

WSR 12-23-058
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed November 19, 2012, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-16-110.

Title of Rule and Other Identifying Information: WAC 388-97-0001 Definitions, 388-97-0040 Discrimination prohibited, 388-97-1000 Resident assessment, 388-97-1620 General administration, 388-97-1640 Required notification and reporting, 388-97-2020 Intermediate care facilities for mentally retarded, and 388-97-2180 ICF/MR exceptions to physical plan requirements.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington Street S.E., Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on January 8, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 9, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 8, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 11, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to be consistent with federal regulations and newly passed state laws: SHB 2056 Relating to assisted living facilities; SHB [SSB] 5708 Relating to reshaping the delivery of long term care services; 20 United States Code 1140 ("Rosa's law"); 42 Code of Federal Regulations 483.20(d); and Social Security Act section 1128I(h) as added by section 6113 of the Affordable Care Act section 6113.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Statute Being Implemented: Chapters 18.51 and 74.42 RCW.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Bird, P.O. Box 45600, Olympia, WA 98513, (360) 725-2581; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85-025(3), a small business economic impact statement is not required for rules adopting or incorporating, by reference

without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes [statutes] or federal statutes [statutes] or regulations.

November 13, 2012

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-077, filed 11/1/11, effective 12/2/11)

WAC 388-97-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements.

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrative law judge (ALJ)" means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Administrator" means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

"Advanced registered nurse practitioner (ARNP)" means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

"Applicant" means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

"ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

"Attending physician" means the doctor responsible for a particular individual's total medical care.

"Berm" means a bank of earth piled against a wall.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms.

"Civil adjudication proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Civil fine" is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

"Condition on a license" means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

"Deficiency" is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Deficiency citation" or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

"Deficient facility practice" or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

"Dementia care" means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

"Denial of payment for new admissions" is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

"Department" means the state department of social and health services (DSHS).

"Department on-site monitoring" means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

"Dietitian" means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

"Disclosure statement" means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

"Drug" means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

"Drug facility" means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

"Emergency closure" is an order by the department to immediately close a nursing home.

"Emergency transfer" means immediate transfer of residents from a nursing home to safe settings.

"Entity" means any type of firm, partnership, corporation, company, association, or joint stock association.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person or entity's profit or advantage other

than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Habilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

"Highest practicable physical, mental, and psychosocial well-being" means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Informal department review" is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

"Inspection" or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

"Intermediate care facility for ~~((the mentally retarded (ICF/MR)))~~ individuals with intellectual disabilities (ICF/IID)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

"License revocation" is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

"License suspension" is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

"Licensee" means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

"Licensed practical nurse" means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

"Mandated reporter" as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of ~~((boarding home))~~ assisted living facility, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means that an individual or entity with a duty of care for nursing home residents has:

(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or

(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Noncompliance" means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

"Nursing assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Officer" means an individual serving as an officer of a corporation.

"Owner of five percent or more of the assets of a nursing home" means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

"Partner" means an individual in a partnership owning or operating a nursing home.

"Person" means any individual, firm, partnership, corporation, company, association or joint stock association.

"Pharmacist" means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

"Pharmacy" means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

"Physician's assistant (PA)" means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

"Plan of correction" is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

"Reasonable accommodation" and **"reasonably accommodate"** has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"Receivership" is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

"Recurring deficiency" means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

"Registered nurse" means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

"Rehabilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

"Resident" generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

"Resident care unit" means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

"Respiratory isolation" is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

"Siphon jet clinic service sink" means a plumbing fixture of adequate size and proper design for waste disposal

with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

"Skilled nursing facility (SNF)" or **"medicare-certified skilled nursing facility"** means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

"Social/therapeutic leave" means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

"Staff work station" means a location at which nursing and other staff perform charting and related activities throughout the day.

"Stop placement" or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

"Substantial compliance" means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicaid certified facility, no deficiencies higher than a scope and severity "C."

"Surrogate decision maker" means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

"Survey" means the same as **"inspection"** as defined in this section.

"Temporary manager" means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"Termination" means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

"Toilet room" means a room containing at least one toilet fixture.

"Uncorrected deficiency" is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

"Violation" means the same as **"deficiency"** as defined in this section.

"Volunteer" means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any (~~boarding home~~) **assisted living facility**; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

"Whistle blower" means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0040 Discrimination prohibited. (1) A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services covered under the state medicaid plan for all individuals regardless of source of payment.

(2) A nursing facility must not require or request:

(a) Residents or potential residents to waive their rights to medicare or medicaid;

(b) Oral or written assurance that residents or potential residents are not eligible for, or will not apply for medicare or medicaid benefits; and

(c) A third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(3) A nursing facility must inform, in writing, a prospective resident, and where applicable, the resident's representative, before or at the time of admission, that a third party may not be required or requested to personally guarantee payment to the nursing home, as specified in subsection (2)(c) of this section.

(4) A nursing facility must readmit a resident, who has been hospitalized or on therapeutic leave, immediately to the first available bed in a semiprivate room if the resident:

(a) Requires the services provided by the facility; and
(b) Is eligible for medicaid nursing facility services.

(5) A nursing facility must not:

(a) Deny or delay admission or readmission of an individual to the facility because of the individual's status as a medicaid recipient;

(b) Transfer a resident, except from a single room to another room within the facility, because of the resident's status as a medicaid recipient;

(c) Discharge a resident from a facility because of the resident's status as a medicaid recipient; or

(d) Charge medicaid recipients any amounts in excess of the medicaid rate from the date of eligibility, except for any supplementation that may be permitted by department regulation.

(6) A nursing facility must maintain only one list of names of individuals seeking admission to the facility, which is ordered by the date of request for admission, and must:

(a) Offer admission to individuals in the order they appear on the list, except as provided in subsection (7), as

long as the facility can meet the needs of the individual with available staff or through the provision of reasonable accommodations required by state or federal laws;

(b) Retain the list of individuals seeking admission for one year from the month admission was requested; and

(c) Offer admission to the portions of the facility certified under medicare and medicaid without discrimination against persons eligible for medicaid, except as provided in subsection (7).

(7) A nursing facility is permitted to give preferential admission to individuals who seek admission from ~~((a boarding home))~~ an assisted living facility, licensed under chapter 18.20 RCW, or from independent retirement housing, if:

(a) The nursing facility is owned by the same entity that owns the ~~((boarding home))~~ assisted living facility or independent housing; and

(b) They are located within the same proximate geographic area; and

(c) The purpose of the preferential admission is to allow continued provision of culturally or faith-based services, or services provided by a continuing care retirement community as defined in RCW 74.38.025.

(8) A nursing facility must develop and implement written policies and procedures to ensure nondiscrimination in accordance with this section and RCW 74.42.055.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1000 Resident assessment. (1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) At the time each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

(g) Psychosocial well-being;

(h) Physical functioning and structural problems;

(i) Continence;

(j) Disease diagnosis and health conditions;

(k) Dental and nutritional status;

- (l) Skin conditions;
 - (m) Activity pursuit;
 - (n) Medications;
 - (o) Special treatments and procedures;
 - (p) Discharge potential;
 - (q) Documentation of summary information regarding the assessment performed; and
 - (r) Documentation of participation in assessment.
- (3) The nursing home must conduct comprehensive assessments:
- (a) No later than fourteen days after the date of admission;
 - (b) Promptly after a significant change in the resident's physical or mental condition; and
 - (c) In no case less often than once every twelve months.
- (4) The nursing home must ensure that:
- (a) Each resident is assessed no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and
 - (b) The results of the assessment are used to develop, review and revise the resident's comprehensive plan of care under WAC 388-97-1020.
- (5) The skilled nursing facility and nursing facility must:
- (a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;
 - (b) ~~((Place))~~ Maintain all copies of ((the completed state approved RAI in each resident's clinical record, unless all charting is computerized)) resident assessments completed within the resident's active medical record, whether in electronic or paper form, for fifteen months and this information must be maintained in a centralized location and be easily and readily accessible;
 - (c) ~~((Maintain all copies of resident assessments completed within the resident's active clinical record for fifteen months))~~ Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;
 - (d) Assess each resident not less than every three months, using the state approved assessment instrument; and
 - (e) Transmit all state and federally required RAI information for each resident to the department:
 - (i) In a manner approved by the department;
 - (ii) Within ten days of completion of any RAI assessment required under this subsection; and
 - (iii) Within ten days of discharging or ~~((readmitting a resident))~~ admitting a resident for a tracking record.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1620 General administration. (1) The nursing home must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(2) The nursing home must:

- (a) Be licensed under chapter 18.51 RCW;

- (b) Operate and provide services in compliance with:
 - (i) All applicable federal, state and local laws, regulations, and codes;
 - (ii) Accepted professional standards and principles that apply to professionals providing services in nursing homes; and
 - (c) Have a governing body or designated individuals functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing home.
 - (3) The governing body of the nursing home must appoint the administrator who:
 - (a) Is licensed by the state;
 - (b) Is responsible for management of the nursing home;
 - (c) Keeps the licensee informed of all surveys and notices of noncompliance;
 - (d) Complies with all requirements of chapter 18.52 RCW, and all regulations adopted under that chapter;
 - (e) Is an on-site, full-time individual in active administrative charge at the premises of only one nursing home, a minimum of four days and an average of forty hours per week ~~((Exception: On-site, full-time administrator with small resident populations or in rural areas will be defined as an individual in active administrative charge at the premises of only one nursing home:

 - (i) A minimum of four days and an average of twenty hours per week at facilities with one to thirty beds; or
 - (ii) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine beds))~~ except as provided in WAC 246-843-010.
- (4) Nursing homes temporarily without an administrator may operate up to four continuous weeks under a responsible individual authorized to act as nursing home administrator designee.
 - (a) The designee must be qualified by experience to assume designated duties; and
 - (b) The nursing home must have a written agreement with a nursing home administrator, licensed in the state of Washington, who must be readily available to consult with the designee.
 - (c) The nursing home may make a written request to the department's designated aging and disability services administration field office for an extension of the four weeks by stating why an extension is needed, how a resident's safety or well-being is maintained during an extension and giving the estimated date by which a full-time, qualified nursing home administrator will be on-site.
- (5) The nursing home must employ on a full-time, part time or consultant basis those professionals necessary to carry out the requirements of this chapter.
- (6) If the nursing home does not employ a qualified professional individual to furnish a specific service to be provided by the nursing home, the nursing home must:
 - (a) Have that service furnished to residents by an individual or agency outside the nursing home under a written arrangement or agreement; and
 - (b) Ensure the arrangement or agreement referred to in (a) of this subsection specifies in writing that the nursing home assumes responsibility for:

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in nursing homes; and

(ii) The timeliness of services.

