

WSR 12-20-078
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed October 3, 2012, 9:31 a.m., effective October 5, 2012]

Effective Date of Rule: October 5, 2012.

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

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

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 2E2SHB 1738 section 53.

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

Reasons for this Finding: 2E2SHB 1738 section 53(10) states that the authority "shall adopt any rules it deems necessary to implement this section" dealing with hearing rights. Further, in section 130, the bill states that "this act is necessary for the *immediate* preservation of the public peace, health, or safety of the state government and its existing public institution, and takes effect July 1, 2011.["] Delaying this adoption could jeopardize the agency's ability to provide general hearing rules and procedures that apply to the resolution of disputes between medical assistance clients and the various medical services programs established under chapter 74.09 RCW. This emergency rule is necessary to continue the current emergency rule adopted under WSR 12-13-033 [12-13-003] while the permanent rule-making process is completed. This emergency rule does not differ from the current emergency rule. The agency filed a CR-101 under WSR 11-19-004, filed September 7, 2011, and began the permanent rule-making process. The agency withdrew WSR 11-19-004 on February 8, 2012, and refiled a CR-101 under WSR 12-05-026 on February 8, 2012. The agency conducted several stakeholder meetings, completed the internal review process, completed the external review process, filed a CR-102 under WSR 12-16-115, and held a public hearing on Tuesday, September 4, 2012. The agency is reviewing the public hearing comments and plans to file the permanent rules for an anticipated December 1, 2012, effective date.

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

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

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

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

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

Date Adopted: September 19, 2012.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-526 WAC

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

NEW SECTION

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

(1) This chapter:

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

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

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

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

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

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

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

NEW SECTION

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

"Administrative law judge (ALJ)" means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are

not department or health care authority employees or representatives.

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

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

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

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

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

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

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

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

"HCA" means the health care authority.

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

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

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

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

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

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

"Party" means:

- (1) The health care authority (HCA); or
- (2) A person or entity:
 - (a) Named in the action;
 - (b) To whom the action is directed; or
 - (c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

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

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

"Program" means an organizational unit and the services that it provides, including services provided by HCA

staff, its authorized agents, and through contracts with providers.

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

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

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

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

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

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

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

NEW SECTION

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

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

NEW SECTION

WAC 388-526-0020 What does good cause mean? (1) Good cause is a substantial reason or legal justification for

failing to appear, to act, or respond to an action. To show good cause, the administrative law judge must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline.

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

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

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

NEW SECTION

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

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

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

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

Olympia

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

Seattle

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

Vancouver

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

Spokane

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

1-800-366-0955
 fax: (509) 456-3997

Yakima

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

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

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

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

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

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

NEW SECTION

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

- (1) A rule requires the OAH to provide notice of a proceeding; and
- (2) The OAH does not provide the amount of notice required.

NEW SECTION

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

NEW SECTION

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

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

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

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

NEW SECTION

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

NEW SECTION

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

- (1) Personal service (hand delivery);
- (2) First class, registered, or certified mail;

- (3) Fax if the party mails a copy of the document the same day;
- (4) Commercial delivery service; or
- (5) Legal messenger service.

NEW SECTION

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

NEW SECTION

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

- (1) Personal service is made;
- (2) Mail is properly stamped, addressed, and deposited in the United States mail;
- (3) Fax produces proof of transmission;
- (4) A parcel is delivered to a commercial delivery service with charges prepaid; or
- (5) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

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

- (1) A sworn statement;
- (2) The certified mail receipt signed by the recipient;
- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or
- (5) Proof of fax transmission.

NEW SECTION

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

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

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

NEW SECTION

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

- (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax transmission if the party mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (2) A party cannot file documents by e-mail.

NEW SECTION

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

- (a) Any special prehearing alternative or administrative process offered by the program;
 - (b) Prehearing meeting;
 - (c) Prehearing conference; and
 - (d) Hearing.
- (2) Because you have a limited time to request a hearing, you must request a hearing within the deadline on the notice of the agency action to preserve your hearing right.

NEW SECTION

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

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

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

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

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

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

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

NEW SECTION

WAC 388-526-0090 Who may request a hearing?

Either you or your representative may request a hearing.

NEW SECTION

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

- (1) Contact the specific program involved, the office of administrative hearings, or the board of appeals;
- (2) Review the notice sent to you of the action or decision; or
- (3) Review the applicable law or program rule.

NEW SECTION

WAC 388-526-0100 How do you request a hearing?

(1) You may request a hearing in writing or orally, depending

upon which program is involved. The notice and applicable laws and rules should tell you whether the request must be in writing or may be made orally.

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

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

NEW SECTION

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

- (a) Your name, address, and telephone number;
- (b) A brief explanation of why you disagree with the agency action;
- (c) Your client identification or case number, contract number, or any other information that identifies your case or the program involved; and
- (d) Any assistance you need, including a foreign or sign language interpreter or any other accommodation for a disability.

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

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

NEW SECTION

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

(2) Before your hearing is held:

- (a) The health care authority (HCA) hearing representative may contact you and try to resolve your dispute; and
- (b) You are encouraged to contact the HCA hearing representative and try to resolve your dispute.

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

NEW SECTION

WAC 388-526-0115 May you withdraw your hearing request? (1) You may withdraw your hearing request for any reason and at any time by contacting the health care authority hearing representative or the office of administrative hearings (OAH) in writing or orally with the administrative law judge

and the other parties. After your request for withdrawal is received, your hearing is cancelled and OAH sends an order dismissing the hearing. If you withdraw your request you may not be able to request another hearing on the same action.

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

NEW SECTION

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

NEW SECTION

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

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

"Intermediary interpreter" means an interpreter who:

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

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

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

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

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

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

NEW SECTION

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

- (1) Be written in your primary language; or
- (2) Include a statement in your primary language:

- (a) Indicating the importance of the notice; and
- (b) Telling you how to get help in understanding the notice and responding to it.

