

WSR 12-19-001
PERMANENT RULES
HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed September 5, 2012, 2:44 p.m., effective October 6, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: With passage of 2E2SHB 1738, the responsibility for refugee medical assistance (RMA) was transferred to the health care authority (HCA). HCA is recodifying the rules for RMA under Title 182 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 182-507-0130.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Chapter 15, Laws of 2011 (2E2SHB 1738).

Adopted under notice filed as WSR 12-16-047 on July 27, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: September 5, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-507-0130 Refugee medical assistance (RMA). ~~((1) Who can apply for refugee medical assistance?~~

Anyone can apply for refugee medical assistance (RMA) and have eligibility determined by the department of social and health services (DSHS).

(2) Who is eligible for refugee medical assistance?

(a) You are eligible for RMA if you meet all of the following conditions:

(i) Immigration status requirements of WAC 388-466-0005;

(ii) Income and resource requirements of WAC 388-466-0140;

~~(iii) Monthly income standards up to two hundred percent of the federal poverty level (FPL). Spenddown is available for applicants whose income exceeds two hundred percent of FPL (see WAC 388-519-0110); and~~

(iv) Provide the name of the voluntary agency (VOLAG) which helped bring you to this country, so that DSHS can

promptly notify the agency (or sponsor) about your application for RMA:

(b) You are eligible for RMA if you:

(i) Receive refugee cash assistance (RCA) and are not eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210; or

(ii) Choose not to apply for or receive RCA and are not eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210, but still meet RMA eligibility requirements.

(3) Who is not eligible for refugee medical assistance?

You are not eligible to receive RMA if you are:

(a) Already eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a department-approved individual responsibility plan (IRP);

(c) A nonrefugee spouse of a refugee.

(4) If I have already received a cash assistance grant from voluntary agency (VOLAG), will it affect my eligibility for RMA?

No. A cash assistance payment provided to you by your VOLAG is not counted in determining eligibility for RMA.

(5) If I get a job after I have applied but before I have been approved for RMA, will my new income be counted in determining my eligibility?

No. Your RMA eligibility is determined on the basis of your income and resources on the date of the application.

(6) Will my sponsor's income and resources be considered in determining my eligibility for RMA?

Your sponsor's income and resources are not considered in determining your eligibility for RMA unless your sponsor is a member of your assistance unit.

(7) How do I find out if I am eligible for RMA?

DSHS will send you a letter in both English and your primary language informing you about your eligibility. DSHS will also let you know in writing every time there are any changes or actions taken on your case.

(8) Will RMA cover my medical expenses that occurred after I arrived in the U.S. but before I applied for RMA?

You may be eligible for RMA coverage of your medical expenses for three months prior to the first day of the month of your application. Eligibility determination will be made according to medicaid rules.

(9) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RMA?

You are eligible for RMA to the same extent as a refugee, if you are:

(a) An adult victim, eighteen years of age or older, and you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS). You also have to meet eligibility requirements in subsections (2)(a) and (b) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter.

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special

letter for children. Children also have to meet income eligibility requirements.

(e) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet eligibility requirements in subsections (2)(a) and (b) of this section.

~~(10) If I am an asylee, what date will be used as an entry date?~~

If you are an asylee, your entry date will be the date that your asylum status is granted. For example, if you entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and granted asylum on September 1, 2000, your date of entry is September 1, 2000. On September 1, 2000 you may be eligible for refugee medical assistance.

~~(11) When does my RMA end?~~

Your refugee medical assistance will end on the last day of the eighth month from the month of your entry into the United States. Start counting the eight months with the first day of the month of your entry into the U.S. For example, if you entered the U.S. on May 28, 2000, your last month is December 2000.

~~(12) What happens if my earned income goes above the income standards?~~

(a) If you are getting RMA, your medical eligibility will not be affected by the amount of your earnings;

(b) If you were getting medicaid and it was terminated because of your earnings, we will transfer you to RMA for the rest of your RMA eligibility period. You will not need to apply.

~~(13) Will my spouse also be eligible for RMA, if he/she arrives into the U.S. after me?~~

When your spouse arrives in the U.S., we will determine his/her eligibility for medicaid and other medical programs.

(a) If your spouse is eligible for RCA, he/she is automatically eligible for RMA.

(b) If your spouse is not eligible for RCA because your household's countable income exceeds the TANF income and resource standards described in chapter 388-450 and 388-470 WAC, he/she is eligible for RMA as long as the countable household income is below two hundred percent of federal poverty level (FPL) per WAC 388-466-0140(2).

(c) If your spouse is approved for RMA, he/she would have a maximum of eight months of RMA starting on the first day of the month of his/her arrival.

~~(14) What do I do if I disagree with a decision or action that has been taken by DSHS on my case?~~

If you disagree with the decision or action taken on your case by department you have the right to request a review of your case or request an administrative hearing (see WAC 388-02-0090). Your request must be made within ninety days of the date of the decision or action.

~~(15) What happens to my medical coverage after my eligibility period is over?~~

We will determine your eligibility for other medical programs. You may have to complete an application for another program.)) (1) An individual is eligible for refugee medical assistance (RMA) if the following conditions are met. The individual:

(a) Meets immigration status requirements of WAC 182-507-0135;

(b) Has countable resources below one thousand dollars on the date of application;

(c) Has countable income equal to or below two hundred percent of the federal poverty level (FPL) on the date of application. The following income is not considered when determining eligibility for RMA:

(i) Resettlement cash payments made by the voluntary agency (VOLAG);

(ii) Income of a sponsor is not counted unless the sponsor is also part of the individual's assistance unit; and

(iii) Income received after the date of application.

(d) Provides the name of the VOLAG which helped bring the individual to the United States so that the department of social and health services (DSHS) can promptly notify the VOLAG (or sponsor) about the medical application.

(2) An individual who receives refugee cash assistance (RCA) is eligible for RMA as long as the individual is not otherwise eligible for medicaid or a children's health care program as described in WAC 182-505-0210. An individual does not have to apply for or receive RCA in order to qualify for RMA.

(3) An individual is not eligible to receive RMA if the individual is:

(a) Already eligible for medicaid or a children's health care program as described in WAC 182-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a DSHS-approved individual responsibility plan (IRP); or

(c) A nonrefugee spouse of a refugee.

(4) If approved for RMA, the agency or its designee issues an approval letter in both English and the individual's primary language. The agency or its designee also sends a notice every time there are any changes or actions taken which affect the individual's eligibility for RMA.

(5) An individual may be eligible for RMA coverage of medical expenses incurred during the three months prior to the first day of the month of the application. Eligibility determination will be made according to medicaid rules.

(6) A victim of human trafficking must provide the following documentation and meet the eligibility requirements in subsections (1) and (2) of this section to be eligible for RMA:

(a) Adults, eighteen years of age or older, must provide the original certification letter from the United States Department of Health and Human Services (DHHS). No other documentation is needed. The eight-month eligibility period will be determined based on the entry date on the individual's certification letter;

(b) A child victim under the age of eighteen does not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements;

(c) A family member of a certified victim of human trafficking must have a T-2, T-3, T-4, or T-5 visa (derivative T-Visas), and the family member must meet eligibility requirements in subsections (1) and (2) of this section.

(7) The entry date for an asylee is the date that the individual's asylum status is granted. For example, an individual entered the United States on December 1, 1999, as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000, and was granted asylum on September 1, 2000. The date of entry is September 1, 2000, and that is the date used to establish eligibility for RMA.

(8) RMA ends on the last day of the eighth month from the month the individual entered the United States. For example, an individual who entered the United States on May 28, 2011, is eligible through the end of December 2011.

(9) An individual approved for RMA is continuously eligible through the end of the eighth month after the individual's entry to the United States, regardless of an increase in income.

(10) The agency, or its designee, determines eligibility for medicaid and other medical programs for an individual's spouse when the spouse arrives in the United States. If the spouse is not eligible for medicaid due to the countable income of the individual, the spouse is still eligible for RMA for eight months following the spouse's entry into the United States.

(11) An individual who disagrees with a decision or action taken on the case by the agency, or its designee, has the right to request a review of the case action(s) or request an administrative hearing (see chapter 182-526 WAC). The request must be received by the agency, or its designee, within ninety days of the date of the decision or action.

NEW SECTION

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);
- (b) Paroled into the United States as a refugee or asylee under section 212 (d)(5) of the INA;
- (c) Granted conditional entry under section 203 (a)(7) of the INA;
- (d) Granted asylum under section 208 of the INA;
- (e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;
- (f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;
- (g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);
- (h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; or
- (i) Admitted as special immigrant from Iraq or Afghanistan under section 101 (a)(27) of the INA.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was

previously in one of the statuses described in subsection (1)(a) through (g) of this section.

WSR 12-19-005 PERMANENT RULES OLYMPIC COLLEGE

[Filed September 6, 2012, 9:02 a.m., effective October 7, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Create a new section WAC 132C-285-020 Adjudicative proceedings, to assist those who wish to appeal decisions made by Olympic College to understand the proper procedures, and to assure that the procedures are consistent with the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250.

Statutory Authority for Adoption: Chapter 28B.50 RCW and RCW 34.05.250.

Adopted under notice filed as WSR 12-15-052 on July 17, 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 1, Amended 0, Repealed 1 [0].

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

Number of Sections Adopted Using Negotiated Rule Making: New 1, 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: August 28, 2012.

Thomas Oliver
Rules Coordinator

NEW SECTION

WAC 132C-285-020 Adjudicative proceedings. (1) **Purpose.** Adjudicative proceedings are formal proceedings designed to resolve disagreements between Olympic College and any of its constituents, including students, employees and members of the general public. The college strongly encourages, but does not require, parties to explore whether disputes can be resolved through informal dispute resolution methods before submitting them to formal hearing.

(2) **Policy.** The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250 are adopted for use at the college. Those rules may be found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. To the extent of any conflict between the model rules and the college's procedural rules, the college's rules shall prevail.

(3) **Matters subject to brief adjudication.** The provisions of RCW 34.05.482 through 34.05.494, (brief adjudica-

tion) are hereby adopted. Brief adjudicative proceedings shall be used in all matters related to:

- (a) Appeals from residency determinations under RCW 28B.15.013;
- (b) Appeals of student suspensions for a time period less than eleven academic days;
- (c) Challenges to contents of educational records;
- (d) Appeals of library charges;
- (e) Federal financial aid appeals;
- (f) Appeals of student debt collection decisions;
- (g) Appeals of employee debt collection not related to payroll;
- (h) Appeals of trespass orders; and
- (i) Appeals pursuant to any other formal policy adopted by the college which specifically provides for a brief adjudicative procedure.

(4) **Application for adjudicative proceeding.** An application for an adjudicative proceeding, including a brief adjudicative proceeding, shall be submitted in writing. The application shall include the printed name, signature and contact information of the applicant, the nature of the matter for which an adjudicative proceeding is sought, a description of the facts involved, and the relief requested. An application shall be submitted to the president's office within twenty days of the agency action giving rise to the application, except as otherwise provided by statute or rule.

(5) **Appointment of presiding officer(s).** The president of the college (or his or her designee) shall appoint presiding officers for formal and brief adjudicative proceedings. The presiding officer(s) shall be either an individual, or a panel of individuals, who is a member of the administration, faculty, staff, or student body, or any combination of the foregoing. When a panel of individuals is selected, one person will be designated as the chair by the president (or president's designee) to make final decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

(6) **Discovery.** Discovery in adjudicative proceedings may be permitted at the discretion of the presiding officer or the chair. In permitting discovery, the presiding officer or the chair shall refer to the civil rules of procedure. The presiding officer or the chair shall have the power to control the frequency and nature of the discovery permitted, and to order discovery conferences to discuss discovery issues.

(7) **Method of recording.** Proceedings shall be recorded by a method chosen by the presiding officer or the chair from among those available under the model rules of procedure, WAC 10-08-170.

(8) **Procedure for closing parts of a hearing.**

(a) Any party may apply for a protective order to close part of a hearing. The moving party shall file a written statement setting forth the reasons for the request with the presiding officer or chair and serve copies on all other parties. If another party opposes the request, a written response to the request shall be submitted within ten days of the request to the presiding officer or the chair. The presiding officer or the chair shall determine which, if any, parts of the proceeding shall be closed, and shall state the reasons in writing within twenty days of receiving the request.

(b) No cameras or recording devices, other than the official recording method, shall be allowed in proceedings or parts of proceedings that have been closed.

WSR 12-19-020
PERMANENT RULES
CLARK COLLEGE

[Filed September 7, 2012, 5:02 p.m., effective October 8, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed new code clarifies the "time, place and manner" of first amendment activities such as rallies, speeches and the distribution of flyers on college property and in college facilities consistent with what has been deemed acceptable by the courts.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 12-15-031 on July 12, 2012.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: August 22, 2012.

Bob Williamson
Vice-President of
Administrative Services

Chapter 132N-153 WAC

FIRST AMENDMENT ACTIVITIES FOR COMMUNITY COLLEGE DISTRICT 14

NEW SECTION

WAC 132N-153-010 Title. WAC 132N-153-010 through 132N-153-090 shall be known as use of Community College District 14 facilities by college groups and noncollege groups for first amendment activities.

NEW SECTION

WAC 132N-153-020 Statement of purpose. Clark College District 14 is an educational institution provided and maintained by the people of the state of Washington. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and

to which the college's buildings, facilities and grounds are dedicated and said buildings, facilities and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities and grounds are not available for unlimited use by college groups, it is recognized that Clark College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place, and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who wish to use the college for purposes of constitutionally protected speech, assembly, or expression.

NEW SECTION

WAC 132N-153-030 Definitions. College facilities - All buildings, structures, grounds, office space, and parking lots.

College groups - Individuals who are currently enrolled students or current employees of Clark College or who are affiliated with a recognized student organization or a recognized employee group of the college.

First amendment activities - Include, but are not necessarily limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

Limited public forum areas - Those areas of each campus that the college has chosen to open as places for expressive activities protected by the first amendment, subject to reasonable time, place and manner. Limited public forum does not include college buildings, walkways or athletic fields. College buildings, rooms, and athletic fields may be rented in accordance with the college's facilities use policy.

Noncollege groups - Individuals, or combinations of individuals, who are not currently enrolled students or current employees of Clark College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

NEW SECTION

WAC 132N-153-040 Request for use of facilities. (1) Subject to the regulations and requirements of this policy, college or noncollege groups may use the college limited forums for those activities protected by the first amendment.

(2) Noncollege groups that intend to be at the college to engage in first amendment activities (hereinafter "the event") shall provide notice to and register with the security office no later than forty-eight hours prior to the event along with the following information:

(a) The name, address, and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization").

(b) The name, address, and telephone number of a contact person for the sponsoring organization.

(c) The date, time, and requested location of the event.

(d) The nature and purpose of the event.

(e) The type of sound amplification devices to be used in connection with the event, if any.

(f) The estimated number of people expected to participate in the event.

(3) Policies established by the college regarding the use of facilities for events include: Clark College Administrative Policies and Procedures Manual 501.010 - Violation and/or Termination of Agreement (WAC 132N-150-270 Violation and/or termination of facilities use agreement); Clark College Administrative Policies and Procedures Manual 535.001 - Bulletin Boards/Posting of Signs and Flyers (WAC 132N-150-100 Bulletin boards); Clark College Administrative Policies and Procedures Manual 535.015 - Sites for Distribution of Public Information Materials (WAC 132N-150-090 Commercial use/solicitation); Clark College Administrative Policies and Procedures Manual 535.035 - Sale or Distribution of Materials (WAC 132N-150-090 Commercial use/solicitation); Clark College Administrative Policies and Procedures Manual 510.056 - Overnight Use (WAC 132N-150-200 Overnight use); and Clark College Administrative Policies and Procedures Manual 510.057 - Temporary Structures (WAC 132N-150-210 Temporary structures). Additional guidelines established by the college regarding the use of facilities, property or grounds for first amendment activities include the following:

(a) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(b) On the college's main campus, the event must be held in the open lawn area south and east of the Chime Tower, north and west of the Chime Tower to include the Fountain area, or east of the O'Connell Sports Center. The designated free speech area at Clark College at the Columbia Tech Center is the circle pad west of the main entry door. The designated areas at the Clark Center at WSU Vancouver are determined by WSU Vancouver policy. All proposed first amendment activities that are at locations other than Clark College must first be approved by the property owner. Please contact the vice-president of administrative services for more information.

(c) The use of sound amplification devices is restricted to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

(d) College groups are encouraged to notify security no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at or around the facility, property or grounds.

(e) First amendment activities at the college's main campus and at the Columbia Tech Center shall not last longer than five hours from beginning to end.

(f) Information may be distributed as long as it does not advocate unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. To avoid excessive littering

of the college and/or greatly increased work requirements for college employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site. In addition, material cannot be forced upon any member of the college community, including visitors, nor may individuals verbally or physically harass or intimidate anyone into accepting their material.

(g) Speech that does no more than propose a commercial transaction shall not occur in connection with the event.

(h) The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

(i) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

(j) The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.

(k) The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(l) ADA compliance of the facilities is the responsibility of the college; however, accommodations related to the event and any materials distributed are the responsibility of the sponsoring organization, as required by state and federal law.

(m) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.

(n) The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(o) The event must also be in accordance with any other applicable college policies and regulations, local ordinances and/or state or federal laws.

NEW SECTION

WAC 132N-153-050 Additional requirements for noncollege groups. The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than five hundred people will attend the college event or activity.

NEW SECTION

WAC 132N-153-060 The role of the president in first amendment decisions. The president of the college or designee may authorize first amendment activities which are reasonably determined not to cause disruption of college activities despite a literal violation of this policy statement. Such determinations shall be made without consideration of the content or message of the first amendment activities.

The president of the college or designee may at any time, terminate, cancel or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute imminent and incendiary danger to the college's orderly operation.

NEW SECTION

WAC 132N-153-070 Criminal trespass. Any person determined to be violating these regulations is subject to an order from security to leave the college. Persons failing to comply with such an order to leave the college are subject to arrest for criminal trespass.

NEW SECTION

WAC 132N-153-080 Posting of a bond and hold harmless statement. When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a college group or noncollege group to use its facilities, it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

NEW SECTION

WAC 132N-153-090 Disclaimer. Groups or individuals who are invited or permitted to engage in first amendment activities at the college do not represent an endorsement by Clark College or the board of trustees.

WSR 12-19-031

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 12, 2012, 9:04 a.m., effective October 13, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order amends chapter 16-623 WAC, Commission Merchant Act—Licensing fees, proof of payment, cargo manifests and registration of acreage commitments, by increasing the license fee for commission merchants, dealers, limited dealers, brokers, cash buyers, and agents. These licenses are issued under chapter 20.01 RCW, which authorizes the agricultural investigations program. The rule language was also changed to increase readability and clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 16-623-001, 16-623-005, 16-623-010, 16-623-015, 16-623-020, 16-623-030, 16-623-040, 16-623-050, and 16-623-060.

Statutory Authority for Adoption: RCW 20.01.020 and 20.01.040; chapter 34.05 RCW; and chapter 7, Laws of 2012 (3ESHB 2127).

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-16-105 on August 1, 2012.

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

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Date Adopted: September 12, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-001 ((What is the)) Purpose ((of this chapter?)). The purpose of this chapter is to implement and clarify selected portions of chapter 20.01 RCW. This chapter addresses four topics.

(1) Licensing fees and requirements for commission merchants, dealers, brokers, cash buyers or agents.

(2) Recordkeeping and proof of payment requirements for licensees.

(3) Cargo manifests and shipping documents that accompany hay and straw during transportation.

(4) Rules governing the registration of processor acreage commitments made to producers of annual crops.

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-005 ((What)) Definitions ((are important to this chapter?)). In addition to the definitions listed in RCW 20.01.010, the following definitions are important to understanding this chapter:

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or their designee.

AMENDATORY SECTION (Amending WSR 09-20-047, filed 10/1/09, effective 11/1/09)

WAC 16-623-010 ((What)) License requirements ((apply to licenses for commission merchants, dealers, brokers, cash buyers and agents?)). (1) The following table summarizes the license fee requirements for commission merchants, dealers, brokers, cash buyers, or agents:

License Class	License Fee	Annual Expiration Date	Annual Renewal Date	Penalty Amount for Not Renewing Before January 1
Commission merchant	\$(560.00) <u>605.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Dealer	\$(560.00) <u>605.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Limited dealer	\$(310.00) <u>335.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Broker	\$(375.00) <u>405.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Cash buyer	\$(125.00) <u>135.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Agent	\$(61.00) <u>66.00</u>	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees
Additional license per class	\$25.00	December 31	Before January 1	A late renewal penalty of twenty-five percent of the total fees

(2) A licensee can be licensed in more than one class for an additional fee of twenty-five dollars per class. The principal license must be in the class requiring the greatest fee and all requirements must be met for each class in which a license is being requested.

(3) All fees and penalties must be paid before the department issues a license.

(4) Applications for licenses are considered incomplete unless an effective bond or other acceptable form of security is ~~((also))~~ filed with the director.

(5) Licenses may be obtained by contacting the department's ~~((commission merchants))~~ agricultural investigations

program at 360-902-1854 or e-mail at: commerch@agr.wa.gov. Application forms, bond forms, and forms for securities in lieu of a surety bond are available on the department's web site at: <http://www.agr.wa.gov/Inspection/CommissionMerchants/>.

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-015 ((What)) Securities ((are acceptable)) in lieu of a surety bond((?)). An applicant or licensee may file an assignment of savings or irrevocable letter of

credit with the director in lieu of a surety bond. These instruments are subject to the same requirements and provisions as bonds stated in RCW 20.01.210, 20.01.211, and 20.01.212.

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-020 (~~(What are the)~~) **Recordkeeping requirements for commission merchants, dealers, brokers and cash buyers**(~~(?)~~). Every commission merchant, dealer, broker and cash buyer (~~(who takes possession of or purchases agricultural products)~~) must keep accurate records. The recordkeeping requirements for:

- (1) Commission merchants are specified in RCW 20.01.370;
- (2) Dealers and cash buyers are specified in RCW 20.01.380; and
- (3) Brokers are specified in RCW 20.01.400.

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-030 (~~(Is a)~~) **Cargo manifest** (~~(required)~~) **requirements for transporting hay and straw**(~~(?)~~). (1) All commission merchants, dealers, their employees or licensed agents must have a copy of the cargo manifest with each load when transporting hay or straw on equipment owned or under their control.

(2) Any common carrier transporting hay or straw for a commission merchant or dealer may use shipping documents required by either the Washington public utilities and transportation commission or interstate commerce commission instead of the department form described in subsection (5) of this section.

(3) Any common carriers, commission merchants, dealers, their employees or licensed agents transporting hay or straw may use shipping documents other than the department form described in subsection (5) of this section if they have been reviewed and authorized by the department before their use.