(7) The nursing home must:

(a) Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance which threatens any individual's welfare and safety;

(b) Identify, investigate, and report incidents involving residents, according to department established nursing home guidelines; and

(c) Comply with "whistle blower" rules as defined in chapter 74.34 RCW.

(8) The department will:

(a) Investigate complaints, made to the department according to established protocols including protocols described in RCW 74.39A.060;

(b) Take action against a nursing home that is found to have used retaliatory treatment toward a resident or employee who has voiced grievances to nursing home staff or administration, or lodged a good faith complaint with the department; and

(c) Report to local law enforcement:

(i) Any mandated reporter that knowingly fails to report in accordance with WAC 388-97-0640; and

(ii) Any person that intentionally, maliciously or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) Refer also to WAC 388-97-1840, Retaliation.

AMENDATORY SECTION (Amending WSR 11-22-077, filed 11/1/11, effective 12/2/11)

WAC 388-97-1640 Required notification and reporting. (1) The nursing home must immediately notify the department's aging and disability services administration of:

(a) Any allegations of resident abandonment, abuse, or neglect, including substantial injuries of an unknown source, financial exploitation and misappropriation of a resident's property;

(b) Any unusual event, having an actual or potential negative impact on residents, requiring the actual or potential implementation of the nursing home's disaster plan. These unusual events include but are not limited to those listed under WAC 388-97-1740 (1)(a) through (k), and could include the evacuation of all or part of the residents to another area of the nursing home or to another address; and

(c) Circumstances which threaten the nursing home's ability to ensure continuation of services to residents.

(2) Mandated reporters must notify the department and law enforcement as directed in WAC 388-97-0640, and according to department established nursing home guidelines.

(3) The nursing home must notify the department's aging and disability services administration of:

(a) Physical plant changes, including but not limited to:

(i) New construction;

(ii) Proposed resident area or room use change;

(iii) Resident room number changes; and

(iv) Proposed bed banking.

(b) Mechanical failure of equipment important to the everyday functioning of the nursing home, which cannot be repaired within a reasonable time frame, such as an elevator; and

(c) An actual or proposed change of ownership (CHOW).

(4) The nursing home must notify, in writing, the department's aging and disability services administration and each resident, of a loss of, or change in, the nursing home's administrator or director of nursing services at the time the loss or change occurs.

(5) The nursing home licensee must notify the department's aging and disability services administration in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.

(6) If a licensee operates in a building it does not own, the licensee must immediately notify the department of the occurrence of any event of default under the terms of the lease, or if it receives verbal or written notice that the lease agreement will be terminated, or that the lease agreement will not be renewed.

(7) The nursing home must report any case or suspected case of a reportable disease to the appropriate department of health officer and must also notify the appropriate department(s) of other health and safety issues, according to state and local laws.

(8) ~~((The nursing home licensee must notify the department in writing))~~ In the event of a nursing home's voluntary closure(-), the nursing home must:

(a) ~~((The licensee must send this written notification sixty days before closure to the department's designated local aging and adult administration office and to))~~ Notify all residents and resident representatives(-), the department's designated aging and disability administration office, the state long-term ombudsman, and, if the facility is medicare-certified, the Centers for Medicare and Medicaid Services;

(b) Send the written notification at least sixty days before closure;

(c) Ensure that the relocation of residents and any required notice to the Centers for Medicare and Medicaid Services and the public ((must be)) is done in accordance with WAC ((388-97-4320(2))) 388-97-4320.

(9) The nursing home licensee must ~~((notify the department and the health care authority in writing of voluntary termination of))~~ provide written notice of its intention to voluntarily terminate its medicare or medicaid contract(-), to:

(a) ~~The ((licensee must send this written notification sixty days before contract termination, to the))~~ department's designated ((local)) aging and disability services administration office ((and to all residents and resident representatives-));

(b) ~~((If the contractor continues to provide nursing facility services, the contract termination will be subject to federal law prohibiting the discharge of residents who are residing in the facility on the day before the effective date of the contract termination))~~ The Washington health care authority;

(c) The Centers for Medicare and Medicaid Services;

(d) All residents and, when appropriate, resident representatives; and

(e) The public.

(10) ((The nursing home licensee must notify the Centers for Medicare and Medicaid Services of voluntary termination of its medicare provider agreement in accordance with the requirements of 42 C.F.R. 489.52 or successor regulations)) The written notice required in subsection (9) must be provided, at least sixty days before contract termination, except notice to Centers for Medicare and Medicaid Services and the public must be provided in accordance with the requirements of 42 C.F.R. 489.52.

(11) If a nursing home voluntarily with-draws from participation in the medicaid program, but continues to provide nursing facility services, the nursing home will be subject to 42 U.S.C. 1396r (c)(2)(F), which prohibits the discharge of medicaid residents who are residing in the facility before the effective date of the withdrawal.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2020 Intermediate care facilities for ((the mentally retarded)) individuals with intellectual disabilities. (1) ((ICF/MR)) ICF/IID nursing facilities must meet the requirements of 42 C.F.R. § 483 Subpart I and the requirements of this subchapter except that in an ((ICF/MR)) ICF/IID nursing facility:

(a) There must be at least one registered nurse or licensed practical nurse on duty eight hours per day, and additional licensed staff on any shift if indicated. WAC 388-97-1080 (2)(a) and (3)(a) and (b) do not apply to ICF/MR nursing facilities; and

(b) A medical director is not required.

(2) Staff from the division of developmental disabilities will approve of social/therapeutic leave for individuals who reside in ((ICF/MR)) ICF/IID nursing facilities.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2180 ((ICF/MR)) ICF/IID exceptions to physical plan requirements. The following regulations do not apply to nursing homes certified exclusively under 42 C.F.R. § 483, Subpart I, or successor laws:

(1) WAC 388-97-2440, regarding the required number of square feet per bed; and

(2) WAC 388-97-2660, regarding cubicle curtains.

WSR 12-24-012
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Special Commitment Center)

[Filed November 27, 2012, 1:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-15-076.

Title of Rule and Other Identifying Information: WAC 388-880-110 Procedures for resident escorted leave from the total confinement facility.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on January 8, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 9, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 8, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 18, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jenni.sha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule pertains only to special commitment center program activities, specifically to its public safety functions when escorting and transporting dangerous sexually violent predators from the total confinement facility into and out of the community under conditions set in RCW 71.09.200, [71.09.]210, [71.09.]220 and [71.09.]230.

Reasons Supporting Proposal: From a public safety perspective, the existing language in WAC 388-880-110 is archaic and inadequate. It lacks focus and direction to those DSHS employees that must carry out this important public safety activity, the escorting of dangerous sexually violent predators from their secured surroundings on McNeil Island into the local community for necessary health care not available on the island.

From a budget shortfall perspective, the existing language in WAC 388-880-110 exacerbates costs and contributes to routine overspending due to archaic staffing requirements that are not in compliance with RCW 71.09.200, archaic language that drives up costs as much as two and [a] half times what it should cost.

Statutory Authority for Adoption: RCW 71.09.800 and 72.01.090.

Statute Being Implemented: RCW 71.09.800 and 72.01.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Davis, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 583-5938; Implementation: Cathi Harris, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 589-6219; and Enforcement: Donald Gauntz, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 583-5933.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule change has been carefully reviewed and it is concluded that it pertains to state operations and it does not impact small businesses. The preparation of a comprehensive small business

economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared because these rules are an "interpretive rule" under RCW 34.05.328 for which a violation of which does not subject a person to a penalty or sanction, and serves only to set forth the agency's interpretation of statutory provisions it administers.

November 14, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-110 Procedures for resident escorted leave from the total confinement facility. (1) Only ~~((persons))~~ an employee approved by the superintendent, or designee, will be authorized to serve as ~~((escorts))~~ an escort. All escorts from the total confinement facility must be employees of ~~((either))~~ the department of social and health services ~~((or the department of corrections and must have attained permanent employee status. At least one of the escorts must be experienced in the escort procedures))~~.