NEW SECTION

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

- (a) Has limited English proficiency; and
 - (b) Is a party or witness in a hearing.
- (2) OAH may hire or contract with persons to interpret at hearings.
- (3) The following persons may not be used as interpreters:

- (a) A relative of any party;
 - (b) Health care authority (HCA) employees; or
 - (c) HCA authorized agents.
- (4) The administrative law judge (ALJ) must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service. To do so, the ALJ considers the interpreter's:
- (a) Ability to meet the needs of the hearing impaired person or limited English speaking person;
 - (b) Education, certification, and experience;
 - (c) Understanding of the basic vocabulary and procedures involved in the hearing; and
 - (d) Ability to be impartial.
- (5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.
- (6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, the ALJ must provide another interpreter.

NEW SECTION

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

- (2) You must make your request in writing or through a qualified interpreter on the record.
- (3) The administrative law judge must determine if your waiver has been knowingly and voluntarily made.
- (4) You may withdraw your waiver at any time before or during the hearing.

NEW SECTION

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

- (a) Use the interpretive mode that the parties, the hearing impaired person, the interpreter, and the administrative law judge (ALJ) consider the most accurate and effective;
 - (b) Interpret statements made by the parties and the ALJ;
 - (c) Not disclose information about the hearing without the written consent of the parties; and
 - (d) Not comment on the hearing or give legal advice.
- (2) The ALJ must allow enough time for all interpretations to be made and understood.

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

WAC 388-526-0160 If a health care authority employee, a health care authority's authorized agent, and

DSHS employee cannot represent you, can they assist you during the hearing process? Although a health care authority (HCA) employee, HCA authorized agent, and DSHS employee cannot represent you during the hearing process, they may assist you by:

- (1) Acting as a witness;
- (2) Referring you to community legal resources;
- (3) Helping you get nonconfidential information; or
- (4) Informing you about or providing copies of the relevant laws or rules.

NEW SECTION

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

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

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

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

- (a) Clarify issues;
- (b) Exchange documents and witness statements;
- (c) Resolve issues through agreement or withdrawal; and
- (d) Ask questions about the hearing process and the laws and rules that apply.

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

- (a) In person;
- (b) By telephone conference call;
- (c) Through correspondence; or
- (d) Any combination of the above that is agreeable to the parties.

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

NEW SECTION

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

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

- (a) Explains the role of the HCA hearing representative in the hearing process;
- (b) Explains how a hearing is conducted and the relevant laws and rules that apply;
- (c) Explains your right to representation during the hearing;
- (d) Responds to your questions about the hearing process;
- (e) Identifies accommodation and safety issues;
- (f) Distributes copies of the documents to be presented during the hearing;
- (g) Provides, upon request, copies of relevant laws and rules;
- (h) Identifies additional documents or evidence you may want or be required to present during the hearing;
- (i) Tells you how to obtain documents from your file;
- (j) Clarifies the issues; and
- (k) Attempts to settle the dispute, if possible.

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

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

NEW SECTION

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

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

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

(4) You may withdraw your hearing request at any time if the HCA hearing representative agrees to some action that resolves your dispute, or for any other reason. If you with-

draw your hearing request, the hearing is not held and the ALJ sends a written order of dismissal.

NEW SECTION

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

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

- (a) The department's division of residential care services under Title XIX of the federal social security act; and
- (b) Provider and vendor overpayment hearings.

NEW SECTION

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

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

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

(3) Identify accommodation and safety issues;

(4) Agree to postpone the hearing;

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

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

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

- (8) Schedule additional prehearing conferences;
- (9) Resolve the dispute;
- (10) Consider granting a stay if authorized by law or program rule; or
- (11) Determine any other procedural issues raised by the parties.

NEW SECTION

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

- (a) The actions taken;
- (b) Any changes to the documents;
- (c) Any agreements reached; and
- (d) Any ruling of the ALJ.

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

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

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

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

NEW SECTION

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

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

NEW SECTION

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

(2) As needed, the ALJ may:

- (a) Determine the order for presenting evidence;
- (b) Issue subpoenas or orders directing witnesses to appear or bring documents;
- (c) Rule on objections, motions, and other procedural matters;
- (d) Rule on an offer of proof made to admit evidence;
- (e) Admit relevant evidence;
- (f) Impartially question witnesses to develop the record;
- (g) Call additional witnesses and request exhibits to complete the record;

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

(i) Keep order during the hearing;

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

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

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

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

(n) Issue protective orders;

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

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

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

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

NEW SECTION

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

NEW SECTION

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

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

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

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

NEW SECTION

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

(2) If no program rule applies, the ALJ or review judge must decide the issue according to the best legal authority and

reasoning available, including federal and Washington state constitutions, statutes, regulations, and court decisions.

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

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

NEW SECTION

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

NEW SECTION

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

NEW SECTION

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

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

- (a) Granting or denying a request for a continuance; and
- (b) Granting or denying a request for a prehearing conference.

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

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

- (a) The OAH did not assign an ALJ at least five business days before the date of the hearing; or
- (b) The OAH changed the assigned ALJ within five business days of the date of the hearing.

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

(e) The date of the hearing request.

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

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

(i) An order of default against you; or

(ii) An order dismissing the hearing.

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

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

NEW SECTION

WAC 388-526-0270 Must you tell the health care authority hearing representative and the office of administrative hearings when your mailing address changes?

(1) You must tell the health care authority (HCA) hearing representative and the office of administrative hearings (OAH), as soon as possible, when your mailing address changes.

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

NEW SECTION

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

NEW SECTION

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

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

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

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

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

NEW SECTION

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

NEW SECTION

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

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

NEW SECTION

WAC 388-526-0320 Who may prepare a subpoena?

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

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

NEW SECTION

WAC 388-526-0325 How is a subpoena served? (1)

Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

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

- (a) Gives the witness a copy of the subpoena; or
- (b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

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

- (a) Who was served with the subpoena;
- (b) When the subpoena was served;
- (c) Where the subpoena was served; and
- (d) The name, age, and address of the person who served the subpoena.