(4) Unless the exceptions in subsections (2) and (3) of this section apply, the manifest must be on a form prescribed by the director which is available from the department.

(5) At a minimum, the form requires the following information:

- (a) Purchaser's name and address;
- (b) Hauler's name and address;
- (c) Business or person the products were received from and their address;
- (d) The commodity, unit count, unit price, total price, total weight, tare weight and weight of the commodity;
- (e) Terms of the settlement;
- (f) Date;
- (g) Signature of the licensee or their agent; and
- (h) Signature of the consignor or their authorized representative.

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-040 (~~(How must)~~) **Reporting a processor's plant capacity** (~~(be reported?)~~). (1) According to RCW 20.01.510, a processor must report the daily total capacity in tons, cases or other legal and customary measure for:

- (a) Each crop; and
 - (b) All plants that process any Washington agricultural product.
- (2) For each processing plant reported, the report must include the:
- (a) Name;
 - (b) Site address;
 - (c) Business address; and
 - (d) Name of the person(s) who may receive legal service.

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-050 (~~(What)~~) **Notification requirements** (~~(apply to)~~) **for grower-processor commitments**(~~(?)~~). (1)(a) Within ten days after a commitment with a processor is made, a grower must notify the director that they have an oral commitment for a specified amount of product.

(b) The grower's notification to the director must be in writing and sent by certified mail to the Washington State Department of Agriculture, c/o the (~~(Commission Merchants)~~) Agricultural Investigations Program, P.O. Box (~~(42594)~~) 42560, Olympia, Washington 98504-~~(2594)~~ 2560.

(2) Once the grower's notification is received, the director has five days to notify the processor by certified mail.

(3) Regardless of whether or not the processor confirms the director's notice, the processor must simultaneously notify the director and grower, by certified mail, within ten days of receipt of the director's notice.

(4) The processor may accept all, none, or any portion of the acreage and/or tonnage stated in the notice.

(5) Once the oral commitment is confirmed for all or for a portion of the acreage and/or tonnage, the processor is committed to receive the acreage or tonnage specified.

(6) If the contract is the processor's standard contract and the terms of the contract, price or other conditions later offered to the grower are unacceptable to the grower, then the agreement is not binding upon the processor.

AMENDATORY SECTION (Amending WSR 05-09-094, filed 4/20/05, effective 5/21/05)

WAC 16-623-060 (~~(How are)~~) **Establishing contract volumes** (~~(established?)~~). For contracts purchasing the production of a specific number of acres, the:

(1) Amount contracted for will be based on the crop yield for the comparable area for the most recent five-year average; and

(2) Crop yield will be determined by using data from the USDA's National Agricultural Statistics Service.

WSR 12-19-035
PERMANENT RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed September 12, 2012, 11:40 a.m., effective October 13, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The 2010 legislature approved SHB 2935, natural resources reform bill, which made the pollution control hearings board the primary forum for administrative review of many agency environmental and land use decision[s] and abolished most internal agency hearings. The department of natural resources (DNR) has completed the expedited rule making CR-105 process which brings DNR's rules into conformity with the approved RCW.

The approved CR-105 amends WAC language related to: (1) Derelict and abandoned vessel provisions, (2) surface mining decisions and penalties, (3) forest practices BAP decisions, and (4) DNR adjudicative proceedings except where specifically retained by statute. The CR-103P completes the approval process for amending chapter 332-08 WAC related to internal agency hearings.

The approved expedited rule making CR-105 for WAC amendments removed deleted RCW language and inserted the clarification to move proceedings to the pollution control hearings board.

Citation of Existing Rules Affected by this Order: Amending chapter 332-08 WAC.

Statutory Authority for Adoption: The 2010 legislature approved the natural resources reform bill establishing the pollution control hearings board as the forum for most internal agency hearings [chapter 21, Laws of 2010].

Adopted under notice filed as WSR 12-06-028 on March 1, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 26.

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 8, 2012.

Peter Goldmark
 Commissioner of
 Public Lands

AMENDATORY SECTION (Amending WSR 08-16-095, filed 8/5/08, effective 9/5/08)

WAC 332-08-101 Applicability to department actions under the Derelict and Abandoned Vessel Act, chapter 79.100 RCW. When is this chapter applicable to

department actions relating to the Derelict and Abandoned Vessel Act? This chapter applies when a challenge to the action of a state agency acting as an authorized public entity is filed with the ~~((department))~~ pollution control hearings board under the Derelict and Abandoned Vessel Act as provided in RCW 79.100.120 (2)(a).

AMENDATORY SECTION (Amending WSR 08-16-095, filed 8/5/08, effective 9/5/08)

WAC 332-08-111 Derelict and abandoned vessel—Appeal deadline. When must my appeal be filed? ~~((An application for an adjudicative proceeding))~~ A notice of appeal regarding an agency action under chapter 79.100 RCW ~~((can))~~ may be filed with the ~~((department as soon as the department issues its notice of its intent))~~ pollution control hearings board upon receipt of the department's notice of intent to take custody of a vessel, but the ~~((application))~~ notice of appeal must be filed no later than ~~((twenty))~~ thirty days after the date the authorized public entity took custody of the vessel, or if the vessel was redeemed before the authorized public entity took custody, no later than ~~((twenty))~~ thirty days after the date of redemption.

AMENDATORY SECTION (Amending WSR 08-16-095, filed 8/5/08, effective 9/5/08)

WAC 332-08-121 Derelict and abandoned vessel—Filing location ~~((and presiding officer))~~. ~~((+))~~ Where must my appeal be filed? ~~((An application for adjudicative proceeding concerning a decision to take temporary possession or custody of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW must be filed at the following address:~~

Department of Natural Resources
 Aquatic Resources Division
 Derelict Vessel Removal Program
 P.O. Box 47027
 Olympia, WA 98504-7027

~~((2) Who may serve as the presiding officer? Adjudicative proceedings governed by subsection (1) of this section will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.))~~ A notice of appeal concerning a decision to take temporary possession or custody of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW must be filed with the pollution control hearings board and served on the department at the following addresses:

Pollution Control Hearings Board
Physical Address:
1111 Israel Road S.W., Suite 301
Tumwater, WA 98501

Mailing Address:
P.O. Box 40903
Olympia, WA 98504-0903

Pollution Control Hearings Board
Department of Natural Resources
Aquatic Resources Division
Derelict Vessel Removal Program
P.O. Box 47027
Olympia, WA 98504-7027

AMENDATORY SECTION (Amending WSR 08-16-095, filed 8/5/08, effective 9/5/08)

WAC 332-08-201 Applicability to department actions under forest practices laws and rules. When is this chapter applicable to the department's forest practices actions? This chapter applies to challenges of notices to comply that the department issues under chapter 76.09 RCW (Forest Practices Act) and chapter 222-46 WAC. These challenges are initially reviewed through brief adjudicative proceedings (BAPs). Other department actions regarding forest practices, including appeals from department BAP actions on notices to comply, are generally subject to review by the ~~((forest practices appeals))~~ pollution control hearings board under chapter ~~((223-08))~~ 371-08 WAC.

AMENDATORY SECTION (Amending WSR 08-16-095, filed 8/5/08, effective 9/5/08)

WAC 332-08-265 Forest practices—Appeal of BAP decision. (1) How do I administratively appeal a BAP decision? The operator, forest land owner, or timber owner subject to a final order of the department on a forest practices notice to comply may, within thirty days from the date of ~~((the))~~ receipt of such final order, appeal to the ~~((forest practices appeals))~~ pollution control hearings board.

(2) Who reviews the BAP decision? The ~~((forest practices appeals))~~ pollution control hearings board will conduct the review. The provisions of chapter ~~((223-08))~~ 371-08 WAC govern such appeals.

AMENDATORY SECTION (Amending WSR 08-16-095, filed 8/5/08, effective 9/5/08)

WAC 332-08-401 Applicability to department actions under surface mining laws and rules. When is this chapter applicable to department determinations relating to the Surface Mining Act, chapter 78.44 RCW? This chapter applies when a challenge is filed with the pollution control hearings board against a department determination made under the Surface Mining Act, chapter 78.44 RCW.

AMENDATORY SECTION (Amending WSR 08-16-095, filed 8/5/08, effective 9/5/08)

WAC 332-08-415 Surface mining—Appeal deadline. When must my appeal be filed? ~~((Time limits for filing applications for adjudicative proceedings regarding department determinations under the Surface Mining Act, chapter 78.44 RCW, are as follows:~~

~~(1) Concerning approval or disapproval of a new or revised reclamation permit, a new, modified, or revised recla-~~

~~mation plan, or reclamation permit transfer—filed within thirty days of the department's determination;~~

~~(2) Concerning a civil penalty—served on the department and filed with the pollution control hearings board within thirty days of the date the applicant receives the civil penalty notice, or within thirty days of the date the applicant receives the department's notice of disposition of a timely application for remission or mitigation of the civil penalty under WAC 332-18-05007. The pollution control hearings board's practice and procedure rules govern these proceedings;~~

~~(3) Concerning a stop work order to rectify deficiencies, an emergency notice and order to rectify deficiencies or emergency order to suspend surface mining, a suspension order, a cancellation of a permit, an order to submit performance security, or any other appealable surface mining determination—filed within thirty days of the date of the department's service of the order or notice.)~~ A notice of appeal regarding a department under chapter 78.44 RCW may be filed with the pollution control hearings board within thirty days from the date of receipt of the decision being appealed.

AMENDATORY SECTION (Amending WSR 08-16-095, filed 8/5/08, effective 9/5/08)

WAC 332-08-421 Surface mining—Filing location ~~((and presiding officer))~~. Where must my appeal be filed? Applications for adjudicative proceedings relating to surface mining must be filed ~~((at the location identified below for each of the issues listed below:~~

~~(1) Civil penalty:~~

~~(a) File with:~~

~~Pollution Control Hearings Board
 4224 6th Avenue S.E., Building 2, Rowe Six
 P.O. Box 40903
 Lacey, WA 98504-0903~~

~~(b) And serve:~~

~~Assistant Division Manager
 Division of Geology and Earth Resources
 Department of Natural Resources
 P.O. Box 47007
 Olympia, WA 98504-7007~~

~~(c) **Who considers my appeal?** The pollution control hearings board will consider properly filed appeals and enter the final decision on appeals of department civil penalties. Chapter 371-08 WAC will govern the proceedings conducted by the pollution control hearings board, except that the burden of proof and standard of proof will be as provided in this chapter.~~

~~(2) **Where must my appeal of other department surface mining actions be filed?** All other surface mining related determinations including requests for brief adjudicative proceedings governed by WAC 332-08-445:~~

~~(a) File with:~~

~~Assistant Division Manager
 Division of Geology and Earth Resources
 Department of Natural Resources
 P.O. Box 47007
 Olympia, WA 98504-7007~~

~~(b) **Who considers my appeal?**—Adjudicative proceedings governed by this subsection will be initially decided through the office of administrative hearings unless subject to a brief adjudicative proceeding through WAC 332-08-445 or the commissioner of public lands decides that he/she will enter a decision.)~~ with the pollution control hearings board and served on the department at the following addresses:

Pollution Control Hearings Board

Physical Address:

1111 Israel Road S.W., Suite 301

Tumwater, WA 98501

Mailing Address:

P.O. Box 40903

Olympia, WA 98504-0903

Department of Natural Resources

Division on Geology and Earth Resources

P.O. Box 47007

Olympia, WA 98504-7007

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 332-08-102 Derelict and abandoned vessel—Contents of appeal.
- WAC 332-08-135 Derelict and abandoned vessel—Burden of proof.
- WAC 332-08-145 Derelict and abandoned vessel—Summary judgment.
- WAC 332-08-155 Derelict and abandoned vessel—Administrative review of initial orders.
- WAC 332-08-165 Derelict and abandoned vessel—Petition for reconsideration of a final order.
- WAC 332-08-411 Surface mining—Contents of appeal.
- WAC 332-08-425 Surface mining—Burden of proof.
- WAC 332-08-431 Surface mining—Summary judgment.
- WAC 332-08-435 Surface mining—Administrative review of initial orders.
- WAC 332-08-441 Surface mining—Petition for reconsideration of final order.
- WAC 332-08-442 Surface mining—Appeal procedures for stop work orders.

- WAC 332-08-443 Surface mining—Appeal procedures for emergency orders.
- WAC 332-08-445 Surface mining—Availability of brief adjudicative proceedings (BAPs).
- WAC 332-08-451 Surface mining—BAP presiding officer.
- WAC 332-08-455 Surface mining—Conversion of BAP to formal adjudicative proceeding.
- WAC 332-08-461 Surface mining—BAP scheduling.
- WAC 332-08-465 Surface mining—Timing of a BAP decision.
- WAC 332-08-471 Surface mining—Appeal of BAP decision and reviewing officer.
- WAC 332-08-501 Applicability to other department actions.
- WAC 332-08-511 Other department actions—Contents of appeal.
- WAC 332-08-521 Other department actions—Appeal deadline.
- WAC 332-08-531 Other department actions—Filing location and presiding officer.
- WAC 332-08-541 Other department actions—Burden of proof.
- WAC 332-08-555 Other department actions—May the parties move for summary judgment on some or all issues?
- WAC 332-08-575 Other department actions—Administrative review of initial orders.
- WAC 332-08-585 Other department actions—Petition for reconsideration of a final order.

WSR 12-19-036
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed September 12, 2012, 11:59 a.m., effective October 13, 2012]

Effective Date of Rule: Thirty-one days after filing.
 Purpose: The community services division is amending WAC 388-458-0011 DSHS sends you a letter when you can't get benefits, to align the language of this WAC section and

several sections in chapter 388-406 WAC, Applications, concerning reconsideration of denied Basic Food applications. This change also brings the rules in line with current and accepted procedures.

Citation of Existing Rules Affected by this Order: Amending WAC 388-458-0011.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 C.F.R. § 273.2.

Adopted under notice filed as WSR 12-15-068 on July 18, 2012.

Changes Other than Editing from Proposed to Adopted Version: The department amended WAC 388-458-0011 (3)(d)(i) to remove change of circumstances to be consistent with processing applications rules. The changes were made because of comments received during the public comment period.

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: September 11, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-16-087, filed 7/25/01, effective 9/1/01)

WAC 388-458-0011 DSHS sends you a denial letter when you can't get benefits. (1) When we finish processing your application, we send you a denial letter if you cannot get benefits.

(2) On this letter, we tell you:

(a) Why you cannot get benefits;

(b) The rules that support our decision;

(c) The date we (~~stopped~~) finished processing your application; and

(d) Your right to have your case reviewed or ask for (~~a fair~~) an administrative hearing.

(3) If we are denying your application because you did not give us (~~some~~) information that we needed and we can't figure out if you are eligible without it, we also tell you on the letter:

(a) What information you didn't give to us;

(b) The date we asked for the information and the date it was due;

(c) That we cannot figure out if you can get benefits without this information; and

(d) That we will review your eligibility if:

(i) For cash and medical, you give us the information within thirty days of the date of the notice; or

(ii) For food assistance, you give us the information within sixty days of the date you applied (~~and~~

~~(iii) Your circumstances have not changed~~).

(4) We send denial letters to you according to the rules in chapter 388-406 WAC.

WSR 12-19-037

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 12, 2012, 11:59 a.m., effective October 13, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The community services division is amending WAC 388-466-0005 Immigration status requirement for refugee assistance, 388-466-0120 Refugee cash assistance (RCA), and 388-466-0140 Income and resources for refugee assistance eligibility.

These amendments will separate the refugee cash assistance WACs from the refugee medical assistance WACs, and repeal the necessary language related to medicaid funded services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-466-0005, 388-466-0120, and 388-466-0140.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250.

Other Authority: 2E2SHB 1738, Laws of 2011.

Adopted under notice filed as WSR 12-13-076 on June 19, 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 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: September 10, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

WAC 388-466-0005 Immigration status requirements for refugee cash assistance. (1) You may be eligible for refugee cash assistance (RCA) (~~and refugee medical assistance (RMA);~~) if you can provide documentation issued by the U.S. Citizenship and Immigration Services (USCIS), that you are:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);
 - (b) Paroled into the U.S. as a refugee or asylee under section 212 (d)(5) of the INA;
 - (c) Granted conditional entry under section 203 (a)(7) of the INA;
 - (d) Granted asylum under section 208 of the INA;
 - (e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;
 - (f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;
 - (g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);
 - (h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;
 - (i) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a)(27) of the INA.
- (2) A permanent resident alien meets the immigration status requirements for RCA (~~and RMA~~) if the individual was previously in one of the statuses described in subsections (1)(a) through (g) of this section.

AMENDATORY SECTION (Amending WSR 09-21-046, filed 10/14/09, effective 11/4/09)

WAC 388-466-0120 Refugee cash assistance (RCA).

(1) Who can apply for refugee cash assistance (RCA)?

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) (~~Who is eligible for refugee cash assistance~~) How do I know if I qualify for RCA?

You may be eligible for RCA if you meet all of the following conditions:

- (a) You have resided in the United States for less than eight months;
- (b) You meet the immigration status requirements of WAC 388-466-0005;
- (c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;
- (d) You meet the work and training requirements of WAC 388-466-0150; and
- (e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) (~~Who is not eligible for RCA~~) What are the other reasons for not being eligible for RCA?

You may not be able to get RCA if you:

- (a) Are eligible for temporary assistance for needy families (TANF) or Supplemental Security Income (SSI); or

- (b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

- (c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

- (d) Are a full-time student in a college or university.

(4) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?

You are eligible for RCA to the same extent as a refugee if you are:

- (a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

- (b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

- (c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) What is the effective date of my eligibility for RCA?

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) When does my RCA end?

- (a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

- (b) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA. Your medical coverage may continue for up to eight months from your month of arrival in the United States (WAC 388-466-0130).

(9) Are there other reasons why RCA may end?

Your RCA also ends if:

- (a) You move out of Washington state;
- (b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or
- (c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

- (a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States.
- (b) If you live together, you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on ((your)) you and your spouse's combined income and resources (WAC 388-466-0140).

(11) Can I get additional money in an emergency?

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or an administrative hearing (WAC 388-02-0090). Your request must be made within ninety days of the date of the decision or action.

AMENDATORY SECTION (Amending WSR 02-04-057, filed 1/30/02, effective 2/1/02)

WAC 388-466-0140 Income and resources for refugee cash assistance eligibility. (1) How does DSHS count my income and resources when determining my eligibility for refugee cash assistance?

We determine your eligibility for RCA using the TANF rules about income and resources in chapters 388-450 and 388-470 WAC, except we do not count a onetime resettlement cash payment provided to you by your voluntary agency (VOLAG).

~~(((2) How does DSHS count my income and resources when determining my eligibility for refugee medical assistance?~~

~~We determine your eligibility for RMA using the TANF rules about income and resources in chapters 388-450 and 388-470 WAC, except as it stated below:~~

- ~~(a) Your monthly income can be up to two hundred percent of the federal poverty level (FPL);~~
- ~~(b) A onetime resettlement cash payment provided to you by your VOLAG is not counted in determining your eligibility for RMA;~~
- ~~(c) Your RMA eligibility is determined on the basis of your income and resources on the date of your application (WAC 388-466-0130-))~~

WSR 12-19-038

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 12, 2012, 12:01 p.m., effective October 13, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To meet the requirements of SSB 5452, the department must establish rules that require an evaluation and treatment facility to document in an individual's clinical record that the mental health provider informed the arresting officer of the individual's release from the facility by agreement to voluntarily participate in outpatient treatment when the arresting officer specifically requested notification and provided contact information.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0536 and 388-865-0755.

Statutory Authority for Adoption: RCW 10.31.110, 71.05.153, 71.05.190, and chapter 74.09 RCW.

Other Authority: SSB 5452.

Adopted under notice filed as WSR 12-16-103 on August 1, 2012.

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

Date Adopted: September 10, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-07-014, filed 3/4/04, effective 4/4/04)

WAC 388-865-0536 Standards for administration—Inpatient evaluation and treatment facilities. ((The)) An

inpatient evaluation and treatment facility must develop a policy to implement the following administrative requirements:

- (1) A description of the program, including age of consumers to be served, length of stay and services to be provided.
- (2) An organizational structure including clear lines of authority for management and clinical supervision.
- (3) Designation of a physician or other mental health professional as the professional person in charge of clinical services at that facility.

(4) A quality management plan to monitor, collect data and develop improvements to meet the requirements of this chapter.

(5) A policy management structure that establishes:

(a) Procedures for maintaining and protecting resident medical/clinical records consistent with chapter 70.02 ((WAC)) RCW, "Medical Records Health Care Information Access and Disclosure Act" and Health Insurance Portability and Accountability Act (HIPAA);

(b) Procedures for maintaining adequate fiscal accounting records consistent with generally accepted accounting principles (GAAP);

(c) Procedures for management of human resources to ensure that residents receive individualized treatment or care by adequate numbers of staff who are qualified and competent to carry out their assigned responsibilities;

(d) Procedures for admitting consumers needing inpatient evaluation and treatment services seven days a week, twenty-four hours a day, except that child long-term inpatient treatment facilities are exempted from this requirement;

(e) Procedures to assure appropriate and safe transportation for persons who are not approved for admission to his or her residence or other appropriate place;

(f) Procedures to detain arrested persons who are not approved for admission for up to eight hours ((in order)) so that reasonable attempts can be made to ((enable)) notify law enforcement to return to the facility and take the person back into custody;

(g) Procedures to assure access to necessary medical treatment, emergency life-sustaining treatment, and medication;

(h) Procedures to assure the protection of consumer and family rights as described in this chapter and chapters 71.05 and 71.34 RCW;

(i) Procedures to inventory and safeguard the personal property of the consumer being detained, including a process to limit inspection of the inventory list by responsible relatives or other persons designated by the detained consumer;

(j) Procedures to assure that a mental health professional and licensed physician are available for consultation and communication with both the consumer and the direct patient care staff twenty-four hours a day, seven days a week;

(k) Procedures to provide warning to an identified person and law enforcement when an adult has made a threat against an identified victim;

(l) Procedures to ensure that consumers detained for up to fourteen or ninety additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the consumer's condition is caused by a mental disorder and either results in likelihood of serious harm or the consumer being gravely disabled;

(m) Procedures to assure the rights of consumers to make mental health advance directives, and facility protocols for responding to consumer and agent requests consistent with RCW 71.32.150;

(n) Procedures to ensure that the following requirements are met when an individual is brought to the facility by a peace officer under RCW 71.05.153:

(i) The individual must be examined by a mental health professional (MHP) within three hours of arrival:

(ii) Within twelve hours of arrival, a designated mental health professional (DMHP) must determine if the individual meets detention criteria under chapter 71.05 RCW; and

(iii) If the facility releases the individual to the community, the facility must inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility.