~~((The superintendent, or designee, shall determine the use and type of restraints necessary for each escorted leave on an individual basis.~~

~~((Escorted leaves supervised by department of corrections staff shall require the approval of the SCC superintendent, or designee, and be done in accordance with applicable department of corrections policy and procedures. The department of corrections shall be reimbursed, according to rates and procedures established between the department of social and health services and the department of corrections. Correctional officers may wear civilian clothing when escorting a resident for a bedside visit or a funeral))~~ Escorted leave will only be granted for the reasons set forth in RCW 71.09.210.

(3) As a matter to standard procedure, the minimum level of restraint used on all escorted leaves performed under RCW 71.09.210 will be ankle and waist restraints which are intended to limit the person's ability to run and/or swing their arms.

(4) The superintendent, or designee, shall:

(a) As needed, on an individual basis, determine the need to use any additional types of restraint above and beyond the standard ankle and waist restraints.

(b) Determine if escort staff will be authorized to wear civilian clothing when escorting a resident to a bedside visit or funeral.

(c) Determine the number of staff and job classification of staff that shall conduct the escort.

(d) Ensure escort staff are trained and experienced in the escort procedures.

(e) Ensure that escorted leaves are supervised by staff in accordance with written procedures approved by the superintendent, or designee.

(f) Ensure that one escort is designated as a lead worker when more than one employee participates on the escort.

(5) The escort shall:

(a) Supervise the resident per written procedure.

(b) Adhere to the restraint level determination.

(c) Ensure that if a resident escapes, or disappears, that local law enforcement is immediately notified and that notification shall include a description of the resident's physical person, clothing and photo.

(d) Carry a copy of the resident's photo and description.

(e) Not deviate from the approved route or make unplanned stops unless an emergency situation arises.

WSR 12-24-019

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 28, 2012, 8:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-064.

Title of Rule and Other Identifying Information: WAC 260-24-580 Starter and assistant starters.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 11, 2013, at 9:30 a.m.

Date of Intended Adoption: January 11, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Requires assistant starters to wear safety helmets in the performance of their duties.

Reasons Supporting Proposal: To avoid head injuries to assistant starters who work in close quarters with thoroughbreds in and around the starting gate.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [No information supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

November 28, 2012

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 10-05-064, filed 2/12/10, effective 3/15/10)

WAC 260-24-580 Starter and assistant starters. (1)

The starter is responsible for the following duties:

(a) Approve all horses which have never started to ensure that the horse is familiar with, and capable of, breaking from the starting gate((-));

(b) Ensure all participants have an equal opportunity to a fair start;

(c) Supervise the assistant starters;

(d) Provide a sufficient number of assistant starters for each race;

(e) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions, or assign a foreman to act in his behalf, before post time for each race;

(f) Assess and make recommendations to the board of stewards on the ability of each person applying for an initial jockey license in breaking from the gate and working a horse in the company of other horses;

(g) Load horses into the gate in any order necessary to ensure a safe and fair start;

(h) Recommend to the stewards horses that should be scratched because a horse at the starting gate is refusing to load or is unruly.

(2) The starter will place and remove horses on the starter's list for poor or unruly behavior in the starting gate. Horses placed on the starter's list will be refused entry until the horse has been satisfactorily schooled in the starting gate. Schooling will be under the direct supervision of the starter or his designee.

(3) The starter has complete authority over the starting gate, the starting of horses, and the authority to give orders, which are not in conflict with these rules.

(4) The starter will appoint all assistant starters. Assistant starters must first demonstrate they are adequately trained to safely handle horses in the starting gate. In emergencies the starter may appoint qualified individuals to act as substitute assistant starters.

All assistant starters, and anyone appointed by the starter to act as a substitute assistant starter, must wear a securely fastened safety vests and helmets, which meet(~~s the shock-absorbing protection required~~) the standards in WAC 260-12-180(~~((2))~~) (1) and (2), at all times when performing their duties.

(5) Assistant starters may not:

(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(b) Impede the start of a race;

(c) Strike a horse with a whip;

(d) Use a device, unless approved by the stewards, to assist in the loading of a horse into the starting gate;

(e) Slap, boot or otherwise dispatch a horse from the starting gate;

(f) Strike or use abusive language to a jockey; or

(g) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(6) The starter and assistant starters will report all unauthorized activities to the stewards.

WSR 12-24-020

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 28, 2012, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-020.

Title of Rule and Other Identifying Information: WAC 260-32-370 Apprentice jockeys.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 11, 2013, at 9:30 a.m.

Date of Intended Adoption: January 11, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows a trainer to utilize an apprentice jockey and not take the allowed weight allowance.

Reasons Supporting Proposal: Requested by the Jockey's Guild and supported by the regulated entities, allows an apprentice jockey to "name on" a horse at entry time without declaring the apprentice allowance but maintain the rights to the allowance.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [No information supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

November 28, 2012

Douglas L. Moore

Deputy Secretary

AMENDATORY SECTION (Amending WSR 12-03-076, filed 1/13/12, effective 2/13/12)

WAC 260-32-370 Apprentice jockeys. (1) An applicant for an apprentice jockey license may be prohibited from riding until the stewards or the commission has sufficient opportunity (not to exceed 14 days) to verify the applicant's previous riding experience.

(2) An apprentice jockey may be granted an apprentice certificate by the board of stewards. The apprentice certificate will grant an apprentice all the allowances and conditions stated in these rules.

(3) An apprentice jockey (~~eligible for a ten-pound allowance~~) that has ridden less than five winners may not

accept mounts on two year olds and first time starters, without prior approval of the board of stewards.

(4) The conditions of an apprentice jockey license do not apply to quarter horse or mixed breed racing. A jockey's performances in quarter horse or mixed breed racing do not apply to the conditions of an apprentice jockey.

(5) An applicant with an approved apprentice certificate from another jurisdiction may be licensed as an apprentice jockey.

(6) An apprentice certificate may be obtained from the stewards on a form provided by the commission. A person may not receive more than one apprentice certificate. In case of emergencies, a copy of the original may be obtained from the commission where it was issued.

(7) The apprentice jockey will be responsible to have his/her apprentice certificate with them at all times. Prior to riding, the apprentice certificate will be submitted to the clerk of scales at each racing association in which the apprentice is licensed and riding.

(8) The apprentice jockey must keep an accurate updated record of his/her first forty winners, to be recorded on the certificate by the clerk of scales.

(9) An apprentice jockey may claim ~~((the following weight allowances in all overnight races except stakes and handicaps:~~

~~(a) Ten pound allowance beginning with the first mount and continuing until the apprentice has ridden five winners;~~

~~(b) Seven pound allowance until the apprentice has ridden an additional thirty five winners; and~~

~~(c) If an apprentice has ridden a total of forty winners prior to the end of a period of one year from the date of riding their fifth winner, the apprentice jockey will have an allowance of five pounds until the end of that year;~~

~~(d) If after one year from the date of the fifth winning mount, the apprentice jockey has not ridden forty winners, the applicable weight allowance will continue for one more year or until the 40th winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.~~

~~(e) An apprentice may waive any or all of the above weight allowances, but may not be eligible to reinstate any of the allowances once voluntarily waived.~~

~~(f) An apprentice may be named as a replacement rider on a mount entered without the apprentice weight allowance only after entries have been drawn at which time the apprentice allowance will not be deemed to have been voluntarily waived)) a five-pound allowance beginning with his/her first mount and for one full year from the date of his/her fifth winning mount. If after riding one year from the date of his/her fifth winning mount, the apprentice jockey has failed to ride a total of forty winners he/she may continue to ride with a five-pound weight allowance for one additional year from the date of his/her fifth winner or until he/she has ridden forty winners, whichever comes first.~~

(a) Apprentice allowances may be waived at the time of entry by the owner, trainer, or authorized agent.

(b) Apprentice allowances may not be claimed in stakes and handicap races.

(10) The commission may extend the period in which an apprentice jockey is allowed a weight allowance when, at the discretion of the commission, an apprentice jockey is unable to continue riding due to:

(a) Physical disablement or illness;

(b) Military service;

(c) Attendance in an institution of secondary or higher education;

(d) Restriction on racing;

(e) Other valid reasons.

(11) In order to qualify for an extension, an apprentice jockey must have been rendered unable to ride for a period of not less than seven consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance.

(12) The commission currently licensing the apprentice jockey will have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation, verifying time lost as defined by this regulation.

(13) An apprentice may petition the jurisdictions in which he or she is licensed and riding for an extension of the time for claiming apprentice weight allowances granted by the commission, and the apprentice will be bound by the decision of the jurisdiction so petitioned.

WSR 12-24-021

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 28, 2012, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-066.

Title of Rule and Other Identifying Information: WAC 260-44-010 Equipment changes.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 11, 2013, at 9:30 a.m.

Date of Intended Adoption: January 11, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds "cheek pieces" as equipment that must be declared at time of entry and approved by the board of stewards.

Reasons Supporting Proposal: A relatively new piece of equipment, cheek pieces have the ability to restrict a horse's peripherally [peripheral] vision much the same a [as] blinkers.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [No information supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

November 28, 2012
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-035, filed 3/12/07, effective 4/12/07)

WAC 260-44-010 Equipment changes. (1) Permission to change any equipment from that which a horse carried in its previous race must be obtained from the stewards.

(2) Permission for a horse to add or remove blinkers or cheek pieces must be approved by the starter before being granted by the stewards.

(3) A trainer may tie down a horse's tongue but only with materials that are not dangerous or likely to cause injury to the horse. An official veterinarian will decide any question about the appropriateness of the material used for a tongue-tie. The stewards may monitor the use of tongue-ties.