NEW SECTION

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

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

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

NEW SECTION

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

- (1) Serving a subpoena;
- (2) Complying with a subpoena; and
- (3) Witness fees according to RCW 34.05.446(7).

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

NEW SECTION

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

NEW SECTION

WAC 388-526-0355 Who may attend your hearing?

(1) All parties and their representatives may attend the hearing.

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

NEW SECTION

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

(1) The administrative law judge (ALJ):

(a) Explains your rights;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

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

(e) Notifies the parties of appeal rights;

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

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

(2) The parties may:

(a) Make opening statements to explain the issues;

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

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

(a) All parties consent to the severance; or

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

- (a) They have good cause for missing the deadline; or
- (b) That the other parties agree.

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

NEW SECTION

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

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

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

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

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

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

- (a) Everything in the exhibit or agrees that it should apply to the hearing;
- (b) What the exhibit says; or
- (c) How the administrative law judge should use the exhibit to make a decision.

NEW SECTION

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

(2) May testify in person or by telephone.

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

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

NEW SECTION

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

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

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

NEW SECTION

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

NEW SECTION

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

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

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

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

- (4) The ALJ may reject evidence, if it:
 - (a) Is not relevant;
 - (b) Repeats evidence already admitted; or
 - (c) Is from a privileged communication protected by law.
- (5) The ALJ must reject evidence if required by law.
- (6) The ALJ decides:
 - (a) What evidence is more credible if evidence conflicts; and
 - (b) The weight given to the evidence.

NEW SECTION

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

- (a) Provide evidence regarding disputed facts; and
- (b) Persuade the administrative law judge (ALJ) that a position is correct.

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

NEW SECTION

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

NEW SECTION

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

NEW SECTION

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

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

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

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

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

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

- (i) You cannot afford to repay the money to the agency;
 - (ii) You gave the agency timely and accurate information when required;
 - (iii) You did not know that the agency made a mistake;
 - (iv) You are free from fault; and
 - (v) The overpayment was caused solely by an agency mistake.
- (e) The exercise of government functions is not impaired. For example, the use of equitable estoppel in your case will not result in circumstances that will impair agency functions.

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

NEW SECTION

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

- (1) Set another hearing date;
- (2) Enter orders to address limited issues if needed before writing and mailing a hearing decision to resolve all issues in the proceeding; or
- (3) Give the parties more time to send in exhibits or written argument.

NEW SECTION

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

- (1) At the end of the hearing if the administrative law judge does not allow more time to send in evidence or argument; or
- (2) After the deadline for sending in evidence or argument is over.

NEW SECTION

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

NEW SECTION

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

- (2) The official record must include, if applicable:
- (a) Notice of all proceedings;
 - (b) Any prehearing order;
 - (c) Any motions, pleadings, briefs, petitions requests, and intermediate rulings;
 - (d) Evidence received or considered;
 - (e) A statement of matters officially noticed;
 - (f) Offers of proof, objections, and any resulting rulings;
 - (g) Proposed findings, requested orders and exceptions;
 - (h) A complete audio recording of the entire hearing, together with any transcript of the hearing;
 - (i) Any final order, initial order, or order on reconsideration; and
 - (j) Matters placed on the record after an ex parte communication.

NEW SECTION

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

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

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

NEW SECTION

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

- (1) Identify the hearing decision as a health care authority case;
- (2) List the name and docket number of the case and the names of all parties and representatives;
- (3) Find the facts used to resolve the dispute based on the hearing record;
- (4) Explain why evidence is credible when the facts or conduct of a witness is in question;
- (5) State the law that applies to the dispute;
- (6) Apply the law to the facts of the case in the conclusions of law;
- (7) Discuss the reasons for the decision based on the facts and the law;
- (8) State the result and remedy ordered;
- (9) Explain how to request changes in the decision and the deadlines for requesting them;
- (10) State the date the decision becomes final according to WAC 388-526-0525; and

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

NEW SECTION

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

(3) Some examples of clerical error are:

- (a) Missing or incorrect words or numbers;
- (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or
- (c) Math errors when adding the total of an overpayment.

NEW SECTION

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

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

NEW SECTION

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

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

NEW SECTION

WAC 388-526-0555 What happens when a party requests a corrected administrative law judge decision?

(1) When a party requests a corrected initial or final order, the administrative law judge (ALJ) must either:

- (a) Send all parties a corrected order; or
- (b) Deny the request within three business days of receiving it.

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

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

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

NEW SECTION

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

- (1) Parts of the initial order with which the party disagrees; and
- (2) Evidence supporting the party's position.

NEW SECTION

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

- (2) A review judge may extend the deadline if a party:
 - (a) Asks for more time before the deadline expires; and
 - (b) Gives a good reason for more time.
- (3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

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

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

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

NEW SECTION

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

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

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

(a) Reviews the initial order; and

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

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

NEW SECTION

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

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

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

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

NEW SECTION

WAC 388-526-0605 What if a party does not agree with a final order entered by the office of administrative

hearings or the board of appeals? (1) If a party does not agree with the final order and wants it reconsidered, the party must:

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

NEW SECTION

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

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

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

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

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

(b) Gives a good reason for the extension.

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

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

- (a) Write a reconsideration decision; or
- (b) Send all parties an order denying the request.

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

NEW SECTION

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

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

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

NEW SECTION

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

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

NEW SECTION

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

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

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

The mailing address of the director is:

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

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

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

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

The mailing address of the attorney general is:

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

REPEALER

The following section of the Washington Administrative Code is repealed:

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

WSR 12-22-003
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed October 25, 2012, 3:26 p.m., effective October 25, 2012, 3:26 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is creating emergency WAC to support ESHB 2592 Extended foster care services. ESHB 2592 authorizes children's administration to provide extended foster care services to youth age eighteen up to twenty-one years who are eligible to receive foster care services authorized under RCW 74.13.031 to complete secondary education, a secondary education equivalency program, a post-secondary education program, or a post-secondary vocational program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-25-0110 and 388-148-0010.