AMENDATORY SECTION (Amending WSR 08-14-079, filed 6/26/08, effective 7/27/08)

WAC 388-865-0755 Standards for administration—Crisis stabilization units. ((The)) A crisis stabilization unit must ensure that the following standards for administration are met:

(1) A description of the program, including age of persons to be served, length of stay, and services to be provided.

(2) An organizational structure that demonstrates clear lines of authority for administrative oversight and clinical supervision.

(3) The professional person in charge of administration of the unit is a mental health professional.

(4) A management plan to monitor, collect data and develop improvements to meet the requirements of this chapter.

(5) A policy management structure that establishes:

(a) Procedures for maintaining and protecting personal medical/clinical records consistent with chapter 70.02 ((WAC)) RCW, "Medical records—Health care information access and disclosure," and the Health Insurance Portability and Accountability Act (HIPAA)((;)).

(b) Procedures for managing human resources to ensure that persons receive individualized evaluation and crisis stabilization services by adequate numbers of staff who are qualified and competent to carry out their assigned responsibilities((;)).

(c) Procedures for ensuring a secure environment appropriate to the legal status of the person(s), and necessary to protect the public safety. "Secure" means having:

(i) All doors and windows leading to the outside locked at all times;

(ii) Visual monitoring, either by line-of-sight or camera as appropriate to the individual;

(iii) Adequate space to segregate violent or potentially violent persons from others;

(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(v) Adequate numbers of staff present at all times that are trained in facility security measures.

(d) Procedures for admitting persons needing crisis stabilization services seven days a week, twenty-four hours a day((;)).

(e) Procedures to ensure that for persons who have been brought to the unit involuntarily by police, the stay is limited to twelve hours unless the individual has signed voluntarily into treatment.

(f) Procedures to ensure that within twelve hours of the time of arrival to the crisis stabilization unit, individuals who have been detained by a designated mental health profes-

sional or designated crisis responder under chapter 71.05 or 70.96B RCW are transferred to a certified evaluation and treatment facility.

(g) Procedures to assure appropriate and safe transportation of persons who are not approved for admission or detained for transfer to an evaluation and treatment facility, and if not in police custody, to their respective residence or other appropriate place((:)).

(h) Procedures to detain arrested persons who are not ~~((otherwise detained and transferred to an evaluation and treatment facility for a period of up to eight hours in order to enable law enforcement to return to the facility and take the person back into custody;))~~ approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody.

(i) Procedures to ensure access to emergency life-sustaining treatment, necessary medical treatment, and medication((:)).

(j) Procedures to ensure the protection of personal and familial rights as described in WAC 388-865-0561 and chapter 71.05 RCW((:)).

(k) Procedures to inventory and safeguard the personal property of the persons being detained((:)).

(l) Procedures to ensure that a mental health professional (as defined in chapter 388-865 WAC) is on-site twenty-four hours a day, seven days a week((:)).

(m) Procedures to ensure that a licensed physician is available for consultation to direct care staff and patients twenty-four hours a day, seven days a week((:)).

(n) Procedures to provide warning to an identified individual and law enforcement when an individual has made a threat against an identified victim, in accordance with RCW 71.05.390(10)((:)).

(o) Procedures to ensure the rights of persons to make mental health advance directives((;and)).

(p) Procedures to establish unit protocols for responding to the provisions of the advanced directives consistent with RCW 71.32.150.

(q) Procedures to ensure that the following requirements are met when an individual is brought to the facility by a peace officer under RCW 71.05.153:

(i) The individual must be examined by a mental health professional (MHP) within three hours of arrival;

(ii) Within twelve hours of arrival, a designated mental health professional (DMHP) must determine if the individual meets detention criteria under chapter 71.05 RCW; and

(iii) If the facility releases the individual to the community, the facility must inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility.

WSR 12-19-039

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 12, 2012, 12:02 p.m., effective October 13, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 148, Laws of 2011 (SHB 1170) directs the department to establish state minimum standards for certification of triage facilities.

Statutory Authority for Adoption: RCW 71.05.020, 71.05.150, 71.05.153, and 71.24.035.

Other Authority: Chapter 148, Laws of 2011 (SHB 1170).

Adopted under notice filed as WSR 12-15-074 on July 18, 2012.

Changes Other than Editing from Proposed to Adopted Version: Added to WAC 388-865-0810: The department does not require a facility licensed by the department of health (DOH) that was providing assessment and stabilization services under chapter 71.05 RCW as of April 22, 2011, to relicense or recertify under these rules. A request for an exemption must be made to DOH and the department.

Made the following changes to WAC 388-865-0810 (1)(d) ... applicable federal, state, and local laws; ~~and~~

(e) Admit only individuals who are eighteen years of age and older; and

(f) Successfully complete ...

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 9, 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 9, Amended 0, Repealed 0.

Date Adopted: September 10, 2012.

Katherine I. Vasquez
Rules Coordinator

SECTION EIGHT—CERTIFICATION OF TRIAGE FACILITIES

NEW SECTION

WAC 388-865-0800 Triage facility—Definitions. The following definitions apply to this chapter:

"Designated mental health professional (DMHP)" See WAC 388-865-0150.

"Mental health professional (MHP)" See WAC 388-865-0150.

"Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

"Triage facility" is a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual. A triage facility must meet department of health residential treatment facility standards and may be structured as a voluntary and/or involuntary placement facility.

"Triage involuntary placement facility" is a triage facility that has elected to operate as an involuntary facility and may, at the direction of a peace officer, hold an individual for up to twelve hours. A peace officer or designated mental health professional may take or cause the person to be taken into custody and immediately delivered to the triage facility. The facility may ask for an involuntarily admitted individual to be assessed by a mental health professional for potential for voluntary admission. The individual has to agree in writing to the conditions of the voluntary admission.

"Triage voluntary placement facility" is a triage facility wherein the individual may elect to leave the facility of their own accord, at anytime. A triage voluntary placement facility may only accept voluntary admissions.

"Short-term facility" is a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035 which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization. Length of stay in a short-term facility is less than fourteen days from the day of admission.

NEW SECTION

WAC 388-865-0810 Triage facility—General requirements for certification. Under chapter 71.05 RCW, the department certifies facilities to provide triage services that assess and stabilize an individual, or determine the need for involuntary commitment. The department does not require a facility licensed by the department of health (DOH) that was providing assessment and stabilization services under chapter 71.05 RCW as of April, 22, 2011, to relicense or recertify under these rules. A request for an exemption must be made to DOH and the department.

(1) To obtain and maintain certification as a triage facility (defined in WAC 388-865-0800), a facility must:

(a) Be licensed by the department of health (DOH) as a residential treatment facility;

(b) Meet the requirements for voluntary admissions under this chapter;

(c) Meet the requirements for involuntary admissions under this chapter if it elects to operate and be certified as a triage involuntary placement facility;

(d) Ensure that the facility and its services are accessible to individuals with disabilities, as required by applicable federal, state, and local laws;

(e) Admit only individuals who are eighteen years of age and older; and

(f) Successfully complete a provisional and annual on-site review administered by the department's division of behavioral health and recovery (DBHR) and be determined by DBHR to be in compliance with the standards of this chapter and chapter 72.06 RCW.

(2) If a triage facility is collocated in another facility, there must be a physical separation. Physically separate means the triage facility is located in an area with no resident foot traffic between the triage facility and other areas of the building, except in case of emergencies.

(3) A triage facility must have, at a minimum:

(a) A written organizational structure that describes clear lines of authority of administrative oversight and clinical supervision.

(b) A designated person in charge of administration of the triage unit.

(c) A mental health professional (MHP) on-site twenty-four hours a day, seven days a week.

(d) A written program description that includes:

(i) Program goals;

(ii) Identification of service categories to be provided;

(iii) Length of stay criteria;

(iv) Identification of the ages or range of ages of individual populations to be served;

(v) A statement that only an individual eighteen years of age or older may be admitted to the triage facility; and

(vi) Any limitation or inability to serve or provide program services to an individual who:

(A) Requires acute medical services;

(B) Has limited mobility;

(C) Has limited physical capacity for self care; or

(D) Exhibits physical violence.

(e) A quality management plan to ensure the facility monitors, collects appropriate data, and develops improvements to meet the requirements of this chapter.

(f) Written procedures to ensure a secure and safe environment. Examples of these procedures are:

(i) Visual monitoring of the population environment by line of sight, mirrors or electronic means;

(ii) Having sufficient staff available twenty-four hours a day, seven days a week to meet the behavioral management needs of the current facility population; and

(iii) Having staff trained in facility security and behavioral management techniques.

(g) Written procedures to ensure that an individual is examined by an MHP within three hours of the individual's arrival at the facility.

(h) Written procedures to ensure that a designated mental health professional (DMHP) evaluates a voluntarily admitted individual for involuntary commitment when the individual's behavior warrants an evaluation.

(i) Written procedures that are in accordance with WAC 246-322-180, 246-337-110, 246-320-271, and WAC 388-865-0545, if the triage facility declares any intent to provide seclusion and/or restraint.

(j) Written procedures to facilitate appropriate and safe transportation, if necessary, for an individual who is:

- (i) Not being held for police custody and/or police pick up;
- (ii) Denied admission to the triage facility; or
- (iii) Detained for transfer to a certified evaluation and treatment facility.

NEW SECTION

WAC 388-865-0820 Triage facility—Memo of understanding and other requirements. This section applies to a facility that elects to operate as a triage involuntary placement facility.

(1) Memo of understanding requirements. The facility must have a memo of understanding developed in consultation with local law enforcement agencies, which details the population that the facility has capacity to serve. The memo of understanding must include, at a minimum, a description of the facility's:

- (a) Capacity to serve individuals with medication, medical and/or accommodation needs;
- (b) Capacity to serve individuals with behavioral management needs;
- (c) Ability to provide seclusion and/or restraint to individuals (see WAC 388-865-0830);
- (d) Notification procedures for discharge of individuals (see WAC 388-865-0850); and
- (e) Procedures for notifying the appropriate law enforcement agency of an individual's release, transfer, or hold for up to twelve hours to allow the peace officer to reclaim the individual.

(2) Individuals brought to a triage involuntary placement facility by a peace officer. The facility must have written procedures to assure the following:

(a) An individual detained by the designated mental health professional (DMHP) under chapter 71.05 RCW with a confirmed admission date to an evaluation and treatment facility, may remain at the triage facility until admitted to the evaluation and treatment facility.

(i) The individual may not be detained to the triage facility; and

(ii) An individual who agrees to a voluntary stay must provide a signature that documents the agreement.

(b) The individual is examined by a mental health professional (MHP) within three hours of the individual's arrival at the facility, and the examination includes an assessment to determine if a designated mental health professional (DMHP) evaluation is also required.

(c) If it is determined a DMHP evaluation is required, the DMHP must evaluate the individual within twelve hours of arrival. The DMHP determines whether the individual:

- (i) Meets detention criteria under chapter 71.05 RCW; or
- (ii) Agrees to accept voluntary admission. The individual must provide a signature agreeing to voluntary treatment.

(3) Individuals involuntarily admitted to a triage involuntary placement facility based on a peace officer-initiated twelve-hour hold. The facility must ensure each involuntarily admitted individual's clinical record:

(a) Documents the date and time the individual arrived at the facility and the date and time the examination by the mental health professional (MHP) occurred. The examination

must occur within three hours of the individual's arrival to the facility (see WAC 388-865-0840(2)).

(b) Documents the peace officer's:

(i) Determination for cause to have the individual transported to the facility;

(ii) Request to be notified if the individual leaves the facility and how the peace officer is to be contacted, or documentation of other person(s) permitted to be contacted, such as the shift supervisor of the law enforcement agency or dispatcher; and

(iii) Request that the individual be held for the duration of the twelve hours to allow the peace officer sufficient time to return and make a determination as to whether or not to take the individual into custody.

(c) Contains a copy of the evaluation if the individual is determined by a designated mental health professional (DMHP) to meet detention criteria under chapter 71.05 RCW.

NEW SECTION

WAC 388-865-0830 Triage facility—Seclusion and restraint. A triage facility must declare to the department any intention to provide seclusion and/or restraint (see WAC 388-865-0810 (3)(i)).

(1) The seclusion and/or restraint may only be used:

(a) To the extent necessary for the safety of the individual or others and in accordance with WAC 246-322-180 and 246-337-110, 246-320-271, and WAC 388-865-0545; and

(b) When all less restrictive measures have failed.

(2) The facility must clearly document in the clinical record:

(a) The threat of imminent danger;

(b) All less restrictive measures that were tried and found to be ineffective; and

(c) A summary of each seclusion and/or restraint event, including a debriefing with staff members and the individual regarding how to prevent the occurrence of similar incidents in the future.

NEW SECTION

WAC 388-865-0840 Triage facility—Admission, assessment, and clinical record requirements for voluntary and involuntary admissions. A triage facility must ensure the requirements in this section are met for each voluntary and involuntary admission. See WAC 388-865-0820(2) for additional requirements for an individual brought to a triage involuntary placement facility by a peace officer. See WAC 388-865-0820(3) for additional requirements for an individual involuntarily admitted to a triage involuntary placement facility based on a peace officer-initiated twelve-hour hold.

(1) Each individual must be assessed for chemical dependency and/or a co-occurring mental health and substance abuse disorder as measured by the global appraisal on individual need-short screen (GAIN-SS) as it existed on the effective date of this section, or such subsequent date consistent with the purposes of this section. The clinical record must contain the results of the assessment.

(2) Each individual must be assessed by a mental health professional (MHP) within three hours of the individual's arrival at the facility.

(a) The assessment must include, at a minimum:

(i) A brief history of mental health or substance abuse treatment; and

(ii) An assessment of risk of harm to self, others, or grave disability.

(b) The MHP must request:

(i) The names of treatment providers and the treatment provided; and

(ii) Emergency contact information.

(c) The MHP must document in the individual's clinical record:

(i) All the information obtained in (a) and (b) of this subsection.

(ii) Sufficient information to demonstrate medical necessity. Medical necessity is defined in the state plan as "A term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause of physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. For the purpose of this chapter "course of treatment" may include mere observation, or where appropriate, no treatment at all."

(iii) Sufficient clinical information to justify a provisional diagnosis using criteria in the:

(A) Diagnostic and Statistical Manual of Mental Disorders (2000) (American Psychiatric Association (DSM-IV-TR), 2000), as it existed on the effective date of this section; then

(B) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(3) Each individual must receive a health care screening to determine the individual's health care needs.

(a) The health care screening instrument must be provided by a licensed health care provider (defined in WAC 246-337-005(22)). A licensed health care provider must be available to staff for staff consultation twenty-four hours a day, seven days a week.

(b) The individual's clinical record must contain the results of the health care screening.

(4) A qualified staff member (see WAC 388-865-0870) must coordinate with the individual's current treatment provider, if applicable, to assure continuity of care during admission and upon discharge.

(5) Each individual's clinical record must:

(a) Contain a statement regarding the individual circumstances and events that led to the individual's admission to the facility.

(b) Document the admission date and time.

(c) Contain the results of the health care screening required in (3) of this section.

(d) Document the date and time of a referral to a designated mental health professional (DMHP), if a referral was made.

(e) Document the date and time of release, or date and time the twelve-hour hold ended.

(f) Document any use of seclusion and/or restraint and include:

(i) Documentation that the use of seclusion and/or restraint occurred only due to the individual being an imminent danger to self or others; and

(ii) A description of the less restrictive measures that were tried and found to be ineffective.

(6) A triage facility that declares any intent to provide seclusion and/or restraint to an individual may do so only to the extent necessary for the safety of others and in accordance with WAC 246-322-180, 246-337-110, 246-320-271, and WAC 388-865-0545. See also WAC 388-865-0830.

(7) A triage facility must document the efforts and services provided to meet the individual's triage stabilization plan.

(8) A triage facility must document the date, time, and reason an individual's admission status changed from involuntary to voluntary.

NEW SECTION

WAC 388-865-0850 Triage facility—Triage stabilization plan. A triage stabilization plan must be developed for each individual voluntarily or involuntarily admitted to a triage facility for longer than twenty-four hours. For an individual admitted twenty-four hours or less, the facility must document the results of the assessment performed by a mental health professional (MHP) required under WAC 388-865-0840.

(1) The triage stabilization plan must:

(a) Be developed collaboratively with the individual within twenty-four hours of admission.

(b) Improve and/or resolve the individual's crisis in the least restrictive manner possible.

(c) Be written in a language that is understandable to the individual and/or the individual's support system if applicable.

(d) Be mindful of the individual's culture, life style, economic situation, and current mental and physical limitation.

(e) Have goals that are relevant to the presenting crisis and demonstrate how they impact the crisis by improving the individual's ability to function.

(f) Include any recommendation for treatment from the mental health professional (MHP) assessment provided with three hours of the individual's arrival at the facility.

(g) Include:

(i) The date and time the designated mental health professional (DMHP) evaluated the individual in accordance with the detention criteria under chapter 71.05 RCW; and

(ii) The DMHP's determination of whether the individual should be detained.

(2) The individual's clinical record must:

(a) Contain a copy of the triage stabilization plan;

(b) Contain charting that demonstrates how requirements of the individual's triage stabilization were met; and

- (c) Document the services provided to the individual.

NEW SECTION

WAC 388-865-0860 Triage facility—Discharge services for voluntary and involuntary admissions. A triage facility must:

- (1) Provide discharge services for each individual:
 - (a) Voluntarily admitted to the facility; or
 - (b) Involuntarily admitted to the facility if the individual is not transferred to another facility.
- (2) Coordinate with the individual's current treatment provider, if applicable, to transition the individual back to the provider.
- (3) Develop a discharge plan and follow-up services from the triage facility that includes:
 - (a) The name, address, and telephone number of the provider;
 - (b) The designated contact person; and
 - (c) The appointment date and time for the follow-up services, if appropriate.

NEW SECTION

WAC 388-865-0870 Triage facility—Staff requirements. A triage facility must ensure each staff member providing services to individuals is qualified to perform the duties within the scope of their position.

- (1) The triage facility must document that each staff member has the following:
 - (a) A current job description.
 - (b) A current Washington state department of health license or credential as required for performing the job duties and meeting the specific responsibilities of the position.
 - (c) A Washington state patrol background check consistent with chapter 43.43 RCW.
 - (d) An annual review and evaluation of work performance.
 - (e) An individualized annual training plan that assures the employee is provided, at a minimum:
 - (i) Training relevant to the skills required for the job and the population served by the facility.
 - (ii) Adequate training regarding the least restrictive alternative options available in the community and how to access them.
 - (iii) Training that meets the requirements of this chapter and RCW 71.05.720.
 - (iv) Training that meets the requirements of RCW 71.05.705 if the triage facility is performing outreach services.
 - (f) Adequate training regarding methods of health care as defined in WAC 246-337-005(19).
 - (g) Adequate training regarding the proper and safe use of seclusion and/or restraint procedures if the triage facility employs these techniques. See WAC 388-865-0810 (3)(i) and 388-865-0830.
- (2) The triage facility must ensure:
 - (a) Each clinical supervisor and each clinical staff member meets the qualifications of a mental health professional as defined in WAC 388-865-0800; and

- (b) A clinical staff member who does not meet the qualifications for an MHP as defined in WAC 388-865-0800 is supervised by an MHP if the staff member provides direct services to individuals.

- (c) A contracted staff member who provides direct services to individuals meets the requirements of this section.

NEW SECTION

WAC 388-865-0880 Triage facility—Posting of individual rights. (1) A triage facility must ensure the individual rights outlined in WAC 388-865-0410 are:

- (a) Prominently posted within the facility;
 - (b) Available to any individual on request; and
 - (c) Provided to each individual being assessed and admitted to the facility.
- (2) A triage facility that has elected to operate as an involuntary placement facility must meet the requirements in subsection (1) of this section and, in addition, ensure the individual rights outlined in WAC 388-865-0561 are:
- (a) Prominently posted within the facility; and
 - (b) Provided in writing to an individual during the admission process.

WSR 12-19-040

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 12, 2012, 1:31 p.m., effective October 13, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend chapter 16-390 WAC to increase the fruit and vegetable inspection program hourly and overtime inspection fee. These hourly rate increases are necessary to recover the department's actual costs of providing inspection services. Currently, hourly inspection rates are below the costs of providing services.

Citation of Existing Rules Affected by this Order: Amending WAC 16-390-005, 16-390-010, 16-390-020, 16-390-030, 16-390-040, 16-390-060, 16-390-100, 16-390-150, 16-390-200, 16-390-210, 16-390-220, 16-390-230, 16-390-240, 16-390-242, 16-390-245, 16-390-250, 16-390-260, 16-390-270, and 16-390-280.

Statutory Authority for Adoption: RCW 15.17.050 and 3ESHB 2127, chapter 7, Laws of 2012.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-16-077 on July 31, 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 19, 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: September 12, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-005 ((What)) Definitions ((are important to this chapter?)). "Certification" means the issuance of an official document confirming the inspection results for grade, classification, condition, and the absence or presence of plant pests or diseases and/or other defects.

"Customer assisted inspection program (CAIP)" means a quality and/or condition inspection performed by industry with verification and oversight by WSDA.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the department or the director's designated representative.

"Grade and condition certificate" means a document issued by the director of a certification confirming the results of an inspection.

"Inspection" means a review or examination of fruits and vegetables in order to determine quality, condition, and/or presence or absence of pests or diseases and/or other defects.

"Platform inspection" means any inspection and/or certification performed on a lot that has no defined per unit charges for the service.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-010 ((How many WSDA)) Fruit and vegetable inspection districts ((are there?)). The department has two fruit and vegetable inspection districts, which are:

(1) Fruit and vegetable inspection district two, which consists of Kittitas, Klickitat, Skamania, Yakima, Pacific, Lewis, Wahkiakum, Cowlitz, Clark, Benton, Franklin, Walla Walla, Columbia, Asotin, Whitman and Garfield counties; and

(2) Fruit and vegetable inspection district four, which consists of Grays Harbor, Jefferson, Clallam, Island, Mason, Kitsap, Pierce, Thurston, King, Snohomish, Skagit, Grant, Adams, Ferry, Pend Oreille, Stevens, Spokane, Lincoln, San Juan, Whatcom, Chelan, Douglas and Okanogan counties.

AMENDATORY SECTION (Amending WSR 05-12-054, filed 5/26/05, effective 6/26/05)

WAC 16-390-020 ((What are the fees for)) Grade and condition certificates ((for fruit?))—Fruits. WSDA fees for grade and condition certificates for all fruits are:

(1) A minimum charge of ~~((sixteen))~~ twenty-five dollars.