(4) Whips will be considered standard equipment in all horse races, unless declared at time of entry.

WSR 12-24-022
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 28, 2012, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-20-031.

Title of Rule and Other Identifying Information: WAC 260-12-010 Definitions.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 11, 2013, at 9:30 a.m.

Date of Intended Adoption: January 11, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates and adds new terminology used by the industry that is or will be included in the WAC.

Reasons Supporting Proposal: Defines any new language or terms used in Title 260 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [No information supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

November 28, 2012
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 10-09-012, filed 4/9/10, effective 5/10/10)

WAC 260-12-010 Definitions. The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Added money." Money added to the purse of a race by the association, or other fund, in the amount paid by owners for nominations, entry, and starting fees.

(2) "Allowance race." An overnight race for which there is no claiming price established.

(3) "Also eligible."

(a) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

(b) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(4) "Apprentice jockey." A jockey who has not won a certain number of races within a specific period of time who is granted an extra weight allowance as provided in WAC 260-32-370(9).

(5) "Apprentice allowance." A weight allowance given to an apprentice jockey ranging from five to ten pounds.

(6) "Authorized agent." A person appointed by a written document signed by the owner with authority to act for the owner.

(7) "Assistant trainer." A person employed by a licensed trainer whom has the authority to represent the trainer in all racing matters. An assistant trainer may also perform all the duties of a groom.

(8) "Association." Any person or persons, associations, or corporations licensed by the commission to conduct parimutuel wagering on a race meet.

(9) "Association employee." Any person hired by a racing association.

~~((8))~~ (10) "Association grounds." All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, and parking lots and any other areas under the jurisdiction of the commission.

~~((9))~~ (11) "Bar shoe." A special shoe with a solid bar that runs across the rear of the shoe for extra protection.

(12) "Barn superintendent." An association employee who is responsible to assign stalls and maintain records of number of horses in a trainer's care on a daily basis.

~~((10))~~ (13) "Bit." The metal mouthpiece on a bridle used to guide and control a horse.

~~((11))~~ (14) "Bleeder." A horse that demonstrates exercise induced pulmonary hemorrhaging.

~~((12))~~ (15) "Blinkers." A hood with different size cups to limit the peripheral vision of a horse.

~~((13))~~ (16) "Breakage." The remaining cents after pari-mutuel payoffs are rounded down to a dime or nickel.

~~((14))~~ (17) "Breeder." For thoroughbreds, the breeder is the owner of the horse's dam at the time of foaling. For quarter horses, appaloosas, arabians and paint horses, the breeder is the owner of the dam at the time of service.

(18) "Cheek pieces." Two pieces of sheepskin or other material which are attached to the cheek pieces of a bridle which may restrict vision.

~~((15))~~ (19) "Claiming." The act of buying a horse out of a race for a specific price.

~~((16))~~ (20) "Claim box." A box in a specified location where a claim must be deposited to be valid.

~~((17))~~ (21) "Claiming race." Races in which horses are entered subject to being claimed for a specified price.

~~((18))~~ (22) "Clerk of scales." An official who weighs the jockeys prior to and after each race.

~~((19))~~ (23) "Clocker." An official that times horses when horses are performing an official workout.

~~((20))~~ (24) "Colors." Racing silks with owners' distinct designs and color worn by jockeys while racing.

~~((21))~~ (25) "Colt." Male horse under the age of five.

~~((22))~~ (26) "Commission."

(a) The five-member commission established by RCW 67.16.012; or

(b) The state agency known as the Washington horse racing commission.

~~((23))~~ (27) "Condition book." A book issued by the racing secretary with specific eligibility conditions for scheduled races.

~~((24))~~ (28) "Coupled entry." Two or more horses running as a single betting interest for pari-mutuel wagering purposes.

~~((25))~~ (29) "Daily double." Type of wager calling for the selection of the winner of two consecutive races.

~~((26))~~ (30) "Dead heat." Two or more horses in an exact tie at the finish line.

~~((27))~~ (31) "Denial." The refusal to grant an applicant a license after the applicant has made application for a license, but prior to the individual performing the duties associated with the license.

~~((28))~~ (32) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

~~((29))~~ (33) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

~~((30))~~ (34) "Entry."

(a) A horse eligible for and entered in a race.

(b) Two or more horses which are entered or run in a race with common ownership.

~~((31))~~ (35) "Equipment." Tack carried or used on a racehorse including whips, blinkers, tongue ties, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

~~((32))~~ (36) "Exacta." A wager involving selecting the first two finishers in a race in exact order.

~~((33))~~ (37) "Exercise rider." A person licensed by the commission to ride horses for the purpose of exercising. Exercise riders working at a race track must be licensed as "Exercise rider - track," while those working at the farm or training centers must be licensed as "Exercise rider - farm" if the trainer wishes to provide their employee industrial insurance coverage under the horse industry account.

~~((34))~~ (38) "Field." The total horses scheduled to run in a race.

~~((35))~~ (39) "Filly." A female horse four years and younger.

~~((36))~~ (40) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.

~~((37))~~ (41) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.

~~((38))~~ (42) "Furosemide." Generic term for a medication used for the treatment of bleeders.

~~((39))~~ (43) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.

~~((40))~~ (44) "Gelding." A male horse that has been castrated.

~~((41))~~ (45) "Groom." A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.

~~((42))~~ (46) "Handicap."

(a) A race in which the racing secretary designates the weight to be carried for each horse.

(b) Making wagering selections on the basis of a horse's past performances.

~~((43))~~ (47) "Handle." Total amount of money wagered in the pari-mutuel pool for a race, race card, or a race meet.

~~((44))~~ (48) "Horse."

(a) A registered filly, mare, colt, horse, gelding or ridgling of a breed that is eligible to race in the state of Washington.

(b) Any male horse five years old or older.

~~((45))~~ (49) "Intact male." Any male horse, colt, or ridgling.

~~((46))~~ (50) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.

~~((47))~~ (51) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.

~~((48))~~ (52) "Jockey fee." The money paid to a jockey for riding in a race.

~~((49))~~ (53) "Maiden." A horse, which at the time of starting in a race, has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden who has been disqualified after finishing first is still considered a maiden.

~~((50))~~ (54) "Mare." A female horse five years old or older.

~~((51))~~ (55) "Minus pool." A mutuel pool caused when one horse is heavily bet and after all mandatory deductions there is not enough money in the pool to pay the legally prescribed minimum on each winning wager.

~~((52))~~ (56) "Morning line." A handicapper's approximate odds quoted in the program.

~~((53))~~ (57) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.

~~((54))~~ (58) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).

~~((55))~~ (59) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.

~~((56))~~ (60) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

~~((57))~~ (61) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.

~~((58))~~ (62) "Official."

(a) When the board of stewards has determined that the order of finish of a race is correct for the mutuel payouts.

(b) An individual designated to perform functions to regulate a race meet.

~~((59))~~ (63) "Off-track betting." Parimutuel wagering on horse races conducted at a location other than the racing association's grounds, often referred to as a satellite location.

~~((60))~~ (64) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.

~~((61))~~ (65) "Overnight race." A contest for which entries close at a time set by the racing secretary.

~~((62))~~ (66) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.

~~((63))~~ (67) "Owner." Any person licensed by the commission with an ownership interest in a horse, including a lessee. An interest only in the winnings of a horse does not constitute part ownership.

~~((64))~~ (68) "Owners' bonus." A percentage of the gross mutuel pool the association is required by RCW 67.16.102 to withhold to be paid to owners of Washington bred horses at the conclusion of the meet based on the owner's horse finishing first, second, third or fourth.

~~((65))~~ (69) "Paddock." Enclosure or area where horses are saddled prior to the post parade.

~~((66))~~ (70) "Paddock judge." An official who monitors the saddling of the horses before a race to ensure consistent equipment on each horse and supervises the paddock.

~~((67))~~ (71) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.

~~((68))~~ (72) "Pick n." A type of wager requiring the patron to select the winners of a specified number of consecutive races.

~~((69))~~ (73) "Pick three." A type of wager requiring the patron to select the winners of three consecutive races.

~~((70))~~ (74) "Place." To finish second in a race.

~~((71))~~ (75) "Poles." Markers positioned around the track indicating the distance to the finish line.

~~((72))~~ (76) "Pony rider." A person licensed by the commission to escort horses either in the morning during training or in the afternoon during racing. A pony rider may not exercise horses. Pony riders working at a race track must be licensed as "Pony rider - track," while those working at the farm or training centers must be licensed as "Pony rider - farm" if the trainer wishes to provide their employee industrial insurance coverage under the horse industry account.

~~((72))~~ (77) "Post." The starting position on the track.

~~((73))~~ (78) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.

~~((74))~~ (79) "Post position." Position assigned to the horse to break from the starting gate determined by lot at the time of the draw of the race.

~~((75))~~ (80) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

~~((76))~~ (81) "Program/paper trainer." A licensed trainer who, solely for the purposes of the official race program, is identified as the trainer of a horse that is actually under the control of and trained by another person who may or may not hold a current trainer's license.

~~((76))~~ (82) "Purse." The amount of prize money offered by the racing association for each race.

~~((77))~~ (83) "Protest." A complaint filed regarding a horse running in a race that is filed in writing with the board of stewards.

~~((78))~~ (84) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

~~((79))~~ (85) "Race meet." The dates of live horse racing that have been approved by the commission. (Also refer to RCW 67.16.010.)