Statutory Authority for Adoption: RCW 74.13.031.

Other Authority: 2012 ESHB 2592, RCW 74.13.020 and 13.34.267.

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

Reasons for this Finding: ESHB 2592 enables Washington state to access a federal match of funds under 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." The act provides an option permitting states to use Title IV-E foster care funds for youth who wish to pursue secondary or post-secondary education programs from age eighteen up to twenty-one years old. ESHB 2592 authorizes continued extended foster care services for youth ages eighteen to twenty-one years to complete a post-secondary academic or post-secondary vocational education program. Because of the range and complexity of delivering foster care and legal services relating to this program, children's administration has collaborated with advocates, judicial officers, legal counsel for children and the department, service providers, youth, foster parents, JRA, DDD, [and] others in developing the proposed WACs to govern the program.

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: October 23, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-23 issue of the Register.

WSR 12-22-005

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 12-252—Filed October 25, 2012, 4:54 p.m., effective October 25, 2012, 4:54 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900W; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Forecast and management objectives for 2012 Humptulips River wild coho allow the retention of one wild coho. This action will bring consistency between the 2012/2013 sport fishing rules pamphlet and WAC 232-28-619. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 25, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules—Humptulips River. Notwithstanding the provisions of WAC 232-28-619, effective immediately through November 30, 2012, in waters of the Humptulips River from Ocean Beach Road to the Highway 101 Bridge, the daily limit is six salmon, of which no more than three may be adult salmon, and of the three adult salmon, only one may be a Chinook and only one may be a wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2012:

WAC 232-28-61900W Exceptions to statewide rules—Humpulips River.

**WSR 12-22-006
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed October 26, 2012, 10:17 a.m., effective October 26, 2012, 10:17 a.m.]

Effective Date of Rule: Immediately.

Purpose: To implement certain bills enacted by the 2012 legislature and signed by the governor:

- Regarding raising the cutoff of eligibility for working connections child care (WCCC) subsidies from one hundred seventy-five percent of the federal poverty level (FPL), to two hundred percent of the FPL.
- Regarding increasing the authorization period for WCCC from six months to twelve months.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0005, 170-290-0012, 170-290-0031, 170-290-0075, 170-290-0082, 170-290-0020 [170-290-0200], 170-290-0205, 170-290-0225, and 170-290-0230.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Other Authority: SB 6226, 3ESHB 2127.

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

Reasons for this Finding: 3ESHB 2127 directs the department to raise the cutoff eligibility for WCCC subsidies from one hundred seventy-five percent of the FPL to two hundred percent of the FPL. SSB 6226 directs the department to increase the authorization period for WCCC from six to twelve months.

Correcting typographical errors regarding ages of children whose families are eligible to receive WCCC subsidies are necessary for the preservation of the general welfare of the public.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 0.

Date Adopted: October 26, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0005 Eligibility. (1) **Parents.** To be eligible for WCCC, the person applying for benefits must:

(a) Have parental control of one or more eligible children;

(b) Live in the state of Washington;

(c) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Nephew or niece;

(vi) Aunt;

(vii) Uncle;

(viii) Grandparent;

(ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or

(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;

(d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;

(f) Have countable income at or below (~~one~~) two hundred (~~seventy-five~~) percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than (~~one~~) two hundred (~~seventy-five~~) percent of the FPG;

(g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;

(h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

(i) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) **Children.** To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

- (iii) A qualified alien; or
- (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
- (b) Live in Washington state, and be:
 - (i) Less than age thirteen; or
 - (ii) Less than age nineteen, and:
 - (A) Have a verified special need, according WAC 170-290-0220; or
 - (B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0012 Verifying consumers' information. (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:

- (a) The consumer initially applies for benefits; or
 - (b) The consumer reapplies for benefits.
- (2) A consumer must provide verification to DSHS to determine if he or she continues to qualify for benefits during his or her eligibility period when there is a change of circumstances under WAC 170-290-0031.
- (3) All verification that is provided to DSHS must:
 - (a) Clearly relate to the information DSHS is requesting;
 - (b) Be from a reliable source; and
 - (c) Be accurate, complete, and consistent.
 - (4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

- (a) A current WorkFirst IRP for consumers receiving TANF;
- (b) Employer name, address, and phone number;
- (c) State business registration and license, if self-employed;
- (d) Work, school, or training schedule (when requesting child care for non-TANF activities);
- (e) Hourly wage or salary;
- (f) Either the:
 - (i) Gross income for the last three months;
 - (ii) Federal income tax return for the preceding calendar year; or
 - (iii) DSHS employment verification form;
- (g) Monthly unearned income the consumer receives, such as child support or Supplemental Security Income (SSI) benefits;
- (h) If the other parent is in the household, the same information for them;
- (i) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

- (i) A U.S. citizen;
- (ii) A U.S. national;
- (iii) A qualified alien; or
- (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
- (j) ~~(Proof of child enrollment in a head start, early head start or early childhood education and assistance program for twelve-month eligibility;~~
- ~~(k))~~ Name and phone number of the licensed child care provider; and
- ~~((H))~~ (k) For the in-home/relative child care provider, a:
 - (i) Completed and signed criminal background check form;
 - (ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;
 - (iii) Legible copy of the proposed providers' valid Social Security card; and
 - (iv) All other information required by WAC 170-290-0135.
- (6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.
- (7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.
- (8) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0031 Notification of changes. When a consumer applies for or receives WCCC benefits, he or she must:

- (1) Notify DSHS, within five days, of any change in providers;
- (2) Notify the consumer's provider within ten days when DSHS changes his or her child care authorization;
- (3) Notify DSHS within ten days of any significant change ~~((H))~~ related to the consumer's copayment or eligibility, including:
 - (a) The number of child care hours the consumer needs (more or less hours);
 - (b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;
 - (c) The consumer's household size such as any family member moving in or out of his or her home;
 - (d) Employment, school or approved TANF activity (starting, stopping or changing);
 - (e) The address and telephone number of the consumer's in-home/relative provider;
 - (f) The consumer's home address and telephone number; and

(g) The consumer's legal obligation to pay child support;
 (4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and

(5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0075 Determining income eligibility and copayment amounts. (1) DSHS takes the following steps to determine a consumer's eligibility and copayment:

(a) Determine the consumer's family size (under WAC 170-290-0015); and

(b) Determine the consumer's countable income (under WAC 170-290-0065).