(2) The fees for **federal-state or state grade and condition certificates** of all fresh market apples, pears, and soft

fruits in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are listed in the following table:

Type of Fruit	Fees per CWT or Fraction Thereof
Apples on-line for domestic shipping, CA, etc.	\$0.17
Apples for export	\$0.17
Apricots, cherries, nectarines, peaches, plums, prunes, other soft fruits, grapes and berries	\$0.23
Pears	\$0.17
Pears for export	\$0.17

(3) The department will give a volume discount for apples and pears that are inspected and certified on-line for domestic shipment, controlled atmosphere certification, etc. Packing of up to 4800 cwt per eight-hour shift, the normal inspection fee will be assessed, and every cwt of product above 4800 cwt for that same shift will be charged at \$0.12 cwt. Platform inspection fees will still apply (WAC 16-390-200).

(4) The department charges a fee of three dollars per ton net weight (or fraction thereof) for all apples, pears, stone fruits, berries, and grapes in bulk or in containers that are inspected for processing.

(5) The department charges a fee of ~~((thirty-two))~~ fifty dollars per hour, with a minimum certificate charge of ~~((sixteen))~~ twenty-five dollars, when an inspection is requested only to verify the product, conveyance, markings, or other factors not related to quality.

AMENDATORY SECTION (Amending WSR 05-12-054, filed 5/26/05, effective 6/26/05)

WAC 16-390-030 ((What are the fees for)) Grade and condition certificates ((for))—Vegetables(?). WSDA fees for grade and condition certificates for all vegetables are:

(1) A minimum charge of ~~((sixteen))~~ twenty-five dollars.

(2) The fees for **federal-state or state grade and condition certificates** for all fresh market vegetables in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are listed in the following table:

Type of Vegetables	Fees per CWT or Fraction Thereof
Asparagus	\$0.23
Cantaloupes and corn	\$0.14
Onions	\$0.09
Potatoes	\$0.07
In-state processing potatoes Complete inspection	\$0.08 Rate shall be reduced for the level of service required
Tomatoes	\$0.21

(3) For the inspection of vegetables not listed, the department charges a fee of ~~((thirty-two))~~ fifty dollars per hour.

(4) The department charges a fee of three dollars per ton net weight (or fraction thereof) for the inspection of vegetables to be processed, whether in bulk or in containers.

(5) When an inspection is requested only to verify the product, conveyance, markings, or other factors not related to quality, the department charges the rate of ~~((thirty-two))~~ fifty dollars per hour, with a minimum certificate charge of ~~((sixteen))~~ twenty-five dollars.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-040 ~~((What are the fees for grade and condition certificates for fruits and vegetables inspected under the))~~ **Customer assisted inspection program (CAIP)(?)** ~~certification charges—Fruits and vegetables.~~ WSDA fees for grade and condition certificates for all fruits and vegetables issued under the customer assisted inspection program (CAIP) are:

- (1) A minimum charge of ~~((sixteen))~~ twenty-five dollars.
- (2) The fees for **federal-state grade and condition certificates** for all fresh market fruits and vegetables in containers (wrapped, place pack, face and fill), bags, master containers, consumer packages, or loose in bulk cartons, boxes, crates, bins, or bags are:

Type of Fruit or Vegetable	Fees per CWT or Fraction Thereof
Fresh potatoes	Three and one-half cents per cwt., with a minimum charge of ((thirty-two)) <u>fifty</u> dollars per hour for each staff hour worked.
All other fresh market fruits and vegetables	Three-fourths of the cwt. rates specified in WAC 16-390-020(2) and 16-390-030(2) but not less than the equivalent rate of ((thirty-two)) <u>fifty</u> dollars per staff hour worked. If the cwt. rate results in an inspection fee that is less than the equivalent of ((thirty-two)) <u>fifty</u> dollars per staff hour worked, the department will assess additional certification charges. For example, if an inspection takes three staff hours (\$ ((96.00)) <u>150.00</u>) to complete and the cwt. rate results in a fee of \$85.00, the department will assess additional certification charges of \$ ((41.00)) <u>65.00</u> .

AMENDATORY SECTION (Amending WSR 08-22-084, filed 11/4/08, effective 12/5/08)

WAC 16-390-060 ~~((Fees for inspecting beans, peas, lentils, hay and straw.))~~ **Certificate charges—Other agricultural commodities.** Inspection fees for beans, peas, lentils, hay, and straw are found in the following rule sections:

Beans, Peas, Lentils	
WAC Section	Title
16-240-010	Definitions.
16-240-020	Washington state grain and commodity service points.
16-240-030	Commodities covered by chapter 22.09 RCW.
16-240-032	Grades and standards adopted by Washington state.
16-240-034	Service requests.
16-240-036	Permanent staffing requests.
16-240-038	Revenue minimum.
16-240-040	Official commercial inspection services.
16-240-042	Payment of fees and charges.
16-240-044	GIPSA, FGIS scale authorization.
16-240-046	Straight time rate.
16-240-048	Rates for working outside established business hours (overtime).
16-240-050	Calculating travel time, mileage and per diem.
16-240-052	Fees for stowage examination.
16-240-054	Service cancellation fee.
16-240-060	WSDA grain program fees for service.
16-240-080	Fees for services under the Agricultural Marketing Act of 1946.
16-240-090	Fees for other services performed by WSDA.

Hay, Straw	
WAC Section	Title
16-470-900	Schedule of fees and charges—Billing policies and procedures.
16-470-912	Schedule of fees and charges—Applicable fees and charges.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-100 ~~((What are the fees for))~~ **Fruit and vegetable** ~~((certificates?))~~ **certificate fees.** As shown in the following table, WSDA certificate fees vary with the type of certificate requested:

Type of Certificate Requested	Fee
Consolidation certificates	Fees are specified in WAC 16-390-020 and 16-390-030 with an added charge of three dollars for each additional lot.
Condition certificates for previously inspected lots	Fee is two-thirds of the fee charged for grade and condition certificates, with a minimum charge of ((sixteen)) <u>twenty-five</u> dollars.
Condition certificates for lots not previously inspected for quality or grade with a request that the certificate carry out-bound car, truck, or state lot number	Fees are based upon the applicable grade and condition certificate schedules.
Out-of-state products reported on state certificates	Fees are based either upon the applicable grade and condition certificate schedule or a charge of ((thirty-two)) <u>fifty</u> dollars per hour whichever is greater.
A state condition certificate or quality control inspection for previously certified controlled atmosphere storage apple lots	A state condition certificate or quality control inspection may be issued without additional charge.
Sanitary and quarantine certificates for fruits and vegetables	((Sixteen)) <u>Twenty-five</u> dollars for issuing a certificate, plus the hourly rates specified in WAC 16-390-200(1) when the shipment is not covered by federal-state or state certificates.
Container weight, or check loading certificates	Fee is charged at the rates specified in WAC 16-390-200(1).

AMENDATORY SECTION (Amending WSR 05-12-054, filed 5/26/05, effective 6/26/05)

WAC 16-390-150 ~~((What requirements apply to))~~ **Shipping permits and certificate~~((s))~~ of compliance ~~((for))~~—Fruits and vegetables~~((?))~~**, (1) Each shipment of apples, apricots, Italian prunes, peaches, pears, dark sweet cherries, Rainier cherries and asparagus must be covered by a shipping permit. All other sweet cherries, whether certified or not, must have a shipping permit indicating freedom from cherry fruit fly larvae.

(2) Shipments of apricots, cherries, peaches, prunes, and asparagus to processors do not require a shipping permit.

(3) A permit or certificate of compliance may be issued without additional charge if the lot is certified.

(4) If the lot has not been certified, a permit or certificate of compliance may be issued based upon the following charges:

(a) The minimum charge for a permit or certificate of compliance is three dollars.

(b) Two-thirds of the rate for federal-state or state grade and condition certificates applies.

(c) A permit to ship apples and/or pears to a by-product plant outside the state is three dollars.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-200 ~~((What are the fees for))~~ **Platform inspection ~~((services?))~~ fees**, (1) Fees for platform inspections, taking samples, extra time, phytosanitary and/or quarantine inspection, and all other platform services are charged at the rate of ~~((thirty-two))~~ fifty dollars per hour.

(2) When a platform inspector is working full time at one house and is also doing certification inspections, the inspector must allow credit, according to the limits outlined in the schedule for such inspections, for the time spent on the inspection at the rate of ~~((thirty-two))~~ fifty dollars per hour.

(a) Platform fees will not be assessed if the certificate cwt. fee divided by the respective hourly rates is equal to or exceeds the number of hours worked.

(b) Platform fees will be assessed if the certificate cwt. fee divided by the respective hourly rates is less than the number of hours worked. The amount assessed will be sufficient to make the total fee equal to the number of hours worked multiplied by the ~~((thirty-two))~~ fifty dollars per hour rate.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-210 ~~((What is the fee for supervising fumigations?))~~ **Fumigation fees**, (1) The minimum fee for supervising fumigation shall be equivalent to one and one-half hours specified in WAC 16-390-200(1) for the master fumigation certificate. Additional certificates issued from this master certificate will cost ~~((sixteen))~~ twenty-five dollars each.

(2) The department will charge for any additional stand-by time at the rate specified in WAC 16-390-200(1).

(3) In facilities that are either temporary or without adequate devices for maintaining acceptable treatment temperatures, fumigations must not start after:

(a) 3:00 p.m. from October 1 to May 31; or

(b) 10:00 p.m. from June 1 to September 30.

AMENDATORY SECTION (Amending WSR 05-12-054, filed 5/26/05, effective 6/26/05)

WAC 16-390-220 ~~((What is the fee for a))~~ **Field or orchard inspection~~((?))~~ fees**, The fee for field or orchard inspections made at the applicant's request to determine the presence or absence of disease or insect infestation, or for some other reason is:

(1) Three dollars per acre or fraction thereof; or

(2) At the platform inspection rate specified in WAC 16-390-200(1).

AMENDATORY SECTION (Amending WSR 08-21-068, filed 10/13/08, effective 11/13/08)

WAC 16-390-230 (~~What is the fee for an~~) Apple pest certification(?) fees. The fee for apple pest certification, using the survey method, on all fresh apples produced in Washington state or marketed under Washington state grades and standards, is \$.015 per cwt. or fraction thereof.

AMENDATORY SECTION (Amending WSR 07-16-084, filed 7/30/07, effective 8/30/07)

WAC 16-390-240 (~~What is the~~) Fresh produce audit verification program(?) The fresh produce audit verification program is a federal-state inspection service program that reviews and verifies a participating company's facility and agronomic practices, along with its documented procedures, to help determine if "good agricultural practices" and "good handling practices" are maintained.

AMENDATORY SECTION (Amending WSR 07-16-084, filed 7/30/07, effective 8/30/07)

WAC 16-390-242 (~~What charges does the department assess for fruit and vegetable audit verification certificates issued under the~~) Fresh produce audit verification program(?) fees for fruit and vegetable audit verification certificates. Charges assessed by the department for good agricultural practices (GAP) and good handling practices (GHP) audit verification certificates issued under the fresh produce audit verification program are as follows:

(1) The hourly rate for audit time, administration time and applicable travel time is seventy-five dollars per audit hour.

(2) Mileage related to GAP and GHP audit services is charged at the rate established by the office of financial management (OFM) at the time the service was performed.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-245 (~~What requirements apply to certifications using~~) USDA positive lot identification(?) fees. (1) Certification fees using USDA positive lot identification are based upon the rates specified in WAC 16-390-020, 16-390-030, 16-390-040, 16-390-100, 16-390-200, 16-390-210, 16-390-250 and 16-390-260.

(2) The department may add an additional charge of ten percent if an inspector is required to be on-site when no other inspections are requested.

(3) The department responds to requests for positive lot identification services in the following order:

(a) First priority is given to those situations where positive lot identification is a mandatory condition of a sales transaction.

(b) All other requests will be honored based upon adequate notice to the inspection service and the availability of inspectors.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-250 (~~What~~) Miscellaneous (inspection) and certification fees (does WSDA charge?) (1) Department services provided to other agencies, commissions, and organizations are charged at the rate of (~~thirty-two~~) fifty dollars per hour.

(2) The charge for mileage related to inspection and certification services is at the rate established by the office of financial management (OFM) at the time the service was performed.

(3) The department may charge for telegrams, facsimile, or electronic transmission of inspection documents at the rate of four dollars per transmission in addition to any Western Union charges made directly to the applicant.

(4) The cost of extra copies of original documents is four dollars per set.

(5) The department may charge twenty-five cents per copy for Xerox copies of inspectors' notes, certificates or related documents.

(6) When, through no fault of the inspection service, it is necessary to retype or reissue a document, the cost of retyping or reissuing the document is four dollars per set.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-260 (~~Does the department assess~~) Extra (charges) fees for (the) inspection and certification services (it provides?) The department does assess extra charges on services provided according to the following:

(1) The minimum inspection charge for each commodity and requested document is (~~sixteen~~) twenty-five dollars.

(2) If, through no fault of the inspection service, excess time is required over the maximum time allowed (as supported by unit rates for each commodity and requested document) the excess time is charged at the rate of (~~thirty-two~~) fifty dollars per hour.

(3)(a) For all inspection services performed beyond a regularly scheduled eight-hour week day shift or on Saturdays, or Sundays, or state legal holidays, a rate equivalent to (~~forty-two~~) seventy-five dollars will be charged for actual hours spent in performance of duties. Such charges include unit charges, plus, if necessary, overtime charges to equal the respective overtime hourly rates.

(b) The following are state legal holidays:

Holiday	Date
New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday of May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November

Holiday	Date
Day following Thanksgiving Day	Fourth Friday in November
Christmas Day	December 25

(4) Additional hourly or overtime charges will not be assessed when the per unit inspection charge in any one day equals or exceeds the basic hourly and/or overtime charge.

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-270 ((Can the department waive) Fruit and vegetable ((inspection) fees(?)). The department may waive inspection fees for fruits and vegetables donated to bona fide nonprofit organizations if the shipping containers are conspicuously labeled or marked "not for resale."

AMENDATORY SECTION (Amending WSR 04-11-078, filed 5/18/04, effective 6/18/04)

WAC 16-390-280 ((What requirements apply to the) Payment and collection of fruit and vegetable fees and charges(?)). (1) All fees and charges for services rendered are due within thirty days after the date of the billing statement you receive from the department.

(2) If your payment is not received within thirty days, service may be withheld until your delinquent account is paid.

(3) If your account is delinquent, the department may require that you pay cash for subsequent services.

(4) The department assesses a penalty of eighteen percent per annum on all delinquent account balances.

WSR 12-19-051

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed September 13, 2012, 1:06 p.m., effective October 14, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In meeting the requirements of E2SHB 2082, the agency is amending, repealing, and creating new rules to: (1) Eliminate references to the General assistance-unemployment 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, 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 (ESSHB [E2SHB] 2082).

Adopted under notice filed as WSR 11-23-164 on November 22, 2011; and WSR 12-12-068 on June 5, 2012.

Changes Other than Editing from Proposed to Adopted Version: **WAC 182-503-0520:** Replaced "person" and "client" with the word "individual" throughout the section.

(3) An individual receiving MCS client can temporarily be out of the state for more than one month.

(9) An client's individual's residence is the state:

(a) Where the parent or legal guardian resides, if appointed, for an institutionalized client individual twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one;

WAC 182-508-0001:

(2)(f)(iii) Is eligible for OAA, AB, AFDC, SSI, or ~~APRD~~ APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.

(7) An adult is eligible for the state-funded medical care services (MCS) program when the individual:

(c) Meets the requirements of the ADATSA program as described in WAC 182-508-0320. ~~MCS clients residing in counties designated as mandatory managed care plan counties must enroll in a plan.~~

(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.

WAC 182-508-0005(2):

(b) Refuses or fails to meet a TANF ~~or SFA~~ eligibility rule.

(i) Is eligible for the aged, blind, disabled (ABD) program under WAC 388-400-0060.

WAC 182-508-0010:

(1)(a) ~~Eligible for payments~~ Disabled based on Social Security Administration (SSA) disability criteria;

~~(2)(e) The Social Security Administration stops the individual's Supplemental Security Income payments because the individual is not a citizen.~~

WAC 182-508-0015:

(2)(a) Applies for MCS medical benefits;

(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 ~~seven~~ 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 ~~aged, blind, or disabled~~ MCS benefits if the individual is incapacitated primarily because of alcoholism or drug addiction.

WAC 182-508-0030:

(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.

WAC 182-508-0035:

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

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

~~(b) The individual's impairment has lasted, or is expected to last, twelve months or more~~

~~(c) The individual was not previously determined to meet aged, blind, or disabled under WAC 388-400-0060.~~

WAC 182-508-0050:

(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.

(5)(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)-Fourth Edition (DSM-IV).

(6)(d) The objective evidence and global assessment of ~~functional~~ functioning score are consistent with a significant limitation on performing work activities.

WAC 182-508-0100:

(4) After considering vocational factors, the agency or the agency's designee ~~approves or denies~~ incapacity when the individual has:

WAC 182-508-0150:

(6) The individual is removed from the MCS wait list if the individual:

~~(e) Reapplies as described in subsection (5) of this section, within thirty days of the offer for MCS enrollment, but does not qualify for MCS; or~~

~~(f) Qualifies Is found eligible for categorically or medically needy coverage.~~

WAC 182-508-0230:

The eligibility standards for MCS assistance units in medical institutions and group living facilities are:

Facility Type	Assistance Unit Size	Eligibility Standard
<u>Medical Institutions (includes nursing homes and hospitals)</u>	<u>1</u>	<u>41.62</u>
<u>Adult Family Homes</u>	<u>1</u>	<u>339.00</u>

Facility Type	Assistance Unit Size	Eligibility Standard
<u>Boarding Homes (includes assisted living, enhanced residential centers (EARC), and adult residential centers (ARC))</u>	<u>1</u>	<u>38.84</u>
<u>DDD Group Home</u>	<u>1</u>	<u>38.84</u>
<u>Mental Health Adult Residential Treatment Facilities (ARTF)</u>	<u>1</u>	<u>38.84</u>

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: September 13, 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)) 182-500-0050.

"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)) 182-517 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.

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 spend-down 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 182-507-0130.

(5) An individual who receives a TANF cash grant or family medical is eligible for a medical extension, as described under WAC 182-523-0100, 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 182-523 WAC.

(7) A child who receives premium-based coverage under a program included in apple health for kids described in WAC 182-505-0210 and chapter 182-505 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 182-512-0050, 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.

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 182-509-0135.

Chapter 182-508 WAC

ADULT MEDICAL AND CHEMICAL DEPENDENCY **((ASSISTANCE PROGRAMS))**

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 con-

sidered 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 182-503-0505; and

(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010; 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 182-503-0505; and

(b) Has MN countable income that does not exceed the income standards in WAC 182-512-0010, or meets the excess income spenddown requirements in WAC 388-519-0110; and

(c) Meets the countable resource standards in WAC 182-519-0050; 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 182-507-0110.

(6) An adult is eligible for the aged, blind, or disabled program when the individual:

(a) Meets the requirements of the aged, blind, or 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. An adult may be eligible for aged, blind, or disabled cash benefits and CN medical coverage due to different sponsor deeming requirements.

(7) An adult is eligible for the 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 and 182-508-0375.

(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) Completes an interview with the agency or its designee;

(b) Is incapacitated as required under WAC 182-508-0010 through 182-508-0120;

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

(d) 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;

(e) Meets the medical care services citizenship/alien status requirements under WAC 182-503-0532;

(f) Provides a Social Security number as required under WAC 388-476-0005;

(g) Resides in the state of Washington as required under WAC 182-503-0520;

(h) Reports changes of circumstances as required under WAC 182-504-0100; and

(i) 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 without good cause.

(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) Refuses or fails to follow a Social Security Administration (SSA) program rule or application requirement without good cause 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 a categorically needy (CN) medicaid program.

(j) Refuses or fails to cooperate with CN medicaid program rules or requirements.

(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) The individual was discharged into outpatient treatment.

(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 and earning more than the substantial gainful activity standard as defined by the Social Security Administration.

(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.

(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 individ-

ual 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; and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and co-workers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

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 profession-

als 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 of an impairment(s) and how the impairment(s) affects the ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective and complete.

(1) Objective evidence for physical impairments means:

(a) Laboratory test results;

(b) Pathology reports;

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

(d) Clinical 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); and

(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.

(4) When making an incapacity decision, the agency or the agency's designee considers documentation in addition to objective evidence to support the acceptable medical source or treating provider's opinion that the individual is unable to perform substantial gainful employment, such as proof of hospitalization.

(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 sixty days after the individual stops using drugs or alcohol.

(8) If the individual can't obtain medical evidence sufficient for the agency or its designee to determine if the individual is likely to be disabled without cost to the individual, and the individual meets other eligibility conditions 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 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 one or more basic work-related activities.	None	1
(b) There is no significant limit on performance of one or more basic work-related activities.	Mild	2
(c) There are significant limits on performance of one or more basic work-related activity.	Moderate	3

Effect on Work Activities	Degree of Impairment	Numerical Value
(d) There are very significant limits on the individual's performance of one or more basic work-related activities.	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 there is at least a moderate severity rating and the individual's impairment has lasted, or is expected to last, twelve months or more with available treatment.

(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) The description of impairments is supported by the medical evidence; and

(c) The 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 the objective medical evidence, the agency or the agency's designee takes the following action:

(a) Assigns a severity rating and functional limitations consistent with the objective medical evidence;

(b) Clearly describes why the agency rejected the medical provider's opinion; and

(c) Identifies the medical evidence used to make the determination.

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 medical information to determine incapacity. The information 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 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, anxiety, thought, memory, personality, 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 clinical findings and objective evidence are consistent with a significant limitation on performing one or more basic work activities.	Moderate (3)
(b) The individual is diagnosed with a functional disorder with psychotic features;	Marked (4)
(c) The individual has had two or more hospitalizations for psychiatric reasons in the past two years;	
(d) The individual has had more than six months of continuous psychiatric inpatient or residential treatment in the past two years;	
(e) The clinical findings and objective evidence are consistent with very significant limitations on ability to perform one or more basic work activities.	Severe (5)
(f) The clinical findings and objective evidence are consistent with an inability to perform one or more basic work activities.	

(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	Marked (4)
(b) One or more disorders rated moderate severity (3), and one rated marked severity (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.

(2) 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
(a) All impairments are mild and there is no cumulative effect on basic work activities.	Mild 2
(b) All impairments are mild and there is a significant cumulative effect on one or more basic work activities.	Moderate 3
(c) Two or more impairments are of moderate severity and there is a very significant cumulative effect on basic work activities.	Marked 4
(d) Two or more impairments are of marked severity.	Severe 5

(3) The agency or the agency's designee denies incapacity when the overall severity rating is two.