~~((80))~~ (86) "Racing plates." Shoes designed for race-horses, usually made of aluminum.

~~((81))~~ (87) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

~~((82))~~ (88) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

~~((83))~~ (89) "Recognized race meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

~~((84))~~ (90) "Retired horse." A horse that at the time of sale or gift is no longer fit to race. No retired horse is eligible to run in a race under the jurisdiction of the commission.

~~((84))~~ (91) "Revocation." The cancellation of an existing license for a minimum of three hundred sixty-five days and up to an indefinite period of time (e.g., life-time). Individuals revoked are ineligible for a license during the period of revocation. Individuals revoked are banned from all facilities under the jurisdiction of the commission during the period of their revocation.

~~((85))~~ (92) "Ridgling." A male horse with one or both testicles undescended.

~~((86))~~ (93) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

~~((87))~~ (94) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

~~((88))~~ (95) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

~~((89))~~ (96) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

~~((90))~~ (97) "Show." To finish third in a race.

~~((91))~~ (98) "Simulcast." Broadcasting a live race from another racing association for purposes of parimutuel wagering on that race, or sending a broadcast of a live race to another racing association for purposes of parimutuel wagering on that race.

~~((92))~~ (99) "Spouse groom." The spouse of a trainer, licensed by the commission and permitted to perform all the duties of a groom, but is not extended industrial insurance coverage under the horse industry account.

~~((92))~~ (100) "Stake race." A race for which nominations close more than seventy-two hours in advance of its running and for which owners or nominators contribute money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of nomination, entry, or starting fees.

~~((93))~~ (101) "Stallion." A male horse or colt which can be used for breeding purposes.

~~((94))~~ (102) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

~~((95))~~ (103) "Starter."

(a) A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses; or

(b) An official responsible for dispatching the horses from the starting gate.

~~((96))~~ (104) "Starter's list." A list, maintained by the official starter, of horses that have been unruly when loading in the starting gate. Horses on the starter's list are ineligible to enter.

~~((97))~~ (105) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

~~((98))~~ (106) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

~~((99))~~ (107) "Stewards' list." A list, maintained by the stewards, of horses which are ineligible to enter for various reasons, e.g., poor performance, ownership disputes, etc.

~~((100))~~ (108) "Suspension." The temporary loss of license privileges for a specific period of time (not to exceed three hundred sixty-five days), or until specific conditions are met. All suspensions for a specific period of time will be in calendar days; with the exception of riding suspensions, which will be race days. Individuals suspended may be banned from all facilities under the jurisdiction of the commission during the period of their suspension.

~~((101))~~ (109) "Test barn." The enclosure to which selected horses are taken for post race testing.

~~((102))~~ (110) "Tongue tie." Bandage or other apparatus used to tie down a horse's tongue to prevent the tongue from getting over the bit, which can affect the horse's breathing and the jockey's ability to control the horse.

(111) "Trainer." A person who holds a valid trainer's license who has a horse eligible to race under his/her care, custody, or control at the time of entry.

~~((103))~~ (112) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

~~((104))~~ (113) "Turf course." A racing surface comprised of grass.

~~((105))~~ (114) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

~~((106))~~ (115) "Walk over." A race that has only one participant.

~~((107))~~ (116) "Washington bred." A horse that was foaled in the state of Washington.

(117) "Washington race track." A race track licensed and regulated by the commission during the track's licensed race meet and periods of training.

~~((108))~~ (118) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

~~((109))~~ (119) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

~~((110))~~ (120) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

~~((111))~~ (121) "Workout" or "official workout." An exercise at moderate to extreme speed for a predetermined distance of a horse as required in WAC 260-40-105 to make a horse eligible to be entered or run in a race.

WSR 12-24-023

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 28, 2012, 8:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-038.

Title of Rule and Other Identifying Information: WAC 260-32-400, jockey agents, powers and duties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 11, 2013, at 9:30 a.m.

Date of Intended Adoption: January 11, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows jockey agents to have ownership interests in race horses with certain restrictions.

Reasons Supporting Proposal: Allows practices that may be happening under hidden ownerships to occur while maintaining regulatory authority to monitor and restrict activities.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [No information supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

November 28, 2012

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 06-07-065, filed 3/10/06, effective 4/10/06)

WAC 260-32-400 Powers and duties. (1) Each jockey agent (~~shall~~) must be licensed by the commission.

(2) (~~No~~) A jockey agent (~~shall~~) may be the owner or trainer of (~~any~~) a horse under the following conditions:

(a) A jockey agent may only enter one horse that they have an ownership interest in for any overnight race.

(b) A jockey agent may not claim a horse.

(c) A jockey whom the jockey agent represents must ride the horse or no other jockey that the jockey agent represents may compete against the horse.

(3) A jockey agent may represent up to three jockeys.

(4) No jockey agent shall make or assist in making any engagement for any rider other than those he is licensed to represent, without prior approval of the board of stewards, which may be granted for a temporary time period not to exceed ten days.

(5) If a jockey agent is absent for a period of more than ten days, the jockey will be required to engage another jockey agent.

(6) Each jockey agent shall keep, on a form provided by the association, a record by races of all engagements made by him of the riders he is representing. This record must be kept up to date and held ready at all times for the inspection by the stewards.

(7) If any jockey agent gives up the making of engagements for any rider, he/she shall immediately notify the stewards, and he/she shall also turn over to the stewards a list of any unfilled engagements he/she may have made for that rider. A jockey agent may not drop a rider without notifying the board of stewards in writing. The stewards will decide all rival claims for the services of a rider. Jockey agents who fail to honor commitments made are subject to disciplinary action.

WSR 12-24-024

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 28, 2012, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-062.

Title of Rule and Other Identifying Information: WAC 260-70-545 Prohibited practices and 260-84-130 Penalties for prohibited practices.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 11, 2013, at 9:30 a.m.

Date of Intended Adoption: January 11, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by January 8, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 8, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adopts recommended language regarding the use and reporting of any practicing veterinarian and training when using shock wave therapy on a race horse.

Reasons Supporting Proposal: Strengthens the reporting and posting on any race horse in which shock wave therapy has been applied, restricting the time following use when a horse may be entered and changing the penalties associated with violations.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [No information supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

November 28, 2012

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-036, filed 3/12/07, effective 4/12/07)

WAC 260-70-545 Prohibited practices. The following are prohibited practices:

(1) The possession or use of any drug, substance, or medication if the use may endanger the health or welfare of the horse or endanger the safety of the rider, or which may adversely affect the integrity of racing; or

(2) The possession or use of a drug or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food

and Drug Administration (FDA) for any use in human or animal, or any substance forbidden by an official veterinarian.

(3) The possession and/or use of blood doping agents(;) including, but not limited to, those listed below, on the premises of a facility under the jurisdiction of the commission:

- (a) Erythropoietin;
- (b) (~~Darbepoietin~~) Darbepoietin;
- (c) Oxyglobin; and
- (d) Hemopure.

(4) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy unless the following conditions are met:

(a) Any treated horse may not race or train for a minimum of ten days following treatment;

(b) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines may only be used by veterinarians licensed by the commission and only approved machines at a previously disclosed location may be used;

(c) The practicing veterinarian has filed a report with an official veterinarian notifying the commission that an Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machine is on association grounds;

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments are reported to an official veterinarian on the prescribed form not later than twenty-four hours after treatment.

The horse will be added to a list of ineligible horses. This list will be kept in the race office and be posted in an accessible location.

(5) The use of a (~~naso-gastric~~) nasogastric tube (a tube longer than six inches) for the administration of any substance within twenty-four hours prior to the post time of the race in which the horse is entered and without the prior approval of an official veterinarian.

AMENDATORY SECTION (Amending WSR 11-03-053, filed 1/14/11, effective 2/14/11)

WAC 260-84-130 Penalties for prohibited practices.

For a person or persons found to be responsible for violation of WAC 260-70-545, including the treating veterinarian, the following penalties will be assessed:

(1) For violations of WAC 260-70-545, except WAC 260-70-545 (4)(b)(;):

- (a) For first offense - Thirty day suspension and \$1,000 fine;
- (b) For second offense - Sixty day suspension and \$2,000 fine;
- (c) For third offense - One year suspension, \$2,500 fine; and
- (d) For subsequent offense(s) - Revocation of license and a \$2500 fine.

(2) For violations of WAC 260-70-545 (4)(a), the person or persons found to be responsible for the violation, including the treating veterinarian a \$2,500 fine and (~~revocation of license~~) a minimum of a one-year suspension.

WSR 12-24-066

**WITHDRAWAL OF PROPOSED RULES
LIQUOR CONTROL BOARD**

(By the Code Reviser's Office)

[Filed December 4, 2012, 9:51 a.m.]

WAC 314-52-110, proposed by the liquor control board in WSR 12-11-009 appearing in issue 12-11 of the State Register, which was distributed on June 6, 2012, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-24-069

**PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed December 4, 2012, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-18-066 on September 4, 2012.

Title of Rule and Other Identifying Information: WAC 220-56-350 Clams other than razor clams, mussels—Areas and seasons and 220-56-380 Oysters—Areas and seasons.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on February 8-9, 2013, at 8:30 a.m.

Date of Intended Adoption: March 1, 2013.