(2) Before February 1, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$50
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$50
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(3) Effective February 1, 2011, through February 28, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$60
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$60
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(4) ~~(On or after)~~ Effective March 1, 2011, through June 30, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$65
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 50%, then adding \$65
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(5) On or after July 1, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$65
(c) Above 137.5% of the FPG through 200% of the FPG.	The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding \$65.
(d) Above 200% of the FPG, a consumer is not eligible for WCCC benefits.	

(6) DSHS does not prorate the copayment when a consumer uses care for part of a month.

~~((6))~~ (7) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0082 Eligibility period. (1) ~~((Six-month eligibility.~~

~~(a))~~ A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for ~~((six))~~ twelve months before having to redetermine his or her income eligibility~~((, except as provided in subsection (2) of this section)).~~ The ~~((six-month))~~ twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1). Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

~~((b))~~ (2) A consumer's eligibility may be for less than ~~((six))~~ twelve months if:

~~((+))~~ (a) Requested by the consumer; or

~~((+))~~ (b) A TANF consumer's individual responsibility plan indicates child care is needed for less than ~~((six))~~ twelve months.

~~((+))~~ (3) A consumer's eligibility may end sooner than ~~((six))~~ twelve months if:

~~((+))~~ (a) The consumer no longer wishes to participate in WCCC; or

~~((+))~~ (b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

~~((2)) **Twelve-month eligibility.**~~

~~(a) A consumer who meets all of the requirements of part II of this chapter, and has a child receiving services from head start (HS), early head start (EHS), or an early childhood education and assistance program (ECEAP), is eligible for WCCC subsidies for twelve months.~~

~~(b) A consumer's eligibility may be for less than twelve months if:~~

~~(i) Requested by the consumer; or~~

~~(ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.~~

~~(c) The consumer's eligibility may end sooner than twelve months if:~~

~~(i) The consumer no longer wishes to participate in WCCC; or~~

~~(ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.~~

~~((d)) (4) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.~~

~~((e)) (5) The twelve-month eligibility period begins:~~

~~((i)(A)) (a) When benefits begin under WAC 170-290-0095; or~~

~~((B)) (b) Upon reapplication under WAC 170-290-0109(4); and~~

~~(ii) When DSHS verifies that the child is receiving services from HS, EHS, or ECEAP.~~

~~(f) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP.~~

~~(g) During a consumer's twelve-month eligibility period, parent education and family development classes offered by HS, EHS, or ECEAP are approved activities. As funds are available, other DEL-approved parent education and family development classes may be authorized.~~

~~(h) Each child who is receiving services from HS, EHS, or ECEAP and is receiving WCCC subsidies will be assigned a unique early learning student identifier. Student information may be merged with information from the office of superintendent of public instruction, the education research and data center, or both, to measure the child's educational progress from preschool through grade twelve).~~

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) Base rate. DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$28.53	\$23.99	\$22.67	\$21.34
	Half-Day	\$14.28	\$12.00	\$11.34	\$10.67
Spokane County	Full-Day	\$29.18	\$24.54	\$23.19	\$21.83
	Half-Day	\$14.61	\$12.28	\$11.61	\$10.91
Region 2	Full-Day	\$28.81	\$24.05	\$22.30	\$19.73
	Half-Day	\$14.41	\$12.03	\$11.15	\$9.88
Region 3	Full-Day	\$38.13	\$31.79	\$27.46	\$26.67
	Half-Day	\$19.07	\$15.89	\$13.73	\$13.34
Region 4	Full-Day	\$44.38	\$37.06	\$31.09	\$28.00
	Half-Day	\$22.63	\$18.54	\$15.55	\$14.00
Region 5	Full-Day	\$32.54	\$28.00	\$24.65	\$21.88
	Half-Day	\$16.26	\$14.00	\$12.32	\$10.95
Region 6	Full-Day	\$31.99	\$27.46	\$23.99	\$23.46
	Half-Day	\$16.01	\$13.73	\$12.00	\$11.74

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five ~~((t))~~ through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) Base rate. DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - ((t)) 12 yrs)
Region 1	Full-Day	\$24.29	\$24.29	\$21.12	\$21.12	\$18.78
	Half-Day	\$12.14	\$12.14	\$10.56	\$10.56	\$9.39
Spokane County	Full-Day	\$24.84	\$24.84	\$21.60	\$21.60	\$19.21
	Half-Day	\$12.42	\$12.42	\$10.80	\$10.80	\$9.60
Region 2	Full-Day	\$25.65	\$25.65	\$22.30	\$19.95	\$19.95
	Half-Day	\$12.82	\$12.82	\$11.15	\$9.97	\$9.97

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - (14)) <u>12</u> yrs)
Region 3	Full-Day	\$34.03	\$34.03	\$29.33	\$25.81	\$23.46
	Half-Day	\$17.02	\$17.02	\$14.67	\$12.91	\$11.74
Region 4	Full-Day	\$40.04	\$40.04	\$34.81	\$29.33	\$28.16
	Half-Day	\$20.03	\$20.03	\$17.42	\$14.67	\$14.08
Region 5	Full-Day	\$26.99	\$26.99	\$23.46	\$22.30	\$19.95
	Half-Day	\$13.50	\$13.50	\$11.74	\$11.15	\$9.97
Region 6	Full-Day	\$26.99	\$26.99	\$23.46	\$23.46	\$22.30
	Half-Day	\$13.50	\$13.50	\$11.74	\$11.74	\$11.15

(2) The family home child care WAC (~~(170-296-0020)~~ 170-296A-0010 and (~~(170-296-1350)~~ 170-296A-5550) allows providers to care for children from birth up to and including the day before their (~~twelfth~~) thirteenth birthday. (~~The provider must obtain a child specific and time limited exception from their child care licensor to provide care for a child outside the age listed on their license. If the provider has an exception to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) of this section, and the five to eleven year age range column is used for comparison.~~)

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five (~~to eleven~~) through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0225 Special needs rates—Licensed or certified child care centers and seasonal day camps. (1) In addition to the base rate for licensed or certified child care centers and seasonal day camps listed in WAC 170-290-0200, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

- (i) Centers in Clark County are paid Region 3 rates;
- (ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour; or

(c) **Level 3.** A rate that exceeds \$15.89 per hour.