(4) The agency or the agency's designee approves incapacity at this step 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 very short and simple instructions.

(b) Understand, remember, and persist in tasks by following detailed instructions.

(c) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision.

(d) Learn new tasks.

(e) Perform routine tasks without special supervision.

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

(g) Make simple work-related decisions.

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

(i) Ask simple questions or request assistance.

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

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

(l) Set realistic goals and plan independently.

(m) 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 tasks following complex instructions; and at least markedly limited in the ability to:

- (i) Learn new tasks;
- (ii) Be aware of normal hazards and take appropriate precautions; and
- (iii) 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; and
- (b) 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 ten pounds maximum and frequently lift or carry light-weight articles. Walking or standing only for brief periods.	Sedentary

If an individual is able to:	Then the individual is assigned this exertion level
(b) Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the work-day. Sitting and using pushing or pulling arm or leg movements most of the day.	Light
(c) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(d) Lift 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	Limited education
(c) Has participated in special education in basic academic classes of reading, writing, or mathematics in high school.	
(d) Has received a high school diploma or general equivalency degree (GED); or	High school and above level of education
(e) Has received skills training and was awarded a certificate, degree or license.	

(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 and Cognitive Limitation	Age
(a) Moderately impaired (rated three) in the individual's ability to: (i) Communicate and perform effectively in a work setting; and (ii) Maintain appropriate behavior in a work setting.	50 years and older
(b) The individual is severely impaired in their ability to: (i) Understand, remember, and persist in tasks following detailed instructions; (ii) Set realistic goals and plan independently; or (iii) Learn new tasks.	45 years and older

Social and Cognitive Limitation	Age
(c) The individual is severely impaired in their ability to: <ul style="list-style-type: none"> (i) Understand, remember, and persist in tasks by following very short and simple instructions; (ii) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision; (iii) Perform routine tasks without special supervision; (iv) Adapt to changes in a routine work setting; (v) Make simple work-related decisions; (vi) Be aware of normal hazards and take appropriate precautions; (vii) Ask simple questions or request assistance; (viii) Communicate and perform effectively in a work setting; (ix) Complete a normal workday and work week without interruption from psychologically-based symptoms; or (x) Maintain appropriate behavior in a work setting. 	Any age

(3) The agency or the agency's designee approves incapacity when the individual has both mental and physical impairments with at least a moderate overall severity 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 that interfere with work 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.
50 or older	Limited education or less	(b) Restricted to medium work or less.
Any age	Limited education or less	(c) Restricted to light work level or less.

(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 (MCS); aged, blind, or disabled (ABD); and Alcohol and Drug Addiction Treatment and Support Act (ADATSA). The eligibility standards for MCS, ABD medical, and 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, or 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 (3) of this section applies), or receive federal assistance under supplemental security income (SSI) or temporary assistance for needy families (TANF).

(2) An individual is not eligible for the ADATSA program if the individual is otherwise eligible for TANF or family medical and loses their eligibility for medical coverage due to:

- (a) Noncooperation with the division of child support requirements; or

(b) Failure to cooperate with third-party liability (TPL) requirements to identify any potential third-party payors for medical coverage.

(3) 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). An ADATSA-eligible individual is eligible for state-funded medical care services (MCS) when one of the following situations exists:

(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 (~~FOR MEDICAL PROGRAMS~~)

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 individ-

ual'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 182-509-0205, 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 eligibility standard 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; 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 this section; 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.

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.

NEW SECTION

The following section of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
388-505-0270	182-514-0270

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.
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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 12-19-053

PERMANENT RULES

GAMBLING COMMISSION

[Order 679—Filed September 13, 2012, 2:05 p.m., effective October 14, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule was amended to reflect a 2012 legislative change (SB 6465) to RCW 9.46.0315 to allow charitable and nonprofit organizations offering members-only raffles to obtain a raffle license. By obtaining a license, they can now exceed the yearly gross revenue limit of \$5,000 which applies to unlicensed raffles.

Reasons Supporting Proposal: See above.

Citation of Existing Rules Affected by this Order: Amending WAC 230-06-020.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0315.

Adopted under notice filed as WSR 12-15-040 on July 13, 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 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 1, Repealed 0.

Date Adopted: September 13, 2012.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

WAC 230-06-020 Restrictions on alcohol as prizes. Licensees must not offer or award beverages that contain alcohol as a prize or in place of a prize for any gambling activity except:

(1) Dice or coin contests for music, food, or beverage payment as authorized by RCW 9.46.0305; and

(2) ~~((Unlicensed))~~ Members-only raffles authorized by RCW 9.46.0315, but only if the liquor control board granted the appropriate permit; and

(3) Other gambling activities where the liquor control board has authorized alcohol as a prize.

WSR 12-19-064

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed September 14, 2012, 2:57 p.m., effective October 15, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Effective June 1, 2010, chapter 23, Laws of 2010 1st sp. sess. changed Washington's method of apportioning certain gross income from engaging in business as a financial institution. RCW 82.04.460 requires [rules] to [be] based on the model regulation for the apportionment of income of financial institutions adopted by the Multistate Tax Commission (MTC).

The department had previously adopted emergency rules while it worked with stakeholders to develop a permanent WAC 458-20-19404 (Rule 19404) Financial institutions—Income apportionment, to explain the implications of this legislation for financial institutions. The department is at this time adopting a permanent Rule 19404 to address how such gross income must be apportioned when a financial institution engages in business both within and outside the state.

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

Adopted under notice filed as WSR 12-06-081 on March 7, 2012.

Changes Other than Editing from Proposed to Adopted Version:

- Subsection (2)(b), added language from the MTC's model rule that was inadvertently omitted.
- Subsection (4)(c), removed a reference to interest on certain loans secured by commercial aircraft as being excluded from the new apportionment calculation. RCW 82.04.43391 treats these amounts as deductions, not exclusions.

A final cost-benefit analysis is available by contacting Chris Coffman, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1590, e-mail ChrisC@dor.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 14, 2012.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.

(a) Effective June 1, 2010, section 108, chapter 23, Laws of 2010 1st sp. sess. changed 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 standards 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 that is effective 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 periods 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 attribute and apportion its service and other activities income as provided in this rule. Any other apportionable income 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 of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401, Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not includable from apportionable activities 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) All apportionable income shall be apportioned to this state by multiplying such income by the apportionments percentage. 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 factors to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection 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 such 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 in 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.

(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 Title 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, 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; 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 (3)(i) of this subsection, affiliated means the affiliated person and the financial institution are under common control. 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.

(ii) 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) **"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; noninterest 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 real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

(k) **"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.

(l) **"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.

(m) **"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.

(n) **"Person"** has the meaning given in RCW 82.04.030.

(o) **"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.

(p) **"Service and other activities income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(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 service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, 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 (s) of this subsection, "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 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 apportionable income of the taxpayer in this state during the taxable period and the denominator of which is the apportionable 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.

(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 (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 (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.

(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 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 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 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 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 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 produc-

ing 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, 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 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 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), attributable to this state and included in the numerator

is determined by multiplying the amount described in (k)(i)(B) of this subsection 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 (k)(ii) of this subsection, 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, 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 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), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection 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, 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.

(1) 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.

WSR 12-19-065

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 17, 2012, 10:08 a.m., effective October 18, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposed rules will ensure that the fees being charged for services provided by the seed program are in correlation to the amount of time needed to render that service and ensure cost recovery for the program.

Citation of Existing Rules Affected by this Order: Amending WAC 16-303-020, 16-303-105, 16-303-200, 16-303-210, 16-303-230, 16-303-240, 16-303-250, 16-303-300, 16-303-310, 16-303-315, 16-303-317, 16-303-320, and 16-303-340.

Statutory Authority for Adoption: RCW 15.49.310, chapter 34.05 RCW.

Other Authority: 3ESHB 2127, chapter 7, Laws of 2012.

Adopted under notice filed as WSR 12-16-078 on July 31, 2012.

Changes Other than Editing from Proposed to Adopted Version: A redundant statement in WAC 16-303-340 was removed to make the rule clearer.

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 13, 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: September 17, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 05-12-053, filed 5/26/05, effective 6/26/05)

WAC 16-303-020 Schedule of charges—Billing policies and procedures. (1) Accounts.

(a) All billable services provided for under chapter 15.49 RCW are due and payable upon billing by the department. For the convenience of established accounts and in accord with good business practices, the department provides a monthly billing service. Accounts not paid in full within thirty days of billing are considered delinquent.

(b) On all debts due and payable after July 28, 1991, all delinquent accounts are assessed a late charge equal to (~~one and one-half~~) two percent per month, or portion of a month, on the unpaid balance.

(c) Except for established accounts where there is a reasonable expectation of additional charges during a calendar month, the minimum billable amount through the monthly billing system is twenty dollars. All billable services of less than twenty dollars are due and payable on the date that service is rendered.

(d) No person with an account ninety days or more in arrears may receive service except on the basis of payment in full at the time service is rendered. Accounts in arrears may be subject to legal action for collection and are not restored to monthly billing status until all past due amounts are paid-in-full.

(e) Accounts that become ninety or more days in arrears twice within a five-year period may be subject to a permanent requirement for payment in full at the time service is provided.

(2) Unless otherwise provided for in rule, requests for refund fees or assessments must be submitted to the department by June 30 of the year following payment of the fee or assessment.

(3) Fees for services not listed in rule are set on the basis of the actual cost to the department of agriculture, or the most appropriate fee established by rule.

AMENDATORY SECTION (Amending WSR 01-01-015, filed 12/6/00, effective 1/6/01)

WAC 16-303-105 Annual seed inspection charge. (1)

Each person required to obtain a seed labeling permit, pursuant to RCW 15.49.400, of the Washington State Seed Act, must also, pursuant to RCW 15.49.310 and 15.49.370, pay a general seed inspection charge annually to the department in the amount of (~~ten~~) eleven cents per one hundred dollars gross annual dollar sales in excess of ten thousand dollars of agricultural and/or vegetable seed distributed in this state during the preceding fiscal year, except that no assessment shall be collected on:

(a) Seed for which the assessment has been previously collected, except when such seed is relabeled;

(b) Agricultural or vegetable seed distributed out-of-state;

(c) Seed distributed in containers of four ounces or less;
 (d) Stock seed; and
 (e) Seed distributed by governmental agencies, such as, but not limited to, the United States Department of Agriculture national foundation seed project. Agricultural and/or vegetable seeds distributed under bailment contract are valued at the producer-conditioner agreement rate in lieu of sale.

(2) The seed assessment fees for the fiscal period beginning July 1 through June 30 are payable on February 1 of the following calendar year.

(3) The seed assessment may accompany the annual application for the seed labeling permit. A penalty of ~~((ten))~~ fifteen percent of the assessment fee or a minimum of ~~((ten))~~

twenty dollars, whichever is greater, is added to all assessments not paid by February 1.

(4) The annual seed-labeling permit may not be issued until all seed assessments and penalties are satisfied.

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-200 Seed program testing fees. Seed testing fees are as follows:

(1)

Category	Crop kind	PURITY	GERM/1	TZ	Additional Crops in each Category/2
1	Agricultural Grasses	((37.00)) <u>40.00</u>	((22.60)) <u>25.00</u>	((41.83)) <u>45.00</u>	Alkaligrass, Bermudagrass, Canarygrass, Foxtail, Switchgrass, Timothy, Zoysia
2	Alfalfa & Clover	((28.78)) <u>31.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Alfalfa, Black Medic, Clover, Lupine, Milkvetch, Sainfoin, Trefoil
3	Beans	((26.72)) <u>29.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Beans
4	Beets	((39.06)) <u>42.00</u>	((43.16)) <u>47.00</u>	((41.83)) <u>45.00</u>	Beets, Swiss chard, Spinach
5	Bentgrass, redtop	((65.78)) <u>72.00</u>	((34.94)) <u>38.00</u>	((41.83)) <u>45.00</u>	Bentgrass, Redtop
6	Bluegrass	((45.22)) <u>49.00</u>	((30.82)) <u>33.00</u>	((41.83)) <u>45.00</u>	Bluegrass, all types
7	Brassica Species	((69.88)) <u>75.00</u>	((34.94)) <u>38.00</u>	((41.83)) <u>45.00</u>	Brassica Species
8	Brome	((47.28)) <u>51.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Brome: Mountain, Smooth, Meadow
9	Fescue	((37.00)) <u>40.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Fescue: Tall and Meadow
10	Fescue, all others	((45.22)) <u>49.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Fescue: Arizona, Blue, Blue Hard, Chewings, Creeping, Hard, Idaho, Red, Sheep
11	Flax	((28.78)) <u>31.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Lewis flax
12	Orchardgrass	((51.38)) <u>55.00</u>	((26.72)) <u>29.00</u>	((41.83)) <u>45.00</u>	Orchardgrass
13	Peas and other large seeded legumes	((28.78)) <u>31.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Peas, Chickpeas, Lentil, Vetch
14	Primrose	((28.78)) <u>31.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Primrose
15	Ryegrass	((45.22)) <u>49.00</u>	((22.60)) <u>25.00</u>	((41.83)) <u>45.00</u>	Ryegrass, (Perennial or Annual)
16	Small burnet	((28.78)) <u>31.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Small burnet
17	Sudangrass	((28.78)) <u>31.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Sudangrass

Category	Crop kind	PURITY	GERM/1	TZ	Additional Crops in each Category/2
18	Vegetables	((28.78)) <u>31.00</u>	((24.66)) <u>27.00</u>	((45.00)) <u>49.00</u>	Vegetables: Arugula, Asparagus, Cantaloupe, Carrot, Celery, Corn, Coriander, Cucumber, Dill, Eggplant, Endive, Leek, Lettuce, Okra, Onion, Parsley, Parsnip, Pepper, Pumpkin, Radish, Squash, Tomato, Watermelon
19	Grains	((28.78)) <u>31.00</u>	((24.66)) <u>27.00</u>	((41.83)) <u>45.00</u>	Wheat, Triticale, Sunflower, Sorghum, Safflower, Rye, Rice, Millet, Buckwheat, Barley, Oats, Emmer, Spelt
20	Wheatgrass, Wildrye, other native species Group A	((78.12)) <u>84.00</u>	((30.82)) <u>33.00</u>	((41.83)) <u>45.00</u>	Bluestem, Buffalograss, Lovegrass, Penstemon, Sand dropseed, Sideoats, Squirreltail; Intermediate, Pubescent, Tall, Thickspike, Slender, and Western wheatgrasses; Small-seeded wildrye
	Wheatgrass, Wildrye, other native species and flowers Group B	((69.00)) <u>75.00</u>	((30.82)) <u>33.00</u>	((41.83)) <u>45.00</u>	Bitterbrush, Echinacea, Indian ricegrass, Junegrass, Kochia, Oatgrass, Indian ricegrass, Blue and other large-seeded wildrye, Crested and Siberian wheatgrasses
	Wheatgrass, Wildrye, other native species and flowers Group C	((69.00)) <u>75.00</u>	((114.48)) <u>123.00*</u>	((41.83)) <u>45.00</u>	Green needlegrass, Needle & Thread, Penstemon *(Germination requires 400 seed TZ according to AOSA Rules)

/1 Standard 400 seed germination test.

(2) Crops not listed in the above table will be charged by the category that they fit into.

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-210 Fees for special seed tests.

Test	Fee	Additional Information
(1) All states noxious weed examination	\$ ((33.38)) <u>36.00</u>	
(2) Dormant Seed Test	\$ ((41.83)) <u>45.00</u>	
(a) For crops requiring a 400 seed TZ as required in the AOSA rules	\$ ((83.66)) <u>90.00</u>	
(b) This fee also applies to paired tests when required by AOSA rules		
(3) Cold (vigor) test for wheat	\$ ((65.00)) <u>70.00</u>	
(4) Crop or weed exam		Standard noxious amount from AOSA rules
(a) Turf-type and other small seeded grasses	\$ ((38.00)) <u>41.00</u>	Kentucky bluegrass, timothy, alkaligrass, fine-leaved fescues
(b) Small seeded legumes and medium seeded crops	\$ ((44.00)) <u>47.00</u>	Brassicas, ryegrass, tall fescue
(c) Wheatgrass and native species	\$ ((50.00)) <u>54.00</u>	
(d) Grains and large seeded legumes	\$ ((22.00)) <u>24.00</u>	
(5) Fescue seed ammonia test	\$ ((30.82)) <u>33.00</u>	Required on all certified Blue, Hard, and Sheep fescues
(6) Fluorescence test (400 seed test)	\$ ((26.72)) <u>29.00</u>	Required on all Perennial and Annual ryegrass samples
(7) Miscellaneous services, samples requiring extra time, field run samples, etc.	\$ ((35.00)) <u>40.00</u> /hour	
(8) Pest and disease (phyto exam) and/or soil exam	\$ ((34.94)) <u>39.00</u>	

Test	Fee	Additional Information
(9) Quarantine tests on seed		
Bluegrass and Bentgrass	\$ ((18.04)) <u>20.00</u> /5 grams	
Other grasses	\$ ((18.04)) <u>20.00</u> /10 grams	
(10) Rules test—Canadian	PURITY	GERMINATION
Alfalfa, clover, peas, lentils	\$ ((32.37)) <u>35.00</u>	\$ ((24.66)) <u>27.00</u>
Kentucky bluegrass	\$ ((49.34)) <u>53.00</u>	\$ ((30.82)) <u>33.00</u>
Bentgrass	\$ ((72.47)) <u>78.00</u>	\$ ((34.94)) <u>38.00</u>
(11) Rules test—I.S.T.A.	PURITY	GERMINATION
Alfalfa, clover, peas, lentils	\$ ((32.37)) <u>35.00</u>	\$ ((30.82)) <u>33.00</u>
Kentucky bluegrass	\$ ((49.34)) <u>53.00</u>	\$ ((30.82)) <u>33.00</u>
(12) Moisture test	\$ ((30.00)) <u>33.00</u>	
(13) Seed Count		
(a) Large seed	\$ ((9.25)) <u>10.00</u>	
(b) Small seed	\$ ((12.30)) <u>13.00</u>	
((14)) <u>(14)</u> Out sourcing charge	\$ <u>15.00</u>)	
((15)) <u>(14)</u> Sod seed analysis	Bluegrass \$ ((75.00)) Fescue <u>81.00</u> Ryegrass \$ ((52.00)) <u>56.00</u> \$ ((42.00)) <u>45.00</u>	
((16)) <u>(15)</u> Sodium Hydroxide test for presence of red and/or white wheat	\$ ((20.54)) <u>23.00</u>	
((17)) <u>(16)</u> Undesirable grass species test (includes an all states noxious test) examination (UGS test)	\$ ((70.37)) <u>76.00</u>	
((18)) <u>(17)</u> Germination test in soil	\$ ((50.00)) <u>54.00</u>	
((19)) <u>(18)</u> Wheat bioassay test	\$ ((50.00)) <u>54.00</u>	
((20)) <u>(19)</u> Germination on mixtures Germination requiring embryo excision	\$ ((35.00)) <u>40.00</u> per hour for separation of kinds or preparation time	This is in addition to the established germination fee

AMENDATORY SECTION (Amending WSR 07-21-060 and 07-24-082, filed 10/12/07 and 12/5/07, effective 12/1/07 and 1/5/08)

WAC 16-303-230 Official seed sampling or similar service. Fees for official sampling are in addition to travel time and mileage.

Crop	Fee	Minimum charge
Peas, beans, small grains or seeds of similar size	Standard sampling \$ ((0.07)) <u>0.09</u> per cwt.	\$ ((35.00)) <u>40.00</u>
	I.S.T.A. sampling \$ ((0.09)) <u>0.11</u> per cwt. plus \$ ((7.50)) <u>9.00</u> per lot	\$ ((35.00)) <u>40.00</u> plus \$ ((7.50)) <u>9.00</u> per lot
For all other kinds	Standard sampling \$ ((0.18)) <u>0.20</u> per cwt.	\$ ((35.00)) <u>40.00</u>

Crop	Fee	Minimum charge
	I.S.T.A. sampling \$ ((0.22)) <u>0.24</u> per cwt. plus \$ ((7.50)) <u>9.00</u> per lot	\$ ((35.00)) <u>40.00</u> plus \$ ((7.50)) <u>9.00</u> per lot

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-240 Fees for blending seed. Blending fee is not applicable to salvage blends.

Grass option B*	Washington origin seed	\$ ((1.02)) <u>1.10</u> per cwt.
Grass option B*	Out-of-state origin	\$ ((0.64)) <u>0.66</u> per cwt.
Grass option A and all other blends of other crops		\$ ((0.07)) <u>0.10</u> per cwt.

*See WAC 16-303-320, footnote 6 for information on option A and option B.

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-250 Miscellaneous charges for seed services. Fees for miscellaneous department seed services are as follows:

Service	Fee
Rush samples (including phone or FAX report if requested at time sample is submitted)	\$ ((15.00)) <u>16.00</u>
High priority sample - Purity result completed before the end of the next business day. (Special circumstances only. Call ahead for availability.)	\$ ((150.00)) <u>160.00</u>
((Phone reports on test result, per call	\$ 7.18
Preliminary report on germination	\$ (5.00))
Additional mailing of report	\$ ((5.12)) <u>6.00</u> each destination
Additional copies of reports	\$ ((2.50)) <u>3.00</u> minimum fee
Revised reports	\$ ((10.26)) <u>11.00</u> minimum (hourly fee when applicable)
Fee for special shipping and handling service, for example Federal Express, Air Parcel or air freight	\$ ((3.70)) <u>5.00</u> plus exact shipping cost
Fee for facsimile transmission of documents	\$ 1.00 per document
Mileage - Additional or special requested trips	As established by the Washington State Office of Financial Management
Stand-by time - Or travel time	\$ ((35.00)) <u>40.00</u> /hour Travel time to be charged when special trip is requested.

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-300 Phytosanitary certification of seed—Fees.

Service	Fee	Additional Information
Federal Phytosanitary certificate	\$ ((35.00)) <u>50.00</u>	
State Phytosanitary certificate	\$ ((40.00)) <u>45.00</u>	

Service	Fee	Additional Information
Field inspection(---)- All seed except wheat seed (for each required inspection)	\$ ((5.30)) <u>5.83</u> per acre, per required inspection	\$ ((50.00)) <u>55.00</u> minimum fee, per inspection
Field inspection(---)- Wheat seed only	\$ ((2.12)) <u>2.33</u> per acre or fraction thereof	\$ ((50.00)) <u>55.00</u> minimum fee, per inspection
Area inspection	\$ ((0.53/)) <u>0.60</u> per acre	
Late fee - Per application	\$ ((41.00)) <u>50.00</u>	

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-310 Organization for economic cooperation and development scheme for varietal certification (O.E.C.D.) fees. In addition to fees required by applicable Washington certification rules, the following fees shall apply to all seed tagged O.E.C.D. and is payable by the person requesting O.E.C.D. certificate. The certifying agency may require fees paid in advance:

Service	Fee	Additional Information
O.E.C.D. certificate	\$ ((15.41)) <u>17.00</u> each	
O.E.C.D. grow out test	\$ ((65.72)) <u>72.00</u> each entry	No charge for control entry
O.E.C.D. assessment	cost to program	This is a pass through fee to USDA
O.E.C.D. tagging fee*	\$ ((0.84)) <u>0.91</u> /cwt.	All grasses except tall fescue
	\$ ((0.51)) <u>0.55</u> /cwt.	Tall fescue
	\$ ((0.53)) <u>0.57</u> /cwt.	All other crops

* Minimum tagging fee is \$13.00.