Submit Written Comments to: Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by February 1, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by February 1, 2013, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: An analysis of clam and oyster survey data, sport harvest projections, and negotiations affecting intertidal treaty and nontreaty fisheries allows for recreational clam and oyster seasons to be opened or extended on some public beaches and requires some beaches to be closed or the seasons shortened. This proposal reflects those openings and closures.

Reasons Supporting Proposal: These amendments will perpetuate shellfish resources while maximizing recreational fishing opportunity and protecting public health.

Statutory Authority for Adoption: RCW 77.04.012 and 77.12.047.

Statute Being Implemented: RCW 77.04.012 and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Childers, 1000 Point Whitney Road, Brinnon, WA 98320, (360) 586-1498; Implementation: James Scott, 1111

Washington Street S.E., Olympia, WA 98504, (360) 902-2736; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule only affects recreational shellfishers.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

December 4, 2012

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 12-31, filed 3/12/12, effective 4/12/12)

WAC 220-56-350 Clams other than razor clams, mussels—Areas and seasons. A person can take, dig for, and possess clams and mussels for personal use on Puget Sound the entire year except from public tidelands at the beaches listed below, which are closed unless otherwise provided.

- (1) Ala Spit: Open May 1 through May 31.
- (2) Alki Park: Closed the entire year.
- (3) Alki Point: Closed the entire year.
- (4) Bay View State Park: Closed the entire year.
- (5) Belfair State Park: Open (~~January~~) April 1 through (~~December 31~~) April 30.
- (6) Brown's Point Lighthouse: Closed the entire year.
- (7) Cama Beach State Park: Closed the entire year.
- (8) Camano Island State Park: Closed the entire year.
- (9) Chuckanut Bay: Closed the entire year.
- (10) Coupeville: Closed the entire year.
- (11) Dash Point State Park: Closed the entire year.
- (12) Dave Mackie County Park: Closed the entire year.
- (13) Des Moines City Park: Closed the entire year.
- (14) Discovery Park: Closed the entire year.
- (15) DNR-79: Closed the entire year.
- (16) DNR-142: Closed the entire year.
- (17) DNR-144 (Sleeper): Closed the entire year.
- (18) Dockton County Park: Closed the entire year.
- (19) Dosewallips State Park: Open (~~March~~) April 1 through (~~October 31~~) August 15 only in area defined by boundary markers and signs posted on the beach.
- (20) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands - Open May 15 through September 30.
- (21) Eagle Creek: Open July 1 through July 31.
- (22) East San de Fuca: Closed the entire year east of the Rolling Hills Glencairn Community dock.
- (23) Fort Flagler State Park including that portion of the spit west of the park boundary (Rat Island): Open May 15 through (~~September 30~~) October 31.
- (24) Fort Ward State Park: Closed the entire year.
- (25) Freeland County Park: Closed the entire year.
- (26) Frye Cove County Park: Open January 1 through May 15.
- (27) Garrison Bay: Tidelands at Guss Island and those tidelands at British camp between the National Park Service dinghy dock at the north end and the park boundary at the south end are closed the entire year.

- (28) Gertrude Island - All tidelands at Gertrude Island closed the entire year.
- (29) Golden Gardens: Closed the entire year.
- (30) Graveyard Spit: Closed the entire year.
- (31) Harrington Beach: Closed the entire year.
- (32) Hoodspport: Tidelands at Hoodspport Salmon Hatchery are closed the entire year.
- (33) Hope Island State Park (South Puget Sound): Open May 1 through May 31.
- (34) Howarth Park: Closed the entire year.
- (35) Illahee State Park: Open April 1 through July 31.
- (36) Kayak Point County Park: Closed the entire year.
- (37) Kitsap Memorial State Park: Closed the entire year.
- (38) Kopachuck State Park: Open June 1 through July 31.
- (39) Liberty Bay - All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed to the harvest of clams the entire year.
- (40) Lincoln Park: Closed the entire year.
- (41) Lions Park (Bremerton): Closed the entire year.
- (42) Little Clam Bay: Closed the entire year.
- (43) Lower Roto Vista Park: Closed the entire year.
- (44) Manchester State Park: Closed the entire year.
- (45) McNeil Island - All tidelands on McNeil Island are closed the entire year.
- (46) Meadowdale County Park: Closed the entire year.
- (47) Mee-Kwa-Mooks Park: Closed the entire year.
- (48) Monroe Landing: Closed the entire year.
- (49) Mukilteo State Park - Closed the entire year.
- (50) Mystery Bay State Park: Open October 1 through April 30.
- (51) Nisqually National Wildlife Refuge: Closed the entire year.
- (52) North Beach County Park: Closed the entire year.
- (53) North Fort Lewis: Closed the entire year.
- (54) North Point Hudson: Closed the entire year.
- (55) Northeast Cultus Bay: Closed the entire year.
- (56) Oak Bay County Park: Open (~~May~~) April 1 through July 31.
- (57) Oak Harbor City Park: Closed the entire year.
- (58) Old Man House State Park: Closed the entire year.
- (59) Olympia Shoal: Closed the entire year.
- (60) Oyster Reserves: Puget Sound and Willapa Bay state oyster reserves are closed the entire year except as follows:
 - (a) North Bay: State-owned oyster reserves open (~~the entire year~~) April 1 through September 15.
 - (b) Oakland Bay: State-owned oyster reserves open the entire year except in areas defined by boundary markers and signs posted on the beach.
 - (c) Willapa Bay - Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59.
- (61) Penrose Point State Park: Open March 1 through May 15.
- (62) Picnic Point County Park: Closed the entire year.
- (63) Pitship Point: Closed the entire year.
- (64) Pitt Island - All tidelands on Pitt Island are closed the entire year.

(65) Pleasant Harbor State Park: Closed the entire year.
 (66) Point Defiance: Closed the entire year.
 (67) Point Whitney (excluding Point Whitney Lagoon): Open March ~~(+)~~ 15 through March 31.
~~((67))~~ (68) Point Whitney Lagoon: Open April 1 through April 30.
~~((68))~~ (69) Port Angeles Coast Guard: Closed the entire year.
~~((69))~~ (70) Port Angeles Harbor: Closed the entire year.
~~((70))~~ (71) Port Gardner: Closed the entire year.
~~((71))~~ (72) Port Townsend Ship Canal/Portage Canal: Open January 1 through ~~(July 31)~~ June 30.
~~((72))~~ (73) Post Point: Closed the entire year.
~~((73))~~ (74) Potlatch DNR tidelands: Open April 1 through June 30.
~~((74))~~ (75) Potlatch State Park: Open April 1 through June 30.
~~((75))~~ (76) Priest Point County Park: Closed the entire year.
~~((76))~~ (77) Purdy Spit County Park: The southern shore of the spit from the boat ramp to the bridge is closed the entire year.
~~((77))~~ (78) Quilcene Bay Tidelands - All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams the entire year, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open April 1 through December 31, daily from official sunrise to official sunset only.
~~((78))~~ (79) Reid Harbor - South Beach: Closed the entire year.
~~((79))~~ (80) Retsil: Closed the entire year.
~~((80))~~ (81) Richmond Beach Saltwater Park: Closed the entire year.
~~((81))~~ (82) Saltwater State Park: Closed the entire year.
~~((82))~~ (83) Samish Beach: Closed the entire year.
~~((83))~~ (84) Scenic Beach State Park: Closed the entire year.
~~((84))~~ (85) Seahurst County Park: Closed the entire year.
~~((85))~~ (86) Semiahmoo: Closed the entire year.
~~((86))~~ (87) Semiahmoo County Park: Closed the entire year.
~~((87))~~ (88) Sequim Bay State Park - Open May 1 through June 30.
~~((88))~~ (89) Shine Tidelands State Park: Open January 1 through May 15.
~~((89))~~ (90) Silverdale Waterfront Park: Closed the entire year.
~~((90))~~ (91) Sinclair Inlet: Closed the entire year.
~~((91))~~ (92) Skagit Wildlife Area: Closed the entire year.
~~((92))~~ (93) South Carkeek Park: Closed the entire year.
~~((93))~~ (94) South Gordon Point: Closed the entire year.
~~((94))~~ (95) South Indian Island County Park: Open ~~(May 15)~~ April 1 through ~~(August 31)~~ June 15.
~~((95))~~ (96) South Mukilteo Park: Closed the entire year.

~~((96))~~ (97) South Oro Bay: Closed the entire year.
~~((97))~~ (98) South Point Wilson (Port Townsend): Closed the entire year.
~~((98))~~ (99) Southworth Ferry Dock: Closed the entire year.
~~((99))~~ (100) Spencer Spit State Park: Open March 1 through July 31.
~~((100))~~ (101) Suquamish (Old Man House): Closed the entire year.
~~((101))~~ (102) Taylor Bay: Closed the entire year.
~~((102))~~ (103) Triton Cove Tidelands: Open ~~(June)~~ July 1 through August 31.
~~((103))~~ (104) Twanoh State Park: Open August 1 through September ~~(30)~~ 15.
~~((104))~~ (105) Walker County Park: Closed the entire year.
~~((105))~~ (106) West Dewatto: DNR Beach 44A open ~~(August)~~ July 1 through September 30.
~~((106))~~ (107) West Pass Access: Closed the entire year.
~~((107))~~ (108) Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and Nahcotta Tidelands Interpretive Site are closed year-round.
~~((108))~~ (109) Wolfe Property State Park: Open January 1 through May 15.
~~((109))~~ (110) Woodard Bay: Closed the entire year.
 A person can take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use in Grays Harbor and Willapa Harbor the entire year, except from state oyster reserves, which are closed to clam digging the entire year.
 A person can take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31.