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

- (a) Be at least eighteen years of age; and
- (b) Meet the requirements for being an assistant under chapter 170-295 WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who:

- (a) Is thirteen years or older; and
- (b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five (~~to~~) through twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0230 Special needs rates—Licensed or certified family home child care providers. (1) In addition to the base rate for licensed or certified family home child care providers listed in WAC 170-290-0205, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - (14)) <u>12</u> yrs)
Region 1	Full-Day	\$6.00	\$5.40	\$5.40	\$4.80
	Half-Day	\$3.00	\$2.70	\$2.70	\$2.40
Region 2	Full-Day	\$6.00	\$5.70	\$5.10	\$5.10
	Half-Day	\$3.00	\$2.85	\$2.55	\$2.55

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - ((+)) 12 yrs)
Region 3	Full-Day	\$8.70	\$7.50	\$6.60	\$6.00
	Half-Day	\$4.35	\$3.75	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.90	\$7.50	\$7.20
	Half-Day	\$4.50	\$4.45	\$3.75	\$3.60
Region 5	Full-Day	\$6.60	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.30	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.60	\$6.00	\$6.00	\$5.70
	Half-Day	\$3.30	\$3.00	\$3.00	\$2.85

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour; or

(c) **Level 3.** A rate that exceeds \$15.89 per hour.

(2) If the provider has an exception to care for a child who:

(a) Is (~~twelve~~) thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five (~~to eleven~~) through twelve year age range for comparison.

(3) If a provider is requesting one-on-one supervision/direct care for the child with special needs, the person providing the one-on-one care must:

(a) Be at least eighteen years old; and

(b) Meet the requirements for being an assistant under chapter (~~(170-296))~~ 170-296A WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

WSR 12-22-007

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-253—Filed October 26, 2012, 10:19 a.m., effective October 29, 2012, 8:00 a.m.]

Effective Date of Rule: October 29, 2012, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000Q and 220-52-04600Z; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Current pot limits were instituted in order to slow the early season landings and maintain a manageable supply to area buyers. The need to limit this flow has eased, which allows for an increase in pots from fifty pots per license to seventy-five pots per license in Region 1. Region 2 West is projected to reach its commercial allocation by the end of the day on October 31, 2012. It is necessary to close this region in order to meet the agreed-to

plans with applicable tribes as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes. There is insufficient time to adopt permanent regulations.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

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

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

Date Adopted: October 26, 2012.

Philip Anderson

Director

NEW SECTION

WAC 220-52-04000R Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(2) Effective 8:00 a.m. October 29, 2012, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 2 East and sub-area 3-1. These regions include Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 24A, 24B, 24C, 24D and 26AE.

(3) Effective 8:00 a.m. October 29, 2012, until 7:00 p.m. October 31, 2012, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 2 West. This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26AW.

(4) Effective 8:00 a.m. October 29, 2012, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management Region 1 and sub-area 3-2, which includes Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23D, 25A, and 25E.

(5) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

NEW SECTION

WAC 220-52-04600A Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 7:00 p.m., October 31, 2012, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina, and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern-most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(d) Port Gardner: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(e) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(f) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(2) Effective 7:00 p.m., October 31, 2012, until further notice, the following areas are closed to commercial crab fishing:

(a) Crab Management Region 2 West. This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26AW.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(c) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. October 29, 2012:

WAC 220-52-04000Q Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (12-223)

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. October 31, 2012:

WAC 220-52-04600Z Puget Sound crab fishery— Seasons and areas. (12-223)

WSR 12-22-009

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 26, 2012, 1:26 p.m., effective October 28, 2012]

Effective Date of Rule: October 28, 2012.

Purpose: The department is amending rules to revise the assessment process for allocating personal care hours as a result of the Washington state supreme court decision in *Samantha A. v. Department of Social and Health Services*. Authorization for additional personal care hours for clients who have off-site laundry and living more than forty-five minutes from essential services is reinstated. The department is in the process of adopting these rules as permanent rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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

Reasons for this Finding: The department is proceeding with the permanent rule process. The department filed a CR-101 as WSR 12-20-076 on October 3, 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 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 25, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-23 issue of the Register.

WSR 12-22-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-254—Filed October 26, 2012, 4:09 p.m., effective October 29, 2012, 7:00 a.m.]

Effective Date of Rule: October 29, 2012, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100L; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable surplus of coho are available for a commercial gillnet fishery in Salmon Management and Catch Reporting Area 6D. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 26, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-47-41100L Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective 7:00 a.m. October 29, 2012, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with gillnet gear in those waters of Puget Sound Salmon Management and Catch Reporting Area 6D, except as follows:

(1) Area 6D - Open for skiff gillnets 7:00 a.m. to 7:00 p.m. daily, Monday, October 29 through Friday, November 2, 2012. All Chinook and chum must be released.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. November 2, 2012:

WAC 220-47-41100L Gillnet—Open periods.

WSR 12-22-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-255—Filed October 30, 2012, 4:45 p.m., effective November 4, 2012]

Effective Date of Rule: November 4, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900P and 232-28-61900X; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.045, 77.12.047, and 77.04.020.