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-315 Service fee for sod quality seed tags and tagging. Service fee for sod quality seed tags and tagging shall be \$ ~~((0.22))~~ 0.25 per cwt. Minimum tagging fee is \$13.00.

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-317 Annual and rough bluegrass quarantine fees. Fees for sampling and analysis for the presence of annual or rough bluegrass are those fees established in this chapter and:

(1) Annual bluegrass and rough bluegrass - Inspection fee for nursery plantings for the presence of annual bluegrass is \$ ~~((59.10))~~ 63.53 per acre or portion thereof. ~~((The tagging fee is \$ 0.53 cwt. with a minimum fee of \$ 23.12.))~~

(2) Quarantine inspection of grass seed fields found to be in violation of the quarantine requirements will be charged at the rate of \$ ~~((200.00))~~ 215.00 per field inspection.

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-320 Certification fees for seed certified by the department. (1) Fees apply to both new and renewal applications.

The seed processor is responsible for seed certification fees including sampling, testing, production and final certification fees, and may accept responsibility for any other additional fees associated with certification. Fees for services such as O.E.C.D. and sod quality, etc., are in addition to the fees listed in this section.

Seed	Application Fee 1/	Seedling field inspection fee	Seedling producing or field inspection Fee 2/	Late Application Penalty Fee	Reinspection Fee (other than isolation)	Production Fee (includes tagging) 7/10/11/	Seed shipped Out-of-State (uncleaned)
Alfalfa, Red clover, White clover and Trefoil	\$ ((30.00)) 32.25 per variety per grower	\$ ((50.00/)) 54.00 per field	\$ ((1.85/)) 2.00 per acre	\$ ((41.00)) 50.00	\$ ((53.44 ea-)) 58.00 per field	\$ ((0.53)) 0.57/cwt. 5/	\$ ((0.20)) 0.22/cwt.
Bean	\$ ((30.00)) 32.25 per variety per grower	N/A	\$ ((1.85/)) 2.00 per acre 3/ (one inspection) \$ ((3.70/)) 4.00 per acre 4/ (two inspections)	\$ ((41.00)) 50.00	\$ ((53.44 ea-)) 58.00 per field	\$ ((0.53)) 0.57/cwt.	\$ ((0.20)) 0.22/cwt.
Turnip, Rutabaga, Kale	\$ ((30.00)) 32.25 per field	N/A	\$ ((3.70/)) 4.00 per acre (two inspections)	\$ ((41.00)) 50.00	\$ ((53.44 each)) 58.00 per field	\$ ((0.53)) 0.57/cwt.	\$ ((0.20)) 0.22
Perennial Grasses 6/	\$ ((30.00)) 32.25 per field	\$ ((50.00/)) 54.00 per field	\$ ((50.00)) 54.00 per field	\$ ((41.00)) 50.00	\$ ((53.44 each)) 58.00 per field	Option A \$ ((0.84)) 0.91/cwt. for all grass except tall fescue \$ ((0.51)) 0.55/cwt. tall fescue Option B \$ ((1.17)) 1.26/cwt. (min. \$ ((1.66)) 1.54)	\$ ((0.31)) 0.34
Corn	\$ ((30.00)) 32.25 per field	N/A	\$ ((50.00)) 55.00 first acre \$ ((10.99)) 12.00 ea. additional acre except hybrid corn \$ ((4.85)) 5.35 ea. additional acre	\$ ((41.00)) 50.00	—	\$ ((0.11)) 0.15 per tag issued (or minimum fee of \$10.00 per lot)	\$ ((3.00)) 4.00 per document
Annual grasses	\$ ((30.00)) 32.25 per field	N/A	\$ ((1.85/)) 2.00 per acre	\$ ((41.00)) 50.00 per field	\$ ((53.44 each)) 58.00 per field	\$ ((0.42)) 0.45/cwt.	\$ ((0.20)) 0.22
Rapeseed, Canola, and Mustard	\$ ((30.00)) 32.25 per variety per grower	N/A	\$ ((1.85/)) 2.00 per acre (one inspection)	\$ ((41.00)) 50.00 per grower	\$ ((53.44 ea-)) 58.00 per field	\$ ((0.53)) 0.57/cwt.	\$ ((0.20)) 0.22

- 1/ Seed certification application due dates can be found in WAC 16-302-050.
- 2/ Seedling producing or field inspection fees are refundable if the acreage is withdrawn before the inspection is completed. In the case of bean seed, fees are required of seedling fields to be harvested for certification the year of planting.
- 3/ One inspection is required for Great Northern Red Mexican, pinto, pink, and small white bean.
- 4/ Includes windrow inspection which is required for certification of snap beans, kidney beans, and eligibility for shipment into the state of Idaho.

- 5/ Production fees are billed at completion of laboratory analysis tests. If no seed is tagged, \$ 0.10 of the \$ ~~((0.53))~~ 0.57 per cwt. production fee is refundable.
- 6/ Option A: Inspection and final certification fees are based on pounds sampled and billed upon completion of required laboratory tests.
Option B: Inspection and final certification fees are based on pounds tagged after required laboratory tests are completed. Those dealers requesting sampling and tagging privileges and/or participation in Option B must sign a memorandum of agreement that shall expire on June 30 of each year. The memorandum may be terminated by the director if the

conditioner violates certification standards or requirements of memorandum.

- 7/ Does not include shipping and handling charge for tags.
- 8/ Service inspection of seed fields
Service inspection will be charged the established hourly rate inclusive of travel time and inspection time. This excludes the seedling inspection which is charged according to the above chart.
Service inspections will be charged a mileage fee based upon the OFM mileage rate.
- 9/ Hybrid inspections (pollen counts)
All crops except corn:
(a) \$ ~~((45-00))~~ 48.50 per inspection if done at the time of the certification inspection.
(b) \$ ~~((425))~~ 135.00 per inspection if not conducted at the time of the certification inspection.

- 10/ Minimum tagging fee is \$ 13.00.
- 11/ For seed lots in packages of less than 25 lbs., tags are \$ 0.15 per tag in addition to the production fee.

(2) Other fees associated with grass seed certification:
Out-of-state origin seed tagged with interagency certification tags.

Grass Option A:	\$ ((0-34)) <u>0.33</u> per cwt.
Grass Option B:	\$ ((0-68)) <u>0.73</u> per cwt.
((Reissuance of cert. tags:	\$ 0.11 per tag or minimum fee of \$ 11.66))

(3) Reissuance of certification tags is \$ 0.15 per tag or a minimum fee of \$ 13.00.

AMENDATORY SECTION (Amending WSR 07-21-060, filed 10/12/07, effective 12/1/07)

WAC 16-303-340 Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains. (1) Seed certification fees for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum and small grains are as follows:

(a) Application fee per variety per grower	\$ ((22-97)) <u>25.00</u>
(b) Field inspection fee per acre except millet and hybrid sorghum	\$ ((3-11)) <u>3.15</u>
(c) Millet - First acre	\$32.55
-Each additional acre	\$ ((6-48)) <u>6.50</u>
(d) Hybrid sorghum - First acre	\$32.55
-Each additional acre	\$13.00
(e) Special field inspection fee per acre	\$ ((2-58)) <u>2.60</u>
(f) Late application fee	\$ ((30-75)) <u>50.00</u>
(g) Reinspection fee	\$ ((43-10)) <u>45.00</u>

minimum for each field which did not pass field inspection plus \$0.46 for each acre over twenty-five. (The reinspection fee for isolation requirements only for a field of any size is \$43.10.)	
(h) Final certification fee	\$0.25
per cwt. of clean seed sampled, which is charged to conditioning plant, or production fee	\$0.105
per cwt. of production from fields inspected which is utilized for seed, which is charged to the grower or the final seller prior to brokerage, retail sale, sale to plant not approved for conditioning certified seed, or transshipment out-of-state.	
(i) Sampling fee	\$0.105
per cwt. of clean seed sampled, with minimum charge of \$10.30 per sample, which is charged to conditioning plant in lieu of mechanical sampling.	

(2) A field may be withdrawn upon notification by the applicant to the certifying agency's office before field inspection. In such case, the field inspection fee is refunded upon request until June 30 of the year following harvest.

(3) Harvest before field inspection causes forfeitures of both the application and field inspection fees, and completion of certification.

WSR 12-19-069

PERMANENT RULES

WASHINGTON STATE LOTTERY

[Filed September 17, 2012, 1:45 p.m., effective October 18, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Proposed change to WAC 315-04-040, will enable the lottery director to better serve "seasonal" retailers who would otherwise be unable to license under existing criteria due to the limitations of their business locations, i.e. access due to inclement weather in winter months or seasonal summer operations. Thus enabling lottery to generate more revenue for the state.

Citation of Existing Rules Affected by this Order: Amending WAC 315-04-040.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Adopted under notice filed as WSR 12-11-096 on May 21, 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 1, 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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 17, 2012.

Jana L. Jones
Director of Legal Services

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-040 General license. The director may issue a general license, which authorizes a lottery retailer to conduct the routine sale of tickets at a fixed structure or facility, to an applicant who qualifies for licensure. The general license shall authorize the lottery retailer to conduct the routine sale of tickets at the location specified on the general license. An addendum to the general or provisional license may be obtained as provided for in WAC 315-04-220, permitting the lottery retailer to sell tickets in locations other than that specified on its license. A seasonal license designation may be issued by the director for businesses routinely closed for a minimum of three months not to exceed six months per calendar year. A seasonal license shall be placed in inactive status during the designated off-season for the retailer. The general license shall be valid until terminated by the lottery or the lottery retailer, provided, the lottery retailer shall provide periodic updates of license information as required by the director.

WSR 12-19-071

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed September 17, 2012, 4:43 p.m., effective October 18, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 23, Laws of 2010 1st sp. sess. changed the apportionment requirements for apportionable activities, effective June 1, 2010. The department had previously adopted emergency rules while it worked with stakeholders to develop permanent rules explaining the implications of this legislation.

The department is at this time adopting a new permanent rule WAC 458-20-19402 (Rule 19402) Single factor receipts apportionment—Generally. This rule provides general guidance on single factor receipts apportionment, how to attribute receipts, how to determine the receipts factor, and computing Washington taxable income.

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

Adopted under notice filed as WSR 12-06-080 on March 7, 2012.

Changes Other than Editing from Proposed to Adopted Version:

- Subsection (106), which provided an explanation of the use of examples, was moved to subsection (302) to be closer to the examples and further explanation was added to clarify that more than one reasonable method of proportionally attributing the benefit of a service may exist.
- Subsection (304)(c), example 22 was modified to state that the use of population in the customer's market may be a reasonable method of proportionally attributing the benefit of a service.
- Subsection (304)(c), example 24. This example was changed from general business services to human resources services to avoid confusion.
- Subsection (304)(c), example 29. This example was removed from the rule. The remaining examples were renumbered.
- Subsection (306), example 35 (formerly example 36) was modified to more accurately explain what is commercially reasonable.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 17, 2012.

Alan R. Lynn
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 12-20 issue of the Register.

WSR 12-19-072

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed September 17, 2012, 4:44 p.m., effective October 18, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 23, Laws of 2010 1st sp. sess. changed the apportionment requirements for apportionable activities, effective June 1, 2010. The department had previously adopted emergency rules while it worked with stakeholders to develop permanent rules explaining the implications of this legislation.

The department is at this time adopting a new permanent rule WAC 458-20-19403 (Rule 19403) Apportionable royalty receipts attribution. This rule explains how to attribute apportionable royalty receipts.

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

Adopted under notice filed as WSR 12-06-080 on March 7, 2012.

Changes Other than Editing from Proposed to Adopted Version: Language was added to subsection (105) to clarify that the examples in the rule are general guides to the application of the rule and that there may be other reasonable methods to determine where the intangible property is used.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 17, 2012.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-19403 Apportionable royalty receipts attribution.

PART 1. INTRODUCTION.

(101) **General.** Effective June 1, 2010, Washington changed its method of apportioning royalty receipts. This rule only addresses how apportionable royalty receipts must be attributed for the purposes of economic nexus and single factor receipts apportionment. This rule is limited to the attribution of apportionable royalty receipts for periods after May 31, 2010.

(102) **Guide to this rule.** This rule is divided into two parts as follows:

1. Introduction.
2. How to attribute apportionable royalty receipts.

(103) **Reference to WAC 458-20-19402.** This rule only provides a method to attribute apportionable royalty receipts in lieu of the attribution methods specified in WAC 458-20-19402 (301)(a) and (b). Otherwise, WAC 458-20-19402 controls the apportionment of royalty receipts. Specifically, WAC 458-20-19402 provides: (a) An overview of single factor receipts apportionment (Part 2); (b) guidance on how to attribute apportionable royalty receipts if this rule does not apply (Part 3); (c) guidance on how to calculate the receipts factor (Part 4); (d) guidance on how to determine taxable income (Part 5); and (e) reporting instructions (Part 6).

(104) **Other rules.** Taxpayers may also find helpful information in the following rules:

(a) WAC 458-20-19401 **Minimum nexus thresholds for apportionable activities.** This rule describes minimum nexus thresholds applicable to apportionable activities that are effective after May 31, 2010.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(105) **Examples.** 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. The examples in this rule assume all gross income received by the taxpayer is apportionable royalty receipts. Unless otherwise stated, the examples do not apply to tax liability prior to June 1, 2010.

When an example states that a particular attribution method is a reasonable method of proportionally attributing the use of an intangible, this does not preclude the existence of other reasonable methods of proportionally attributing the use depending on the specific facts and circumstances of a taxpayer's situation.

(106) **Definitions.** The definitions included in WAC 458-20-19401 and 458-20-19402 apply to this rule unless the context clearly requires otherwise. Additionally, the definitions in this subsection apply specifically to this rule.

(a) **"Apportionable royalty receipts"** means all compensation for the use of intangible property, including charges in the nature of royalties, regardless of where the intangible property will be used. Apportionable royalty receipts does not include:

- (i) Compensation for any natural resources;
- (ii) The licensing of prewritten computer software to an end user;
- (iii) The licensing of digital goods, digital codes, or digital automated services to an end user as defined in RCW 82.04.190(11); or
- (iv) Receipts from the outright sale of intangible property.

(b) **"Intangible property"** includes: Copyrights, patents, licenses, franchises, trademarks, trade names, and other similar intangible property/rights.

(c) **"Reasonable method of proportionally attributing"** means a method of determining where the use occurs, and thus where receipts are attributed that is uniform, consistent, accurately reflects the market, and is not distortive.

PART 2. HOW TO ATTRIBUTE APPORTIONABLE ROYALTY RECEIPTS.

(201) **Attribution of income.** Apportionable royalty receipts are attributed to states based on a cascading method or series of steps. The department expects that most taxpayers will attribute apportionable royalty receipts based on (a)(i) of this subsection because the department believes that either taxpayers will know the place of use or a "reasonable method of proportionally attributing" receipts will generally be available. These steps are:

(a) **Where the customer uses the intangible property.**

(i) If a taxpayer can reasonably determine the amount of a specific apportionable royalty receipt that relates to a specific use in a state, that royalty receipt is attributable to that state. This may be shown by application of a reasonable method of proportionally attributing use, and thus receipts, among the states. The result determines the apportionable royalty receipts attributed to each state. Under certain situations, the use of data based on an attribution method specified in (b) and (c) of this subsection may also be a reasonable method of proportionally attributing receipts among states.

(ii) If a taxpayer is unable to separately determine, or use a reasonable method of proportionally attributing, the use and receipts in specific states under (a)(i) of this subsection, and the customer used the intangible property in multiple states, the apportionable royalty receipts are attributed to the state in which the intangible property was primarily used. Primarily means, in this case, more than fifty percent.

(b) **Office of negotiation.** If the taxpayer is unable to attribute apportionable royalty receipts to a location under (a) of this subsection, then apportionable royalty receipts must be attributed to the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(c) If the taxpayer is unable to attribute apportionable royalty receipts to a location under (a) and (b) of this subsection, then the steps specified in WAC 458-20-19402 (301)(c) through (g) shall apply to apportionable royalty receipts.

(202) **Framework for analysis of the "use of intangible property."** The use of intangible property and therefore the attribution of apportionable royalty receipts from the use of intangible property will generally fall into one of the following three categories:

(a) **Marketing use** means the intangible property is used by the taxpayer's customer for purposes that include, but are not limited to, marketing, displaying, selling, and exhibiting. The use of the intangible property is connected to the sale of goods or services. Typically, this category includes trademarks, copyrights, trade names, logos, or other intangibles with promotional value. Receipts from the marketing use of intangible property are generally attributed to the location of the consumer of the goods or services promoted using the intangible property.

Example 1. SportsCo licenses to AthleticCo the right to use its trademark on a basketball that AthleticCo manufactures, markets, and sells at retail on its web site. This is a marketing use. SportsCo is paid a fee based on AthleticCo's basketball sales in multiple states. SportsCo knows that sales from the AthleticCo web site delivered to Washington represent 10% of AthleticCo's total sales. Pursuant to subsection

(201)(a)(i) of this section, SportsCo will attribute 10% of its apportionable royalty receipts received from AthleticCo to Washington. The remaining 90% will be attributed to other states.

Example 2. Same facts as Example 1, except that AthleticCo sells its basketballs at wholesale to MiddleCo, a distributor with its receiving warehouse located in Idaho. MiddleCo then sells the basketballs to RetailW, a retailer with stores in Washington, Oregon, and California. SportsCo would generally attribute its apportionable royalty receipts to the location of RetailW's customers. However, SportsCo does not have any data, and cannot reasonably obtain any data, relating to RetailW's customer locations. Pursuant to subsection (201)(a)(i) of this section, SportsCo may reasonably attribute receipts to Washington based on the percentage of RetailW's store locations in Washington as long as such attribution does not distort the number of customers in each state. SportsCo knows that 15% of RetailW's store locations are in Washington therefore it is reasonable for SportsCo to attribute 15% of its apportionable royalty receipts to Washington. The remaining 85% will be attributed to other states.

Example 3. MusicCo licenses to RetailCo the right to make copies of a digital song and sell those copies at retail on the internet for the U.S. market only. This is a marketing use. RetailCo has a single copy of the song on its server in Virginia. Each time a customer comes to RetailCo's web site and makes a purchase of the song, RetailCo creates a copy of the song (e.g., a new file) that is then available for sale to the customer. MusicCo would usually attribute its apportionable royalty receipts to the location of RetailCo's customers. However, MusicCo does not have any data, and cannot reasonably obtain any specific data, relating to RetailCo's customers' locations. Pursuant to subsection (201)(a)(i) of this section, MusicCo may reasonably attribute receipts to each state based on the percentage that each state's population represents in relation to the total market population, which in this case is the U.S. population, as long as such attribution does not distort the number of customers in each state.

Example 4. A local baseball star, Joe Ball, plays for a professional athletic franchise located in Washington. Joe Ball licenses to T-ShirtCo the right to put his image on t-shirts and sell them on the internet in the U.S. market. This is a marketing use limited to the U.S. by license. Joe Ball does not know where T-ShirtCo's customers are located and cannot reasonably obtain data to reasonably attribute receipts. In the absence of actual sales data from T-ShirtCo, Joe Ball cannot use relative population data to attribute receipts to the states as was done in Example 3 above. This is because Joe Ball is an overwhelmingly "local" celebrity in Washington. Joe Ball does not have a "national appeal" such that t-shirt sales by T-ShirtCo would be significant outside Washington. In this case, Joe Ball is unable to separately determine the use of the intangible property in specific states pursuant to subsection (201)(a)(i) of this section. However, it is reasonable for Joe Ball to assume that sales by T-ShirtCo of Joe Ball shirts are primarily delivered to customers in Washington. Accordingly, Joe Ball should assign all receipts received from T-ShirtCo to Washington, pursuant to subsection (201)(a)(ii) of this section.

Example 5. MegaComputer ("Mega") manufactures and sells computers. SoftwareCo licenses to MegaComputer the right to copy and install the software on Mega's computers, which are then offered for sale to consumers. This is a marketing use by Mega. Mega sells its computers to DistributorX that in turn sells the computers to RetailerY. Mega uses the intangible property at the location of the consumer. If SoftwareCo can attribute its receipts to the location of the consumer (e.g., through the use of software registration data obtained from consumer), SoftwareCo should do so. In the absence of that more precise information, and pursuant to subsection (201)(a)(i) of this section, it would be "reasonable" for SoftwareCo to attribute its receipts in proportion to the number of RetailerY stores in each state.

(b) **Nonmarketing use** means the intangible property is used for purposes other than marketing, displaying, selling, and exhibiting. This use of the intangible property is often connected to manufacturing, research and development, or other similar nonmarketing uses. Typically, this category includes patents, know-how, designs, processes, models, and similar intangibles. Receipts from the nonmarketing use of intangible property are generally attributed to a specific location or locations where the manufacturing, research and development, or other similar nonmarketing use occurs.

Example 6. RideCo licenses the right to use its patented scooter brake to FunRide for the purpose of manufacturing scooters. FunRide will market the scooter under its own brand. This is a nonmarketing use. RideCo knows that FunRide will manufacture scooters in Michigan and Washington and that the scooter design is used equally in Michigan and Washington. Pursuant to subsection (201)(a)(i) of this section, RideCo will attribute its receipts from the license of its patent equally to Michigan and Washington.

Example 7. BurgerZ licenses to JoeHam the right to use its jumbo hamburger making process and know-how. This is a nonmarketing use. JoeHam markets the jumbo hamburgers under its own brand. JoeHam has two restaurant locations, one in Washington and one in Oregon. BurgerZ's fee for the intangible rights is based on a percentage of sales at each location. Pursuant to subsection (201)(a)(i) of this section, BurgerZ will attribute receipts from its license with JoeHam to each location based on sales at those locations.