AMENDATORY SECTION (Amending Order 12-31, filed 3/12/12, effective 4/12/12)

WAC 220-56-380 Oysters—Areas and seasons. A person can take and possess oysters for personal use from public tidelands the entire year except from public tidelands at the beaches listed below, which are closed unless otherwise provided.

- (1) Ala Spit: Open May 1 through May 31.
- (2) Alki Park: Closed the entire year.
- (3) Alki Point: Closed the entire year.
- (4) Bangor: Closed the entire year.
- (5) Bay View State Park: Closed the entire year.
- (6) Brown's Point Lighthouse: Closed the entire year.
- (7) Cama Beach State Park: Closed the entire year.
- (8) Camano Island State Park: Closed the entire year.
- (9) Chuckanut: Closed the entire year.
- (10) Coupeville: Closed the entire year.
- (11) Dash Point State Park: Closed the entire year.
- (12) Dave Mackie County Park: Closed the entire year.
- (13) Des Moines City Park: Closed the entire year.
- (14) Discovery Park: Closed the entire year.
- (15) DNR-79: Closed the entire year.
- (16) DNR-142: Closed the entire year.

- (17) DNR 144 (Sleeper): Closed the entire year.
- (18) Dockton County Park: Closed the entire year.
- (19) Dungeness Spit/National Wildlife Refuge: Open May 15 - September 30.
- (20) East San de Fuca: Closed the entire year east of the Rolling Hills Glencairn Community dock.
- (21) Fort Flagler State Park including that portion of the spit west of the park boundary (Rat Island): Open May 15 through ~~((September 30))~~ October 31.
- (22) Fort Ward State Park: Closed the entire year.
- (23) Freeland County Park: Closed the entire year.
- (24) Frye Cove County Park: Open January 1 through May 15.
- (25) Golden Gardens: Closed the entire year.
- (26) Graveyard Spit: Closed the entire year.
- (27) Harrington Beach: Closed the entire year.
- (28) Hoodspout: Tidelands at the Hoodspout Salmon Hatchery are closed the entire year.
- (29) Hope Island State Park (South Puget Sound): Open May 1 through May 31.
- (30) Howarth Park: Closed the entire year.
- (31) Illahee State Park: Open April 1 through July 31.
- (32) Kayak Point County Park: Closed the entire year.
- (33) Kitsap Memorial State Park: Closed the entire year.
- (34) Kopachuck State Park: Open March 1 through July 31.
- (35) Liberty Bay - All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed to the harvest of oysters the entire year.
- (36) Lincoln Park: Closed the entire year.
- (37) Lions Park (Bremerton): Closed the entire year.
- (38) Little Clam Bay: Closed the entire year.
- (39) Lower Roto Vista Park: Closed the entire year.
- (40) Manchester State Park: Closed the entire year.
- (41) Meadowdale County Park: Closed the entire year.
- (42) Mee-Kwa-Mooks Park: Closed the entire year.
- (43) Monroe Landing: Closed the entire year.
- (44) Mukilteo State Park: Closed the entire year.
- (45) Mystery Bay State Park: Open October 1 through April 30.
- (46) Nisqually National Wildlife Refuge: Closed the entire year.
- (47) North Beach County Park: Closed the entire year.
- (48) North Fort Lewis: Closed the entire year.
- (49) North Point Hudson: Closed the entire year.
- (50) Northeast Cultus Bay: Closed the entire year.
- (51) Oak Bay County Park: Open ~~((May))~~ April 1 through July 31.
- (52) Oak Harbor Beach Park: Closed the entire year.
- (53) Oak Harbor City Park: Closed the entire year.
- (54) Old Man House State Park: Closed the entire year.
- (55) Olympia Shoal: Closed the entire year.
- (56) Oyster Reserves: Puget Sound and Willapa Bay oyster reserves are closed the entire year except the following are open the entire year:
- (a) Oakland Bay - State-owned oyster reserves open the entire years except in areas defined by boundary markers and signs posted on the beach.
- (b) North Bay - State-owned reserves open ~~((the entire year))~~ April 1 through September 15.
- (c) Willapa Bay - Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59.
- ~~((57))~~ (57) Penrose Point State Park: Open March 1 through May 15.
- ~~((58))~~ (58) Picnic Point: Closed the entire year.
- ~~((59))~~ (59) Pitt Island: Closed the entire year.
- ~~((60))~~ (60) Pleasant Harbor State Park: Closed the entire year.
- ~~((61))~~ (61) Point Defiance: Closed the entire year.
- ~~((62))~~ (62) Point Whitney tidelands (excluding Point Whitney Lagoon): Open January 1 through June 30.
- ~~((63))~~ (63) Port Angeles Coast Guard: Closed the entire year.
- ~~((64))~~ (64) Port Angeles Harbor: Closed the entire year.
- ~~((65))~~ (65) Port Gardner: Closed the entire year.
- ~~((66))~~ (66) Port Townsend Ship Canal/Portage Canal: Open January 1 through ~~((July 31))~~ June 30.
- ~~((67))~~ (67) Post Point: Closed the entire year.
- ~~((68))~~ (68) Potlatch DNR Tidelands: Open April 1 through June 30.
- ~~((69))~~ (69) Potlatch State Park: Open April 1 through June 30.
- ~~((70))~~ (70) Priest Point County Park: Closed the entire year.
- ~~((71))~~ (71) Purdy Spit County Park: The southern shore of the spit from the boat ramp to the bridge is closed the entire year.
- ~~((72))~~ (72) Quilcene Bay Tidelands - All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open April 1 through December 31, daily from official sunrise to official sunset, only.
- ~~((73))~~ (73) Reid Harbor - South Beach: Closed the entire year.
- ~~((74))~~ (74) Retsil: Closed the entire year.
- ~~((75))~~ (75) Richmond Beach Saltwater Park: Closed the entire year.
- ~~((76))~~ (76) Saltwater State Park: Closed the entire year.
- ~~((77))~~ (77) Samish Beach: Closed the entire year.
- ~~((78))~~ (78) Seahurst County Park: Closed the entire year.
- ~~((79))~~ (79) Scenic Beach State Park: Closed the entire year.
- ~~((80))~~ (80) Semiahmoo: Closed the entire year.
- ~~((81))~~ (81) Semiahmoo County Park: Closed the entire year.
- ~~((82))~~ (82) Shine Tidelands State Park: Open January 1 through May 15.
- ~~((83))~~ (83) Silverdale Waterfront Park: Closed the entire year.
- ~~((84))~~ (84) Sinclair Inlet: Closed the entire year.
- ~~((85))~~ (85) Skagit Wildlife Area: Closed the entire year.
- ~~((86))~~ (86) South Carkeek Park: Closed the entire year.
- ~~((87))~~ (87) South Gordon Point: Closed the entire year.

~~((87))~~ (88) South Indian Island County Park: Open ~~(May 15)~~ April 1 through ~~(August 31)~~ June 15.

~~((88))~~ (89) South Mukilteo Park: Closed the entire year.

~~((89))~~ (90) South Oro Bay: Closed the entire year.

~~((90))~~ (91) South Point Wilson (Port Townsend): Closed the entire year.

~~((91))~~ (92) Southworth Ferry Dock: Closed the entire year.

~~((92))~~ (93) Spencer Spit State Park: Open March 1 through July 31.

~~((93))~~ (94) Suquamish (Old Man House): Closed the entire year.

~~((94))~~ (95) Taylor Bay: Closed the entire year.

~~((95))~~ (96) Walker County Park: Closed the entire year.

~~((96))~~ (97) West Pass Access: Closed the entire year.

~~((97))~~ (98) Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and the Nahcotta Tidelands Interpretive Site are open only between boundary markers and posted signs.

~~((98))~~ (99) Woodard Bay: Closed the entire year.

~~((99))~~ (100) Wolfe Property State Park: Open January 1 through May 15.

WSR 12-24-076

PROPOSED RULES

SECRETARY OF STATE

(E-Recording Standards Commission)

[Filed December 4, 2012, 3:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-06-068.

Title of Rule and Other Identifying Information: Real property electronic recording, the eRecording standards commission established under RCW 65.24.040 develops recommendations for rules necessary to implement the Uniform Real Property Electronic Records Act (chapter 65.24 RCW).

Hearing Location(s): Washington State Archives, Conference Room, 1129 Washington Street S.E., Olympia, WA 98504, on January 8, 2013, at 10:00 a.m.

Date of Intended Adoption: January 9, 2013.

Submit Written Comments to: Jerry Handfield, Washington State Archivist, 1129 Washington Street S.E., Olympia, WA 98504-0228, e-mail jerry.handfield@sos.wa.gov, fax (360) 586-0368, by January 8, 2013.

Assistance for Persons with Disabilities: Contact Julie Blecha by January 7, 2013, e-mail recordsmanagement@sos.wa.gov, or fax (360) 586-0368.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules implement new law passed in 2008, Uniform Real Property Electronic Records Act (chapter 65.24 RCW).

Statutory Authority for Adoption: Chapter 65.24 RCW.

Statute Being Implemented: RCW 65.24.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of the secretary of state, Washington state archives, governmental.