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

Reasons for this Finding: Ruling rescinds the white sturgeon retention season in The Dalles Pool, as harvest is approaching the guideline for that area. Regulation maintains the complete closure of recreational sturgeon retention in the area downstream of Bonneville Dam and all adjacent tributaries for the remainder of 2012. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of October 2 and October 29, 2012. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 30, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619, effective November 4 through December 31, 2012, it is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to Bonneville Dam, and all adjacent Washington tributaries.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 4, 2012:

WAC 232-28-61900P Exceptions to statewide rules—Columbia River sturgeon. (12-231).

The following section of the Washington Administrative Code is repealed effective January 1, 2013:

WAC 232-28-61900X Exceptions to statewide rules—Columbia River sturgeon.

WSR 12-22-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-256—Filed November 1, 2012, 4:44 p.m., effective November 6, 2012, 12:00 p.m.]

Effective Date of Rule: November 6, 2012, 12:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-40-02700S; and amending WAC 220-40-027.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: In preseason modeling coho directed fisheries during the November timeframe were limited by predicted chum abundance. Evaluation of commercial catch, hatchery rack counts, and early spawning ground information suggests that the chum run-size is quite likely much larger than the preseason forecast. Expanding the coho directed opportunity is consistent with achieving conservation goals while the increased run-size of chum will very likely exceed our conservation goal by a significant amount. This emergency rule is also intended to slow the harvest of white sturgeon, because only twenty-five remain within the harvest guideline. Eliminating the allowed use of nine inch or larger gear is intended to accomplish objective. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 1, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-40-02700S Salmon—Willapa Bay fall fishery. Notwithstanding the provisions of WAC 220-40-027, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Fishing periods:

(1) Gillnet gear may be used to fish for coho salmon, chum salmon, white sturgeon, and adipose fin-clipped hatchery Chinook:

Time:	Area:
12:00 p.m. November 6 through	2M, 2N, 2R, 2T, and 2U
12:00 p.m. November 19, 2012	

Gear:

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

(b) It is unlawful to use a gillnet to fish for salmon and/or white sturgeon if the lead line weighs more than two pounds

per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.

(c) From November 6 through 6:00 p.m. November 19, 2012 mesh size must not exceed six and one-half inch maximum mesh.

Other:

(3) Recovery boxes are not required and soak time are not limited.

From November 6 through November 19, 2012, all non-legal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon, chum salmon, white sturgeon with fork length measure not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.

(8) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon not of a legal size and all green sturgeon, obtain available information from tags without removing tags.

(9) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. November 19, 2012:

WAC 220-40-02700S Salmon—Willapa Bay fall fishery.

WSR 12-22-041

EMERGENCY RULES

**DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-258—Filed November 2, 2012, 11:09 a.m., effective December 1, 2012]

Effective Date of Rule: December 1, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Y; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Washington department of fish and wildlife has determined that the coho return to the Naselle River and the Naselle Hatchery is sufficient enough to meet conservation goals and hatchery egg-take needs while allowing additional harvest opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 2, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Y Exceptions to statewide rules—Naselle River. Notwithstanding the provisions of WAC 232-28-619, effective December 1, 2012, through January 31, 2013, in waters of the Naselle River from the Highway 101 Bridge to the Crown Mainline Salme Bridge, daily limit of 6 salmon. Up to three adults may be retained, and only two may be wild coho. Minimum size 12 inches; release chum and wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2013:

WAC 232-28-61900Y Exceptions to statewide rules—Naselle River.

WSR 12-22-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-260—Filed November 2, 2012, 3:24 p.m., effective November 2, 2012, 3:24 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100X and 220-47-41100M; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The allocation has been caught so an emergency rule is needed to close Salmon Management and Catch Reporting Areas 12, 12B and 12C to commercial purse seines and gillnets. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

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

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

Date Adopted: November 2, 2012.

Joe Stohr
 for Philip Anderson
 Director

NEW SECTION

WAC 220-47-31100X Purse seines—Open periods. Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to fish for

commercial purposes with purse seine gear in Salmon Management and Catch Reporting Areas 12, 12B and 12C.

NEW SECTION

WAC 220-47-41100M Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to fish for commercial purposes with gillnet gear in Salmon Management and Catch Reporting Areas 12, 12B and 12C.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 21, 2012:

WAC 220-47-31100X Purse seines—Open periods.

The following section of the Washington Administrative Code is repealed effective November 22, 2012:

WAC 220-47-41100M Gillnets—Open periods.

WSR 12-22-048**EMERGENCY RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed November 5, 2012, 11:40 a.m., effective November 7, 2012]

Effective Date of Rule: November 7, 2012.

Purpose: To adjust campaign contribution limits for school board candidates, enacted by chapter 202, Laws of 2012 effective June 7, 2012, consistent with the commission's January 2012 adjustments contribution limits in effect at that time. Permanent rule making is underway.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-400.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.125.

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

Reasons for this Finding: At the beginning of every even-numbered year, the commission is required to increase or decrease all dollar amounts found in RCW 42.17A.405, 42.17A.410, and other sections of law enacted by Initiative 134 based on economic conditions. These dollar amounts include contribution limits found in RCW 42.17A.405. To accomplish these adjustments for 2012, the commission began permanent rule making in September 2011 and the changes went into effect January 13, 2012. Chapter 202, Laws of 2012, effective June 7, 2012, amended RCW 42.1A.405 [42.17A.405] to place contribution limits on school board candidates, however the limit imposed was the amount in place prior to the commission's pre-January 2012 adjustment. Adjusting the newly imposed limit will eliminate candidates' confusion that would result from having an "old" limit in place for some candidates. To preserve the gen-

eral welfare and given the timing restriction for rule making in RCW 42.17A.110(1), the commission has adjusted the newly imposed limits on an emergency basis while it proceeds with permanent rule making.

