except spot shrimp. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

3) Effective immediately until 9:00 p.m. September 15, 2012, all waters of Marine Area 4 east of the Bonilla-Tatoosh line, and Marine Area 5, are open to the harvest of all shrimp species.

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. July 11, 2012:

WAC 220-56-32500D	Shrimp—Areas and seasons. (12-103)

The following section of the Washington Administrative Code is repealed effective October 16, 2012:

WAC 220-56-32500E	Shrimp—Areas and seasons.

WSR 12-14-108
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 12-135—Filed July 3, 2012, 3:09 p.m., effective July 4, 2012, 12:01 a.m.]

Effective Date of Rule: July 4, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100J; and amending WAC 220-52-051.

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) closes Catch Area 23A-E to spot shrimp fishing, as the quota has been reached; (2) closes SMA 2E to all fishing on July 11, 2012, as the quota has been reached and (3) reduces the spot shrimp weekly limits in SMA 2E and Catch Area 26B-2. 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: July 3, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100K 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 (SMA) 1A, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 2W, Catch Areas 23A-E, 23A-S and 23D, are closed to the harvest of spot shrimp.

iii) Effective immediately, until 12:01 a.m. July 11, 2012, all waters of SMA 2E are closed to the harvest of all shrimp species other than spot shrimp. Effective 12:01 a.m. July 11, 2012, all waters of SMA 2E are closed.

(b) The shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, with the following exceptions:

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 130 pounds per week in SMA 2E, and 215 pounds per week in Catch Area 26B-2.

(d) It is unlawful to pull shellfish pots in more than one catch area per day.

(e) 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) 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) Those portions of Catch Areas 20B, 21A and 22A within SMA 1B are open, effective immediately until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. July 4, 2012:

WAC 220-52-05100J	Puget Sound shrimp beam trawl fishery—Season. (12-124)

WSR 12-14-111
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-136—Filed July 3, 2012, 4:04 p.m., effective July 3, 2012, 4:04 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000J; 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: July 3, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-24-04000J 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:

Immediately through July 4, 2012;
July 6 through July 10, 2012;
July 13 through July 17, 2012;
July 20 through July 24, 2012;
July 27 through July 31, 2012;
August 3 through August 7, 2012;
August 10 through August 14, 2012;
August 17 through August 21, 2012;
August 24 through August 27, 2012;
August 31 through September 3, 2012;
September 7 through September 10, 2012; and
September 14 through September 17, 2012.

(2) Landing and possession limit of 40 Chinook and 35 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4.

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

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon and halibut.

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

(6) 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.

(7) 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.

(8) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/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.

(9) Mandatory Yelloweye Rockfish Conservation Area - This is defined as 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.

(10) 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.

(11) 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 September 19, 2012:

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