Example 8. WidgetCo licenses the use of its patent to ManuCo, to manufacture widgets. ManuCo has three manufacturing plants located in Michigan where it will use the patent for manufacturing widgets. ManuCo also has a single research and development (R&D) facility in Washington where it will use the patented technology to develop the next generation of its widgets. These are nonmarketing uses. WidgetCo charges ManuCo a single price for the use of the patent in manufacturing and R&D. In the absence of information to the contrary, it is reasonable for WidgetCo to assume ManuCo's use of the patent is equal at all of ManuCo's relevant locations. Pursuant to subsection (201)(a)(i) of this section, because there are four locations where the patent is used equally, WidgetCo will attribute 25% of its apportionable royalty receipts to each of the four locations. Accordingly, 75% of the apportionable royalty receipts will be attributed to Michigan to reflect the use of the patent at the three manufacturing locations, and 25% of the

apportionable royalty receipts will be attributable to Washington to reflect the use of the patent at the single R&D location.

(c) **Mixed use** means licensing the use of intangible property for both marketing and nonmarketing uses. Mixed use licenses may be sold for a single fee or more than one fee.

(i) **Single fee.** Where a single fee is charged for the mixed use license, it will be presumed that receipts were earned for a "marketing use" pursuant to the guidelines provided in (a) of this subsection, except to the extent that the taxpayer can reasonably establish otherwise or the department of revenue determines otherwise.

Example 9. ProcessCo licenses to KimchiCo, for a single fee, the right to use its patent and trademark for manufacturing and marketing a food processing device. KimchiCo has a single manufacturing plant in Washington and markets the finished product solely in Korea. This mixed use license for a single fee is presumed to be for a marketing use. Accordingly, ProcessCo must attribute receipts under the guidelines established for marketing uses. Pursuant to subsection (201)(a)(i) of this section, KimchiCo is marketing and selling the device only in Korea; therefore, all receipts will be attributed to Korea.

Example 10. FranchiseCo operates a restaurant franchising business and licenses the right to use its trademark, patent, and know-how to EatQuick for a single fee. EatQuick will use the intangibles to create and market its food product. This is a mixed use license for a single fee and will be presumed to be for a marketing use. EatQuick has a single restaurant location in Washington, where all sales are made. Pursuant to subsection (201)(a)(i) of this section, the intangible property is used by EatQuick in Washington at its restaurant location. Taxpayer will attribute 100% of its apportionable royalty receipts earned under the EatQuick license to Washington.

Example 11. Same facts as Example 10, except that EatQuick has five restaurant locations, one each in: Washington, California, Oregon, Idaho, and Montana. EatQuick pays an annual lump sum to FoodCo. This is a mixed use license for a single fee and will be presumed to be for marketing use. Further, FranchiseCo knows that EatQuick's use of the intangible property is equal at all locations. The intangible property is used equally by EatQuick in five states including Washington. Accordingly, pursuant to subsection (201)(a)(i) of this section, FoodCo will attribute 20% of its apportionable royalty receipts to each location, including Washington.

(ii) **More than one fee.** Where the mixed use license involves separate fees for each type of use and separate itemization is reasonable, then each fee will receive separate attribution treatment pursuant to (a) and (b) of this subsection. If the department determines that the separate itemization is not reasonable, the department may provide for more accurate attribution using the guidelines in (a) and (b) of this subsection.

Example 12. Same as Example 9, except the license agreement states that the nonmarketing use of the patent is valued at \$450,000, and the marketing use of the trademark is valued at \$550,000. This is a mixed use license with more than one fee. The stated values for the separate uses are rea-

sonable. Pursuant to subsection (201)(a)(i) of this section, the receipts associated with the nonmarketing use are \$450,000 and attributable to Washington where the patent is used in manufacturing. The receipts associated with the marketing use are \$550,000 and attributed to Korea where the trademark is used for marketing and selling the finished product.

WSR 12-19-081
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-13—Filed September 18,
2012, 2:30 p.m., effective April 1, 2013]

Effective Date of Rule: April 1, 2013.

Purpose: This new rule requires inclusion of office of insurance commissioner (OIC) contact information for the following notices: WAC 284-19-170, FAIR plan cancellation or nonrenewal and 284-30-395(1), PIP within a reasonable time after receipt of actual notice of an insured's intent to file a personal injury protection medical and hospital benefits claim.

This will ensure that consumers have access to OIC assistance when they have questions regarding their property and casualty insurance coverage.

Citation of Existing Rules Affected by this Order: Amending WAC 284-19-170 and 284-30-395.

Statutory Authority for Adoption: RCW 48.02.060 and 48.22.105.

Adopted under notice filed as WSR 12-15-084 on July 18, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-30-395(1) was revised to include the following language: The written explanation responsive to an insured's intent to file a personal injury protection medical and hospital benefits claim must also include ...

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7051, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

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 2, 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: September 18, 2012.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-170 Public education and notices required. (1) All insurers shall undertake a continuing public education program in cooperation with producers and others, to assure that the program receives adequate public attention.

(2) All insurers terminating a property insurance policy shall give any policyholder eligible for coverage under this program notice of cancellation or refusal to renew as required under chapters 48.18 and 48.53 RCW. The insurers shall explain the procedure for making application under this program in or accompanying the notice. A notice of cancellation or refusal to renew must include contact information for the office of the Washington state insurance commissioner's consumer protection services, including the consumer protection division's hotline phone number and the agency's web site address, and a statement that the consumer may contact the office of the insurance commissioner for assistance with questions or complaints.

AMENDATORY SECTION (Amending Matter No. R 96-6, filed 6/5/97, effective 7/6/97)

WAC 284-30-395 Standards for prompt, fair and equitable settlements applicable to automobile personal injury protection insurance. The commissioner finds that some insurers limit, terminate, or deny coverage for personal injury protection insurance without adequate disclosure to insureds of their bases for such actions. To eliminate unfair acts or practices in accord with RCW 48.30.010, the following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance specifically applicable to automobile personal injury protection insurance. The following standards apply to an insurer's consultation with health care professionals when reviewing the reasonableness or necessity of treatment of the insured claiming benefits under his or her automobile personal injury protection benefits in an automobile insurance policy, as those terms are defined in RCW 48.22.005 (1), (7), and (8), and as prescribed at RCW 48.22.085 through 48.22.100. This section applies only where the insurer relies on the medical opinion of health care professionals to deny, limit, or terminate medical and hospital benefit claims. When used in this section, the term "medical or health care professional" does not include an insurer's claim representatives, adjusters, or managers or any health care professional in the direct employ of the insurer.

(1) Within a reasonable time after receipt of actual notice of an insured's intent to file a personal injury protection medical and hospital benefits claim, and in every case prior to denying, limiting, or terminating an insured's medical and hospital benefits, an insurer shall provide an insured with a written explanation of the coverage provided by the policy, including a notice that the insurer may deny, limit, or termi-

nate benefits if the insurer determines that the medical and hospital services:

- (a) Are not reasonable;
- (b) Are not necessary;
- (c) Are not related to the accident; or
- (d) Are not incurred within three years of the automobile accident.

These are the only grounds for denial, limitation, or termination of medical and hospital services permitted pursuant to RCW 48.22.005(7), 48.22.095, or 48.22.100.

The written explanation responsive to an insured's intent to file a personal injury protection medical and hospital benefits claim must also include contact information for the office of the Washington state insurance commissioner's consumer protection services, including the consumer protection division's hotline phone number and the agency's web site address, and a statement that the consumer may contact the office of the insurance commissioner for assistance with questions or complaints.

(2) Within a reasonable time after an insurer concludes that it intends to deny, limit, or terminate an insured's medical and hospital benefits, the insurer shall provide an insured with a written explanation that describes the reasons for its action and copies of pertinent documents, if any, upon request of the insured. The insurer shall include the true and actual reason for its action as provided to the insurer by the medical or health care professional with whom the insurer consulted in clear and simple language, so that the insured will not need to resort to additional research to understand the reason for the action. A simple statement, for example, that the services are "not reasonable or necessary" is insufficient.

(3)(a) Health care professionals with whom the insurer will consult regarding its decision to deny, limit, or terminate an insured's medical and hospital benefits shall be currently licensed, certified, or registered to practice in the same health field or specialty as the health care professional that treated the insured.

(b) If the insured is being treated by more than one health care professional, the review shall be completed by a professional licensed, certified, or registered to practice in the same health field or specialty as the principal prescribing or diagnosing provider, unless otherwise agreed to by the insured and the insurer. This does not prohibit the insurer from providing additional reviews of other categories of professionals.

(4) To assist in any examination by the commissioner or the commissioner's delegatee, the insurer shall maintain in the insured's claim file sufficient information to verify the credentials of the health care professional with whom it consulted.

(5) An insurer shall not refuse to pay expenses related to a covered property damage loss arising out of an automobile accident solely because an insured failed to attend, or chose not to participate in, an independent medical examination requested under the insured's personal injury protection coverage.

(6) If an automobile liability insurance policy includes an arbitration provision, it shall conform to the following standards:

(a) The arbitration shall commence within a reasonable period of time after it is requested by an insured.

(b) The arbitration shall take place in the county in which the insured resides or the county where the insured resided at the time of the accident, unless the parties agree to another location.

(c) Relaxed rules of evidence shall apply, unless other rules of evidence are agreed to by the parties.

(d) The arbitration shall be conducted pursuant to arbitration rules similar to those of the American Arbitration Association, the Center for Public Resources, the Judicial Arbitration and Mediation Service, Washington Arbitration and Mediation Service, chapter 7.04 RCW, or any other rules of arbitration agreed to by the parties.

WSR 12-19-088

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed September 18, 2012, 3:51 p.m., effective November 1, 2012]

Effective Date of Rule: November 1, 2012.

Purpose: Title 246 WAC, amending rules to reduce the annual surcharge (fee) for fifteen health professions that supports the Health Evidence Resource for Washington (HEAL-WA) web portal provided by the University of Washington (UW). The surcharge is authorized by RCW 43.70.110 (3)(c). Reducing the fee will align the revenue the department collects with the spending authority to transfer funds to the UW.

Health professions affected by the HEAL-WA surcharge reduction, WAC sections amended, previous and amended fee amounts.

Profession*	WAC	Previous HEAL-WA Fee (annual)	Reduced HEAL-WA Fee (annual), Effective 11/12
Chiropractors	246-808-990	\$25.00	\$16.00
Marriage/family therapists	246-809-990	\$25.00	\$16.00
Massage herapists	246-830-990	\$25.00	\$16.00
Mental health counselors	246-809-990	\$25.00	\$16.00
Midwives	246-834-990	\$25.00	\$16.00
Naturopathic physicians	246-836-990	\$25.00	\$16.00
Optometrists	246-851-990	\$25.00	\$16.00
Osteopathic physicians	246-853-990	\$25.00	\$16.00
Osteopathic physician assistants	246-853-990	\$25.00	\$16.00

Profession*	WAC	Previous HEAL-WA Fee (annual)	Reduced HEAL-WA Fee (annual), Effective 11/1/12
Physicians	246-919-990	\$25.00	\$16.00
Physician assistants	246-918-990	\$25.00	\$16.00
Podiatrists	246-922-990	\$25.00	\$16.00
Psychologists	246-924-990	\$25.00	\$16.00
Registered nurses	246-840-990	\$20.00	\$16.00
Social workers (advanced and independent)	246-809-990	\$25.00	\$16.00

*East Asian medicine practitioners are not impacted by the fee change. Their HEAL-WA fee will remain at \$9.00 per year. Although assessed annually, some professions with a two-year renewal cycle pay the HEAL-WA fee for two years when the practitioner renews his or her credential.

Citation of Existing Rules Affected by this Order: Amending WAC 246-808-990, 246-809-990, 246-830-990, 246-834-990, 246-836-990, 246-840-990, 246-851-990, 246-853-990, 246-918-990, 246-919-990, 246-922-990, and 246-924-990.

Statutory Authority for Adoption: RCW 43.70.110 (3)(c).

Other Authority: RCW 43.70.250.

Adopted under notice filed as WSR 12-15-056 on July 17, 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 12, 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 12, Repealed 0.

Date Adopted: September 18, 2012.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-808-990 Chiropractic fees and renewal cycle. (1) Licenses and registrations must be renewed on the

practitioner's birthday every year as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for chiropractic license:

Title of Fee	Fee
Application/full examination or reexamination	\$630.00
Temporary permit application	205.00
Temporary practice permit	105.00
Preceptorship	155.00
License renewal	582.00
Late renewal penalty	302.00
Expired license reissuance	302.00
Inactive license renewal	257.00
Expired inactive license reissuance	157.00
Duplicate license	30.00
Certification of license	30.00
UW on-line access fee (HEAL-WA)	((25.00)) <u>16.00</u>

(3) The following nonrefundable fees will be charged for chiropractic X-ray technician registration:

Title of Fee	Fee
Application	47.00
Original registration	47.00
Renewal	62.00
Late renewal penalty	62.00
Expired registration reissuance	62.00
Duplicate registration	30.00
Certification of registration	30.00

AMENDATORY SECTION (Amending WSR 11-19-098, filed 9/20/11, effective 1/1/12)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than four times.

Title	Fee
(3) The following nonrefundable fees will be charged for licensed marriage and family therapist:	
Application	\$150.00
Initial license	75.00
Renewal	140.00
Late renewal penalty	70.00
Expired license reissuance	85.00
Duplicate license	10.00
Certification of license	10.00

Title	Fee
UW on-line access fee (HEAL-WA)	((25.00))
	<u>16.00</u>
(4) The following nonrefundable fees will be charged for licensed mental health counselor:	
Application	140.00
Initial license	125.00
Renewal	138.00
Late renewal penalty	60.00
Expired license reissuance	65.00
Duplicate license	10.00
Certification of license	10.00
UW on-line access fee (HEAL-WA)	((25.00))
	<u>16.00</u>
(5) The following nonrefundable fees will be charged for licensed advanced social worker and licensed independent clinical social worker:	
Application	125.00
Initial license	125.00
Renewal	126.00
Late renewal penalty	63.00
Expired license reissuance	72.50
Duplicate license	10.00
Certification of license	10.00
UW on-line access fee (HEAL-WA)	((25.00))
	<u>16.00</u>
(6) The following nonrefundable fees will be charged for licensed marriage and family therapy associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00
(7) The following nonrefundable fees will be charged for licensed mental health counselor associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00
(8) The following nonrefundable fees will be charged for licensed advanced social worker associates and licensed independent clinical social worker associates:	
Application	50.00
Renewal	40.00

Title	Fee
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00

AMENDATORY SECTION (Amending WSR 09-11-016, filed 5/7/09, effective 6/7/09)

WAC 246-830-990 Massage fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Written examination and reexamination	\$65.00
Practical examination and reexamination	50.00
Initial license	90.00
Renewal	65.00
Late renewal penalty	50.00
Expired license reissuance	50.00
Inactive license renewal	50.00
Expired inactive license reissuance	50.00
Certification of license	10.00
Duplicate license	10.00
Intraoral massage endorsement	25.00
UW ((library)) on-line access fee (HEAL-WA)	((25.00))
	<u>16.00</u>

AMENDATORY SECTION (Amending WSR 11-19-098, filed 9/20/11, effective 1/1/12)

WAC 246-834-990 Midwifery fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following fees are nonrefundable:

Title of Fee	Fee
Initial application	\$500.00
National examination administration (initial/retake)	103.00
State examination (initial/retake)	155.00
Renewal	500.00
Late renewal penalty	250.00
Duplicate license	25.00
Certification of license	25.00

Title of Fee	Fee
Application fee—Midwife-in-training program	978.75
Expired license reissuance	300.00
UW on-line access fee (HEAL-WA)	((25.00)) <u>16.00</u>

AMENDATORY SECTION (Amending WSR 12-13-104, filed 6/20/12, effective 7/21/12)

WAC 246-836-990 Naturopathic physician licensing fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Amount
Application initial/retake	\$100.00
State examination (initial/retake)	100.00
Initial license	100.00
License renewal	325.00
Late renewal penalty	62.50
Expired license reissuance	62.50
Duplicate license	15.00
Certification of license	15.00
UW ((library)) on-line access fee (HEAL-WA)	*((25.00)) <u>16.00</u>

* The ((25)) University of Washington HEAL-WA web portal access fee ((for the University of Washington HEAL-WA library web portal)), required under RCW 43.70.110, is assessed with the initial application fee and the license renewal fee.

AMENDATORY SECTION (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

WAC 246-840-990 Fees and renewal cycle. (1) Applicants for a practical nurse license must pay the application fee and the nursing center surcharge fee when applying for a license. Licenses for practical nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Practical nurses must pay the renewal fee and the nursing center surcharge fee when renewing licenses.

(2) Applicants for a registered nurse license must pay the application fee, the RN UW ((library)) on-line access fee (HEAL-WA), and the nursing center surcharge fee when applying for a license. Licenses for registered nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Registered nurses must pay the renewal fee, the ((RN-UW library)) HEAL-WA fee, and the nursing center surcharge fee when renewing licenses.

(3) Licenses for advanced registered nurse must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(4) Registrations for nursing technicians must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The renewal must be accompanied by an attestation as described in RCW 18.79.370. This attestation will include the nursing technician's anticipated

graduation date. If the anticipated graduation date is within one year, the registration will expire thirty days after the anticipated graduation date. The expiration date may be extended to sixty days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010(15).

~~(5) ((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.~~

~~(6))~~ The following nonrefundable fees shall be charged by the health professions quality assurance division of the department of health. Persons who hold an RN and an LPN license shall be charged separate fees for each license. Persons who are licensed as an advanced registered nurse practitioner in more than one specialty will be charged a fee for each specialty:

RN/LPN fees:

Title of Fee	Fee
RN application (initial or endorsement)	\$67.00
LPN application (initial or endorsement)	87.00
RN license renewal	76.00
LPN license renewal	91.00
Late renewal penalty	50.00
Expired license reissuance	70.00
Inactive renewal	40.00
Expired inactive license reissuance	40.00
Inactive late renewal penalty	30.00
Duplicate license	20.00
Verification of licensure/education (written)	25.00
Nursing center surcharge	5.00
RN UW ((library)) on-line access fee (HEAL-WA)	((20.00)) <u>16.00</u>

Advanced registered nurse fees:

Title of Fee	Fee
ARNP application with or without prescriptive authority (per specialty)	\$92.00
ARNP renewal with or without prescriptive authority (per specialty)	96.00
ARNP late renewal penalty (per specialty)	50.00
ARNP duplicate license (per specialty)	20.00
ARNP written verification of license (per specialty)	25.00

Nurse technologist fees:

Title of Fee	Fee
Application fee registration	\$92.00
Renewal of registration	91.00
Duplicate registration	15.00
Registration late renewal penalty	50.00

AMENDATORY SECTION (Amending WSR 10-19-071, filed 9/16/10, effective 10/15/10)

WAC 246-851-990 Optometry fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$175.00
Out-of-state seminar	100.00
License renewal	199.00
Late renewal penalty	100.00
Expired license reissuance	75.00
Inactive license renewal	75.00
Duplicate license	15.00
Certification of license	25.00
UW (library) <u>on-line access fee (HEAL-WA)</u>	((25.00)) <u>16.00</u>

AMENDATORY SECTION (Amending WSR 11-14-038, filed 6/28/11, effective 8/15/11)

WAC 246-853-990 Osteopathic fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
Endorsement application	\$600.00
Active license renewal	600.00
Active late renewal penalty	250.00
Active expired license reissuance	250.00
Inactive license renewal	350.00
Expired inactive license reissuance	225.00
Inactive late renewal penalty	175.00

Title of Fee	Fee
Endorsement/state exam application	500.00
Reexam	100.00
Certification of license	50.00
Limited license application	325.00
Limited license renewal	300.00
Temporary permit application	70.00
Duplicate certificate	20.00
Substance abuse monitoring surcharge	25.00
UW on-line access fee (HEAL-WA)	((25.00)) <u>16.00</u>

(4) The following nonrefundable fees will be charged for osteopathic physician assistants:

Title of Fee	Fee
Application	\$250.00
Renewal	250.00
Late renewal penalty	150.00
Expired license reissuance	100.00
Certification of license	30.00
Practice plan	70.00
Interim permit	200.00
License after exam	100.00
Duplicate certificate	20.00
Substance abuse monitoring surcharge	25.00
UW on-line access fee (HEAL-WA)	((25.00)) <u>16.00</u>

AMENDATORY SECTION (Amending WSR 09-16-120, filed 8/4/09, effective 8/15/09)

WAC 246-918-990 Physician assistants fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The applicant or licensee must pay the following nonrefundable fees:

Title of Fee	Fee
Physician assistants:	
Application (annual)*	\$(125.00)) <u>116.00</u>
Two-year renewal*	((220.00)) <u>202.00</u>
Expired license reissuance	50.00
Duplicate license	15.00

~~*((includes:))~~ The application or renewal fee ~~(=)~~ includes the Washington physician health program surcharge (RCW 18.71A.020(3)) assessed at \$50.00 per year, and ~~((the fee to access))~~ the University of Wash-

ington (UW) HEAL-WA web ((site)) portal access fee (RCW 43.70.110) assessed at \$((25.00)) 16.00 per year.

ington (UW) HEAL-WA web ((site)) portal access fee (RCW 43.70.110) assessed at \$((25.00)) 16.00 per year.

AMENDATORY SECTION (Amending WSR 09-16-120, filed 8/4/09, effective 8/15/09)

WAC 246-919-990 Physician and surgeon fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to the program's date.

(3) A retired active physician who resides and practices in Washington and obtains or renews a retired active license is exempt from all licensing fees except for the impaired physician program surcharge authorized by RCW 18.71.310.

(4) The applicants and licensees must pay the following nonrefundable fees:

Title of Fee	Fee
Physicians and surgeons: Chapter 18.71 RCW	
Application (annual)*	\$((500.00)) <u>491.00</u>
Two-year renewal*	((675.00)) <u>657.00</u>
Late renewal penalty	262.50
Expired license reissuance	262.50
Certification of license	50.00
Duplicate license	15.00
Temporary permit	50.00
Application fee for transitioning from a postgraduate training limited license (annual)*	((175.00)) <u>166.00</u>
Retired active physicians and surgeons: (Two-year cycle)	
Retired active physician who resides and practices in-state per RCW 18.71.080 and 18.130.250 (Washington physician health program surcharge)	100.00
Retired active physician license renewal *(does not meet in-state exemption)	((350.00)) <u>332.00</u>
Retired active late renewal penalty	50.00
Postgraduate limited license fees: RCW 18.71.095 (One-year cycle)	
Limited license application*	((400.00)) <u>391.00</u>
Limited license renewal*	((400.00)) <u>391.00</u>
Limited duplicate license	15.00
*((Includes:)) The application or renewal fee((:)) includes: The Washington physician health program surcharge (RCW 18.71.310(2)) assessed at \$50.00 per year, and ((the fee to access)) the University of Wash-	

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-922-990 Podiatry fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except for postgraduate training limited licenses. ((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates. ((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$975.00
License renewal	975.00
Inactive license renewal	175.00
Inactive late renewal penalty	100.00
Active late renewal penalty	300.00
Active expired license reissuance	300.00
Expired inactive license reissuance	67.50
Duplicate license	30.00
Certification of license	50.00
Retired active status	275.00
Temporary practice permit	50.00
Limited license application	400.00
Limited license renewal	475.00
Substance abuse monitoring surcharge	25.00
UW ((library)) on-line access fee (HEAL-WA)	((25.00)) <u>16.00</u>

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-924-990 Psychology fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$275.00
Renewal	300.00
Renewal retired active	105.00
Late renewal penalty	155.00
Expired license reissuance	155.00
Duplicate license	30.00
Certification of license	30.00
Amendment of certificate of qualification	35.00
UW on-line access fee (HEAL-WA)	(25.00) 16.00

WSR 12-19-098
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 19, 2012, 10:49 a.m., effective October 20, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Revisions to chapter 392-142 WAC, Transportation—Replacement and depreciation allocation, technical corrections and reformatting of sections have been made to clarify the definitions, school bus categories, the calculation of the replacement system for school district-owned school buses, and the calculation of the depreciation system for contractor-owned school buses.