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

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

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

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

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

Date Adopted: October 25, 2012.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-10-041, filed 4/27/12, effective 5/28/12)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
.005	Definition of "Independent Expenditure"	\$800	\$900
.445(3)	Reimbursement of candidate for loan to own campaign	\$4,700	\$5,000
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$16,000 \$800	\$18,000 \$900
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts Candidates for city council office Candidates for mayoral office <u>Candidates for school board office</u>	\$800 \$800 \$1,600 \$1,600 \$800 \$800 <u>\$800</u>	\$900 \$900 \$1,800 \$1,800 \$900 \$900 <u>\$900</u>
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$800 \$1,600	\$900 \$1,800
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	.80 per voter .40 per voter .40 per voter	.90 per registered voter .45 per registered voter .45 per registered voter
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus		

Code Section	Subject Matter	Amount Enacted or Last Revised	2012 Revision
	committees to state official up for recall or committee supporting recall		
	State parties and caucuses	.80 per voter	.90 per registered voter
	County and leg. district parties	.40 per voter	.45 per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.40 per voter	.45 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$800	\$900
	To political party	\$4,000	\$4,500
.410(1)	Candidates for judicial office	\$1,600	\$1,800
.475	Contribution must be made by written instrument	\$80	\$90

**WSR 12-22-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-261—Filed November 5, 2012, 4:05 p.m., effective November 7, 2012, 11:00 a.m.]

Effective Date of Rule: November 7, 2012, 11:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100M and 220-47-41100N; amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There is a small amount of the allocation remaining to allow for a one-day gillnet fishery in Salmon Management and Catch Reporting Areas 12 and 12B. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 5, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-47-41100N Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to fish for commercial purposes with gillnet gear in Salmon Management and Catch Reporting Areas 12, 12B and 12C, except as follows:

(1) Areas 12 and 12B - Open for gillnets 11:00 a.m. to 6:00 p.m. November 7, 2012.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:00 a.m. November 7, 2012:

WAC 220-47-41100M Gillnets—Open periods.
(12-260)

The following section of the Washington Administrative Code is repealed effective November 22, 2012:

WAC 220-47-41100N Gillnets—Open periods.

WSR 12-22-057
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed November 6, 2012, 11:21 a.m., effective November 6, 2012, 11:21 a.m.]

Effective Date of Rule: Immediately.

Purpose: During the revision of the hospice rules under WSR 12-09-079, the agency incorrectly added "medical care services" (MCS) as an eligible program under WAC 182-551-1200 [(1)](d). To comply with the agency's federal Transitional Bridge 1115 Waiver, the agency is striking MCS from the list of eligible programs for hospice services.

Citation of Existing Rules Affected by this Order: Amending WAC 182-551-1200.

Statutory Authority for Adoption: RCW 41.05.021.

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

Reasons for this Finding: The existing rule is not in compliance with the agency's Transitional Bridge 1115 Waiver with the Centers for Medicare and Medicaid Services (CMS) which lists hospice services as not covered for MCS clients. This jeopardizes the agency's federal funding for MCS services under the waiver. Also, the Washington state legislature did not authorize funding to cover hospice services for MCS clients.

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 1, Repealed 0.

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

Date Adopted: November 6, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-09-079, filed 4/17/12, effective 5/18/12)

WAC 182-551-1200 Client eligibility for hospice care. (1) A client who elects to receive hospice care must be eligible for one of the following medical assistance programs, subject to the restrictions and limitations in this chapter and other WAC:

- (a) Categorically needy (CN);
- (b) Children's health care as described in WAC 388-505-0210;
- (c) Medically needy (MN); or
- (d) ~~((Medical care services as described in WAC 182-508-0005 (within Washington state or designated border cities); or~~
- ~~(e))~~ Alien emergency medical (AEM) as described in WAC 388-438-0110, when the medical services are necessary to treat a qualifying emergency medical condition.

(2) A hospice agency is responsible to verify a client's eligibility with the client or the client's department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO).

(3) A client enrolled in one of the medicaid agency's managed care organizations (MCO) must receive all hospice services, including facility room and board, directly through that MCO. The MCO is responsible for arranging and providing all hospice services for an MCO client.

(4) A client who is also eligible for medicare hospice under part A is not eligible for hospice care through the medicaid agency's hospice program. The medicaid agency does pay hospice nursing facility room and board for these clients if the client is admitted to a nursing facility or hospice care center (HCC) and is not receiving general inpatient care or inpatient respite care. See also WAC 182-551-1530.

(5) A client who meets the requirements in this section is eligible to receive hospice care through the medicaid agency's hospice program when all of the following is met:

(a) The client's physician certifies the client has a life expectancy of six months or less.

(b) The client elects to receive hospice care and agrees to the conditions of the "election statement" as described in WAC 182-551-1310.

(c) The hospice agency serving the client:

(i) Notifies the medicaid agency's hospice program within five working days of the admission of all clients, including:

(A) Medicaid-only clients;

(B) Medicaid-medicare dual eligible clients;

(C) Medicaid clients with third party insurance; and

(D) Medicaid-medicare dual eligible clients with third party insurance.

(ii) Meets the hospice agency requirements in WAC 182-551-1300 and 182-551-1305.

(d) The hospice agency provides additional information for a diagnosis when the medicaid agency requests and determines, on a case-by-case basis, the information that is needed for further review.

WSR 12-22-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-259—Filed November 6, 2012, 3:27 p.m., effective November 19, 2012, 12:01 a.m.]

Effective Date of Rule: November 19, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900B; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: These fish were grown as an opportunity to try and provide quality family trout fishing during the Thanksgiving weekend. These closures prevent fishing for trout prior to Thanksgiving weekend, so that anglers have equal access to these fish on the day of the opener. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 6, 2012.

Joe Stohr
 for Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. November 22, 2012:

WAC 232-28-61900B Exceptions to statewide rules.

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules.

Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. November 19 through November 22, 2012, it is unlawful to fish in the following waters:

- (1) Fort Borst Park Pond (Lewis Co.)
- (2) South Lewis County Park Pond (Lewis Co.)
- (3) Kress Lake (Cowlitz Co.)
- (4) Battleground Lake (Clark Co.)
- (5) Kline Pond (Clark Co.)
- (6) Rowland Lake (Klickitat Co.)