The primary change is to provide payment for school-district owned buses to be made in August instead of September.

Changes were also made to the sections explaining the use of the transportation vehicle fund and improper maintenance and operation of school buses.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-142-010, 392-142-075, 392-142-080, 392-142-085, 392-142-095, 392-142-105, 392-142-110, 392-142-125, 392-142-145, 392-142-155, 392-142-160, 392-142-162, 392-142-163, 392-142-165, 392-142-171, 392-142-172, 392-142-180, 392-142-185, 392-142-190, 392-142-195, 392-142-210, 392-142-212, 392-142-213 and 392-142-231; and amending WAC 392-142-005, 392-142-100, 392-142-205, 392-142-225, 392-142-240, 392-142-245, 392-142-250, 392-142-255, 392-142-260, 392-142-265, and 392-142-270.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 12-16-072 on July 31, 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 1, Amended 11, Repealed 24.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 11, Repealed 24.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 11, Repealed 24; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 6, 2012.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 95-17-011, filed 8/4/95, effective 9/4/95)

WAC 392-142-005 Authority and purpose. The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations for the proper administration of ~~((chapter 28A.160 RCW, which includes state depreciation and replacement payments for school buses as specified in))~~ RCW 28A.160.195 and 28A.160.200. The purpose of this chapter is to specify and implement the rules for the school bus depreciation and replacement systems.

AMENDATORY SECTION (Amending Order 21, filed 1/2/90, effective 2/2/90)

WAC 392-142-100 Definitions(~~(—School bus)~~). ~~((As used in this chapter, "school bus" means a vehicle:~~

~~(1) With a seating capacity of more than ten persons including the driver;~~

~~(2) Used for transportation of students to and from school or in connection with school activities; and~~

~~(3) That meets the requirement set forth in chapter 392-143 WAC (Transportation—Specifications for school buses-))~~ For the purposes of this chapter, the following definitions apply:

(1) "Superintendent" means the superintendent of public instruction.

(2) "School district" means a public school district or educational service district.

(3) "School bus" means a vehicle:

(a) With a seating capacity of more than ten persons including the driver;

(b) Used for transportation of students to and from school or in connection with school activities; and

(c) That meets the requirements of the school bus specifications manual published by the superintendent.

(4) "Replacement system" is the reimbursement process used for school buses when a school district is the legal owner.

(5) "Depreciation system" is the reimbursement process used for contractor-owned school buses operated under

a contract with a school district to provide regularly scheduled to-and-from student transportation services.

(6) **"School bus categories"** are defined annually by the superintendent, taking into account such factors as student capacity, fuel type, and special equipment.

(7) **"System lifetime"** means the minimum number of months that a category of school bus is expected to be in use as determined by the superintendent.

(8) **"Eligible months"** are defined as the number of months a school bus is eligible for reimbursement payments within a school year. If a newly acquired school bus is eligible for reimbursement, such eligibility is determined by the issue date of the school bus operation permit as defined in WAC 392-143-010(4). If the issue date is prior to the 15th of any month, eligibility begins with the first of the month; otherwise eligibility begins with the first of the following month. The total number of eligible months in all school years shall not be more than the system lifetime.

(9) A school bus is defined as **"improperly maintained or operated"** when it is unable to pass the Washington state patrol inspection process within ninety days of the date requested for presentation. The school district may request the superintendent for an additional ninety days to arrange for repairs to the school bus. Improper operation includes use of a school bus without a valid school bus operation permit issued by the superintendent.

(10) The **"state school bus quote"** means the annual sealed bid process used by the superintendent as authorized by RCW 28A.160.195 to establish prices for school districts to purchase school buses for a school year. School districts may purchase school buses from any school bus dealer's accepted bid.

(11) The **"low price quote"** means the lowest competitive price quote for each category of school bus received from school bus dealers in the state school bus quote. The low price quote is determined prior to the inclusion of any sales or use tax. Included in the low price quote are:

(a) Freight to the school district; and

(b) Cost associated with full payment within thirty days of delivery.

In the state school bus quote process, the superintendent may include options for school districts to purchase that are not included in the low price quote.

(12) **"State-determined purchase price"** is defined as the low price quote including any sales and use taxes at the highest rate that could be charged to any school district in the state by the school bus dealer submitting that quote.

(13) **"Average price"** is defined as the five-year average of the low price quote for each school bus category. The average price is determined using the current and four previous school years' state school bus quote.

(14) **"System price"** means the price used to calculate the payment in a given school year, as follows:

(a) For the replacement system, the system price for a school bus for all years except the final year is the average price. For the final year, the system price is the current state determined purchase price.

(b) For the depreciation system, the system price for a school bus for all years is the first year's state determined purchase price.

(15) **"Total school bus replacement payments"** means the sum of all replacement payments for a school bus for prior school years.

(16) **"Assumed interest earnings"** means the sum of interest which is assumed to be earned on money assumed to be available in the transportation vehicle fund from any prior replacement payments and any previous interest earnings for a school bus. The rate used to calculate assumed interest earnings shall be the average of the ninety-day treasury bill rate during the previous state fiscal year calculated on the basis of simple interest.

(17) The **"salvage value"** of a school bus is defined as twenty-five percent of the first year's state determined purchase price divided by the system lifetime in years.

AMENDATORY SECTION (Amending WSR 04-08-116, filed 4/6/04, effective 5/7/04)

WAC 392-142-205 (~~Determination of~~) Assignment and changes to school bus categories (~~by the superintendent of public instruction~~). (~~The superintendent of public instruction, in consultation with the regional transportation coordinators of the educational service districts, shall annually establish a minimum number of school bus categories considering student capacity and type.~~) To determine the average price for a school bus assigned to a category that was not defined in the previous four years, the superintendent shall assign the school bus to the most appropriate category. When a school bus category is no longer available or when the definition of a school bus category is changed, the superintendent shall place any school bus still eligible for reimbursement into the most appropriate existing category. The superintendent (~~of public instruction will~~) shall provide a public (~~hearing~~) meeting for interested parties prior to (~~the adoption of~~) any change in school bus categories.

NEW SECTION

WAC 392-142-214 Alternative bid process. School districts are not required to use the state school bus quote process to purchase a school bus. However, a school district using another process shall only be reimbursed for a school bus if the school district uses a lowest-price competitive bid process conducted in accordance with the requirements of RCW 28A.335.190. Regardless of purchase process, all school buses must meet the requirements established in the school bus specifications manual.

AMENDATORY SECTION (Amending WSR 05-19-072, filed 9/16/05, effective 10/17/05)

WAC 392-142-225 Placement of used school buses on the state (~~replacement or depreciation schedules~~) reimbursement system. A used school bus not previously on the reimbursement system shall be placed on the (~~state replacement or depreciation schedule~~) reimbursement system as if it had been issued a school bus operation permit on the first of September in the year of manufacture (~~including an estimate by the superintendent of public instruction of:~~

(1) Prior school years total state replacement or depreciation payments;

(2) Assumed interest earnings (if purchased by a school district); and

(3) Salvage value (if purchased by a school district)). A used school bus previously on the reimbursement system shall be placed on the system using the original initial eligible month and assuming no break in eligible months. The superintendent shall calculate reimbursement for used school buses using the assumption that all possible prior system payments were paid along with any assumed interest earnings.

AMENDATORY SECTION (Amending WSR 05-19-072, filed 9/16/05, effective 10/17/05)

WAC 392-142-240 Calculation of (~~annual state replacement payment for district-owned school buses~~) replacement system payments. ((The superintendent of public instruction shall)) To calculate ((each school district's annual state)) the replacement system payment for a school district-owned school ((buses as follows)) bus, the superintendent shall:

(1) ((For district-owned school buses issued a school bus operation permit prior to the fifteenth of any month of the current school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the system price by the useful lifetime in months as determined in (a) of this subsection; and

(c) Multiply the result obtained in (b) of this subsection by the number of months remaining in the school year.

(2) For school buses issued a school bus operation permit prior to the current school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the system price by the useful lifetime in months determined in (a) of this subsection;

(c) Multiply the result obtained in (b) of this subsection by the total number of months the school bus has been on the replacement schedule including the months for the current school year;

(d) Subtract from the result obtained in (c) of this subsection the total school bus replacement payments made in prior school years;

(e) Subtract from the result obtained in (c) of this subsection the assumed interest earnings; and

(f) Subtract from the result obtained in (c) of this subsection the salvage value of the school bus if the current school year is the final year of the vehicle's useful life.) Assign the school bus to the appropriate category:

(2) Divide the current year system price by the system lifetime;

(3) Multiply by the total number of past and current year eligible months;

(4) Subtract the total amount of all school bus replacement payments made in prior school years (if any);

(5) Subtract the assumed interest earnings (if any); and

(6) Subtract the salvage value if the current school year is the final year of the school bus's system life.

AMENDATORY SECTION (Amending WSR 05-19-072, filed 9/16/05, effective 10/17/05)

WAC 392-142-245 Calculation of (~~annual state~~) depreciation system payments (~~for contractor-owned school buses~~). ((The superintendent of public instruction shall)) To calculate ((each school district's state)) the depreciation system payment for a contractor-owned school ((buses as follows)) bus, the superintendent shall:

(1) ((For contractor-owned school buses issued a school bus operation permit prior to the fifteenth of the month of the current school year:

(a) Place each bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the state-determined purchase price by the useful lifetime in months determined in (a) of this subsection; and

(c) Multiply the result obtained in (b) of this subsection by the number of months remaining in the school year.

(2) For contractor-owned school buses issued a school bus operation permit in a prior school year:

(a) Place each school bus in the appropriate school bus category set forth in WAC 392-142-155;

(b) Divide the state-determined purchase price at the time the school bus was purchased by the useful lifetime in months for the appropriate school bus category set forth in WAC 392-142-155;

(c) Calculate the total number of months the bus is eligible for depreciation payment in the current school year; and

(d) Multiply the amount calculated in (b) of this subsection by the number of months calculated in (c) of this subsection.) Assign the school bus to the appropriate category:

(2) Divide the first year state supported price by the system lifetime; and

(3) Multiply the result by the number of eligible months in the current school year.

AMENDATORY SECTION (Amending WSR 05-19-072, filed 9/16/05, effective 10/17/05)

WAC 392-142-250 Calculation and allocation (~~of state replacement or depreciation payment~~) schedule.

The superintendent ((of public instruction shall apportion school bus replacement or depreciation payments each school year calculated as follows:

(1) For school district-owned vehicles:

(a) The September apportionment payment for those school buses issued school bus operating permits in prior school years; or

(b) The first apportionment payment after the issuance of the school bus operating permit for school buses purchased in the current school year; or

(2) For contractor-owned vehicles: According to)) shall calculate annual school bus reimbursement payments for existing school buses by September 15th of each year. Calculation of reimbursement for a school bus entering the system during a school year shall be based on the number of remaining eligible months in the school year. The superintendent shall apportion school bus reimbursement payments as follows:

(1) Replacement system payments shall be distributed to school districts on the final business day of August of each year; and

(2) Depreciation system payments shall be distributed to school districts in accordance with the schedule set forth in RCW 28A.510.250.

AMENDATORY SECTION (Amending WSR 10-02-088, filed 1/6/10, effective 2/6/10)

WAC 392-142-255 Deposit of payments in the transportation vehicle fund. School districts shall deposit net proceeds for the rent, sale, ~~((or))~~ lease, or other disposition of school buses and replacement payments for school district-owned vehicles in the transportation vehicle fund. ~~((School districts shall not deposit school bus depreciation payments for contractor owned vehicles))~~ Depreciation system payments are not required to be deposited in the transportation vehicle fund.

AMENDATORY SECTION (Amending WSR 10-02-088, filed 1/6/10, effective 2/6/10)

WAC 392-142-260 Allowable uses of the transportation vehicle fund. School districts shall only use money~~((s))~~ in the transportation vehicle fund for the following purposes:

(1) The purchase of school buses;

(2) Performing major repairs ~~((of))~~ to a school bus receiving prior approval by the superintendent ~~((of public instruction.~~

~~((3) The transfer of moneys from the transportation vehicle fund to the debt service fund exclusively for the payment of debt and interest incurred by the transportation vehicle fund shall not be considered to be a transfer of moneys from the transportation vehicle fund to any other fund within the meaning of RCW 28A.160.130)).~~

Funds may be transferred from the transportation vehicle fund to the debt service fund for the payment of debt and interest associated with purchase agreements for school buses, including lease purchase agreements.

AMENDATORY SECTION (Amending WSR 08-19-016, filed 9/5/08, effective 10/6/08)

WAC 392-142-265 Improper maintenance and operation. ~~((1) To the extent possible, school districts shall operate vehicles not less than the number of years of useful life-time now, or hereafter, assigned to the category of vehicles by the superintendent of public instruction.~~

~~((2) A school bus that continues to possess a valid operation permit and operates its useful vehicle life shall be considered to be properly maintained in accordance with general accepted maintenance and operation standards. A school bus which does not operate its useful vehicle life shall be considered as not being properly maintained in accordance with generally accepted maintenance and operation standards unless proven otherwise by the school district. Prima facie evidence of such proof shall include unforeseen events which shorten the useful vehicle life, including but not limited to, fire, flood, explosion, storm, earthquake, or volcanic eruption.~~

~~((3) If a district fails to follow generally accepted standards of maintenance and operation or, if a district disposes of a bus prior to the end of its useful life time, the superintendent of public instruction shall discontinue reimbursement system payments, including adjusting the amount of the current year payment to be the final payment by:~~

~~((a) Determining the total number of months the bus operated;~~

~~((b) Dividing the number of months the bus operated by the "useful life" of the bus, in months. Multiply the result by the "state determined purchase price" for the current year, than subtract previous "total school bus replacement payments," "assumed interest earnings," and the "salvage value.")~~ (1) If a school bus is otherwise eligible for reimbursement payments and is determined to have been improperly maintained or operated, the superintendent shall discontinue reimbursement system payments effective the first of the month following the initial determination. The superintendent shall use the following process for any future payments:

(a) For school buses that are restored to operational condition, the superintendent shall:

(i) Return the school bus to the reimbursement system effective the first of the month following the date of the Washington state patrol inspection; and

(ii) Not provide reimbursement for any months the school bus was determined to have been improperly maintained or operated. However, such months shall be included as eligible months in the calculation of the system lifetime of the vehicle.

(b) For school buses that the school district disposes of without returning the vehicle to operational condition, the superintendent shall:

(i) Divide the total number of eligible months by the system life;

(ii) Multiplying the result by the current state-determined purchase price;

(iii) Subtract the total of all previous school bus replacement payments;

(iv) Subtract the total assumed interest earnings; and

(v) Subtract the salvage value.

(2) Such factors as fire, flood, explosion, storm, earthquake, or volcanic eruption shall not result in a school bus being determined to have been improperly maintained or operated. However, reimbursement payments shall be discontinued effective the first of the month following any such occurrence. Any future payments shall be calculated using the procedures listed in subsection (1) of this section. The superintendent shall assume any such school bus will be returned to service until such time as the school district disposes of the school bus.

(3) If a school district disposes of a school bus prior to the end of its useful lifetime, the superintendent shall discontinue reimbursement system payments as of the month of the sale of the school bus and adjust any final payment using the process in subsection (1) of this section.

(4) If a school district operates a school bus without an operation permit, the superintendent shall not provide reimbursement for that time period. However, any such months

shall be included as eligible months in the calculation of the system lifetime of the vehicle.

AMENDATORY SECTION (Amending WSR 03-13-049, filed 6/12/03, effective 7/13/03)

WAC 392-142-270 Disposition of school buses. ~~((Each))~~ When a school district sells or otherwise disposes of a school bus, the school district shall notify the superintendent ((of public instruction of the disposition of a school bus on SPI Form 1020)) within thirty days ((of this action)) using SPI Form 1020B.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-142-010 Purpose.
- WAC 392-142-075 Definition—School year.
- WAC 392-142-080 Definition—Current school year.
- WAC 392-142-085 Definition—Prior school year.
- WAC 392-142-095 Definition—State supported competitive specifications.
- WAC 392-142-105 Definition—District-owned school bus.
- WAC 392-142-110 Definition—Contractor-owned school bus.
- WAC 392-142-125 Definition—Student capacity.
- WAC 392-142-145 Definition—Useful life.
- WAC 392-142-155 Definition—School bus categories.
- WAC 392-142-160 Definition—Vendor bid proposal.
- WAC 392-142-162 Definition—Competitive price quote.
- WAC 392-142-163 Definition—School bus dealer.
- WAC 392-142-165 Definition—State-determined purchase price.
- WAC 392-142-171 Definition—System price.
- WAC 392-142-172 Definition—Average price.
- WAC 392-142-180 Definition—Total school bus replacement payments.
- WAC 392-142-185 Definition—Assumed interest earnings.
- WAC 392-142-190 Definition—Salvage value.
- WAC 392-142-195 Definition—SPI Form 1020.

- WAC 392-142-210 State-determined purchase prices by the superintendent of public instruction.
- WAC 392-142-212 Obtaining competitive price quotes.
- WAC 392-142-213 Purchase of school buses by school districts.
- WAC 392-142-231 Calculation of system price.

WSR 12-19-099

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-19—Filed September 19, 2012, 10:51 a.m., effective October 20, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule formally defines the benchmark reference plan for the state of Washington's essential health benefits package.

Statutory Authority for Adoption: Chapter 87, Laws of 2012; RCW 48.02.060.

Adopted under notice filed as WSR 12-15-082 on July 18, 2012.

Changes Other than Editing from Proposed to Adopted Version: The name of the health care service contractor was corrected, from Regence Blue Cross Blue Shield to Regence Blue Shield.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 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 1, Amended 0, Repealed 0.

Date Adopted: September 19, 2012.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-865 Essential health benefits package benchmark reference plan. A not grandfathered individual or small group health benefit plan offered, issued, amended or renewed on or after January 1, 2014, must, at a minimum, include coverage for essential health benefits. "Essential health benefits" means all of the following:

(1) The benefits and services covered by health care service contractor Regence Blue Shield as the *Innova* small group plan policy form, policy form number WW0711CCONMS, and certificate form number WW0112BINNS, offered during the first quarter of 2012. The SERFF filing number is RGWA-127372701.

(2) The services and items covered by a health benefit plan that are within the categories identified in Section 1302(b) of PPACA including, but not limited to, ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric services, including oral and vision care, and as supplemented by the commissioner or required by the secretary of the U.S. Department of Health and Human Services.

(3) Mandated benefits pursuant to Title 48 RCW enacted before December 31, 2011.

WSR 12-19-100

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-20—Filed September 19, 2012, 10:56 a.m., effective October 20, 2012]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule is to make a correction in WAC 284-17-265 (4)(b).

Citation of Existing Rules Affected by this Order: Amending WAC 284-17-265 (4)(b).

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 12-15-085 on July 18, 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 1, Repealed 0.

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

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

Date Adopted: September 19, 2012.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2011-23, filed 2/28/12, effective 3/30/12)

WAC 284-17-265 Sales of annuities—Insurance producer training. (1) A person may not sell, solicit, or negotiate the sale of an annuity product unless he or she is appropriately licensed as an insurance producer and has successfully completed the annuity suitability training that meets the requirements of this section.

(2)(a) After March 29, 2012, prior to selling, soliciting, or negotiating the sale of annuity products, all insurance producers must complete a one-time, four-hour training course approved by the commissioner and provided by an insurance education provider approved in this state.

(b) Insurance producers who hold a life insurance line of authority on March 29, 2012, and who desire to sell annuities must complete the requirements of this section by September 29, 2012.

(c) Persons who obtain a life insurance line of authority on or after March 29, 2012, may not sell, solicit, or negotiate the sale of an annuity product until the annuity training course has been completed.

(3)(a) The annuity suitability training required under this section shall include information on the following topics:

(i) The types of annuities and various classifications of annuities;

(ii) Identification of the parties to an annuity;

(iii) How fixed, variable, and indexed annuity contract provisions affect consumers;

(iv) The application of income taxation of qualified and nonqualified annuities;

(v) The primary uses of annuities; and

(vi) Appropriate sales practices, replacement, and disclosure requirements.

(b) The training required in this section must be sufficient to qualify for at least four continuing education credits.

(c) The training required in this section may be completed by either classroom instruction or self-study in accordance with WAC 284-17-220 through 284-17-256.

(d) The insurance producer education required by this section must not include training that is issuer or company product specific or includes any sales or marketing information and materials.

(e) Approved providers offering the annuity education required by this section must administer the course, issue certificates of completion, report completed training to the commissioner, and maintain records as required by WAC 284-17-270 through 284-17-310.

(4)(a) Resident insurance producers that complete the required training of this section and which are approved in this state may count those credits toward fulfillment of their Washington CE requirement.

(b) A resident or nonresident producer completing the required training of this section in another state which has adopted the annuity suitability requirement shall be deemed as satisfying this state's requirement ((as required by WAC 284-17-224)).

(c) If a resident insurance producer wishes to apply course credits for the required annuity suitability training offered in another state and the course is not otherwise approved for continuing education credit in this state, the

training may qualify for individual course credit subject to WAC 284-17-244.

(5) Each insurer must verify that an insurance producer has completed the annuity training course required in this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored data base systems or vendors or from a reasonably reliable commercial data base vendor that has a reporting arrangement with approved insurance education providers.

(6) Insurance producers who have completed the annuity suitability training requirements of this section in a state other than Washington which has adopted the annuity suitability requirement prior to March 29, 2012, are deemed to have satisfied the training requirements of this section.