Name of Agency Personnel Responsible for Drafting: Julie Blecha, 1129 Washington Street S.E., Olympia, WA 98504, (360) 586-4902; Implementation: Jerry Handfield, 1129 Washington Street S.E., Olympia, WA 98504, (360) 586-2666; and Enforcement: Kyle Crews, AAG, 1125 Washington Street S.E., Olympia, WA 98504, (360) 664-2510.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting Washington state statutes by reference without material change and do not require a cost-benefit analysis per RCW 34.05.328 (5)(b)(iii).

November 30, 2012

Steve Excell

Assistant Secretary of State

Chapter 434-661 WAC

REAL PROPERTY ELECTRONIC RECORDING

ELECTRONIC RECORDING STANDARDS

NEW SECTION

WAC 434-661-010 General purpose. (1) This rule prescribes standards for electronic recording of real property documents in those Washington counties in which the county recording officer elects to accept electronic real property documents for recordation.

(2) These standards are based on recommendations of the Washington state electronic recording standards commission and promulgated by the secretary of state pursuant to chapter 65.24 RCW, Uniform Real Property Electronic Recording Act.

NEW SECTION

WAC 434-661-020 Definitions. For the purpose of this chapter:

(1) "Delivery package" means a document, group of documents, related or unrelated, bundled into a single entity for electronic transfer.

(2) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium, is retrievable in perceivable form, and is eligible to be recorded in the land records maintained by the county recording officer.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Electronic document" means a document that is received or sent by the recording officer in an electronic form.

(5) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a

document and executed or adopted by a person with the intent to sign the document.

(6) "Electronic notarization" means a notarial act performed in accordance with chapter 42.44 RCW and chapter 308-30 WAC by a notary public, appointed by the Washington state department of licensing, who provides notarial acts using electronic interface.

(7) "Electronic recording standards commission" or "eRecording standards commission" or "ERSC" means the body of stakeholders appointed by the secretary of state to review electronic recording standards and make recommendations to the secretary in accordance with RCW 65.24.040.

(8) "eRecording" means electronic recording of real property documents.

(9) "Metadata" means data describing other data to facilitate the understanding, use, and management of that data.

(10) "Open architecture" means computer architecture or software architecture that employs specifications that are open to the public to allow for adding, upgrading and exchange of components produced by a broad range of manufacturers.

(11) "PDF (portable document format)" means the file format originally created by Adobe Systems for document exchange allowing documents to be viewed as they were intended to appear. PDFs are a common format for image exchange or world wide web presentation.

(12) "Recording" means making a matter of record in the office of the recording officer in accordance with RCW 65.04.030.

(13) "Recording officer" means the county auditor or other official county recording officer.

(14) "TIFF" (tagged image file format) means the variable-resolution bitmapped image format originally developed by the Aldus Corporation (now part of Adobe Systems) and published as ISO 12639:2004, Graphic technology-Prepress digital data exchange-Tag image file format for image technology (TIFF/IT). TIFF is a common format for high-quality black and white, gray-scaled, or color graphics of any resolution and is made up of individual dots or pixels.

(15) "URPERA (Uniform Real Property Electronic Recording Act)" means the body of recommended legislation released in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. URPERA authorizes recording officers to accept electronic documents for recording in accordance with established standards. Washington state adopted a modified version of URPERA in 2008 (chapter 65.24 RCW).

(16) "Washington state archives" means the office of the secretary of state, division of archives and records management.

(17) "Web portal (gateway)" means a site that functions as a point of access to information or services on the world wide web.

(18) "XML (extensible markup language)" means an extensible document language for specifying document content. XML is not a predefined markup language but a meta-language (a language for describing other languages) allowing the user to specify a document type definition (DTD) and design customized markup languages for different classes of documents.

NEW SECTION

WAC 434-661-030 Washington real property electronic recording standards. (1) Technical standards and implementation guidelines.

(a) Electronic recording of real property documents shall meet technical standards for document formatting and document data fields and follow implementation guidelines as prescribed by the Property Records Industry Association (PRIA) which are hereby incorporated by reference, made a part of this rule, and listed below:

- (i) PRIA Request Version 2.4.2, August 2007;
- (ii) PRIA Response Version 2.4.2, August 2007;
- (iii) Document Version 2.4.1, October 2007;
- (iv) Notary Version 2.4.1, October 2007;
- (v) eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007;
- (vi) URPERA Enactment and eRecording Standards Implementation Guide, December 2005.

These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560, and at <http://www.pria.us/>.

(b) eRecording shall be offered and conducted in accordance with the models of submission described in the URPERA Enactment and eRecording Standards Implementation Guide, Section 2.3, eRecording Models.

(c) Each recording officer who accepts documents for eRecording shall provide open architecture for reception of electronic documents. All reception software, including web portals, must support PRIA eRecording SML Implementation Guide for Version 2.4.1 standards.

(2) Web portals.

(a) The world wide web will be the most common delivery medium for electronic documents.

(b) A document delivered over the web should provide a minimum amount of information in the delivery package sufficient to identify and authenticate the sender to the recording officer, while also itemizing the contents of the package.

(c) Payment processing, if supplied at the portal, shall comply with the 2012 NACHA Operating Rules & Guidelines, which is hereby incorporated by reference and made a part of this rule. This publication is available from NACHA: The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, VA 20171, and at <http://www.nacha.org/>. The recording officer and portal provider shall determine the portal's payment processing capabilities, and each recording officer shall designate approved methods of payment, which may include credit cards, ACH (automated clearing house), escrow accounts, electronic checks, or other methods.

(3) **Business rules.** Recording officers shall establish and publish business rules that govern how eRecording will be conducted. The business rules may be in electronic or hard copy format and may appear on a portal or the recording officer web site. The transmitting parties' electronic acknowledgment of acceptance of the terms of the business rules is acceptable. The business rules must cover the following items:

- (a) Memorandum of understanding or contract;
- (b) Defined technical specifications;
- (c) Document formatting and indexing specifications;

- (d) Hours of operations and processing schedules;
- (e) Payment options;
- (f) Termination terms;
- (g) Document rejection rights;
- (h) Statement that any amendments and/or alterations to the business rules will be published with adequate notice before taking effect;
- (i) Statement clarifying the liability of the recording offices.

(4) Security.

(a) All electronic documents must be secured in such a way that both the transmitting and receiving parties are assured of each other's identity and that no unauthorized party can view or alter the electronic document during transmission, processing, and delivery. If followed through the entire electronic document process of execution through recording, the security measures identified in chapter 6 of the eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007, satisfy this requirement.

(b) Each recording officer who elects to accept electronic real property documents for recordation shall implement reasonable measures such that each electronic document accepted for recordation is protected from alteration and unauthorized access.

(5) **Electronic signatures.** Recording officers are only required to accept electronic signatures that they have the technology to support. Recording officers have no responsibility to authenticate electronic signatures embedded within the body of the document.

(6) **Notarizations.** Pursuant to chapter 65.24 RCW, notarizations must:

(a) Be performed by a notary public who has been appointed by the Washington state department of licensing in accordance with chapter 43.44 RCW; and

(b) Comply with all requirements for performing a notarial act as found in chapter 42.44 RCW and chapter 308-30 WAC, as amended from time to time, except that in the case of an electronic notarization, an impression of the official seal or stamp is not required.

Recording officers have no responsibility for verifying or authenticating notary signatures and acknowledgments.

(7) **File formats for eRecording.** The electronic recording standards commission recommends that electronic recordings be converted to (if necessary) and preserved as image files along with their associated metadata. If submissions are accepted in XHTML (extensible hypertext markup language) format, they shall be converted to a digital image until the viability of preserving these eRecordings in their native format has been demonstrated. Document images should be submitted as defined in WAC 434-663-305 and meet all state requirements for recorded instruments as defined in RCW 65.04.045.

(8) **Records retention and preservation.** Recording officers must not destroy public records, including electronic records, without the approval of the local records committee, in accordance with RCW 40.14.070.

Recording officers must retain electronic public records in electronic format such that the records remain usable, searchable, retrievable, and authentic for the length of the

designated retention period in accordance with WAC 434-662-040.

The local records committee has approved the local government common records retention schedule (CORE) and the county auditor records retention schedule authorizing the minimum retention periods for recording officer records, and designating those records with enduring value as "archival."

Recording officers may transfer public records designated as "archival," including electronic records, to Washington state archives for preservation and for facilitating public access to the records.

(9) **Payment of recording fees.** Electronic payment of recording fees and excise tax, where applicable, shall be collected by the county agency responsible for such as prescribed in accordance with Washington state law and accepted industry standards without incurring unreasonable electronic processing fees.

ELECTRONIC RECORDING STANDARDS COMMISSION

NEW SECTION

WAC 434-661-100 Electronic recording standards commission. The electronic recording standards commission is established in accordance with RCW 65.24.040.

NEW SECTION

WAC 434-661-110 Purpose. The purpose of the electronic recording standards commission is to advise the secretary of state in the following areas:

(1) Rules necessary to implement the Uniform Real Property Electronic Recording Act (URPERA);

(2) Standards and practices affecting electronic recording in this state and other jurisdictions that enact URPERA to keep the technology used by recording officers in this state compatible with technology used by recording offices in other jurisdictions that enact URPERA, including:

(a) Standards adopted by national standard-setting bodies, such as the property records industry association;

(b) The views of interested persons and governmental officials and entities;

(c) The needs of counties of varying size, population and resources; and

(d) Standards requiring adequate information-security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering;

(3) Emerging issues and trends affecting electronic recording which may necessitate amendments to or repeal of published standards;

(4) Other related issues at the request of the secretary of state.

NEW SECTION

WAC 434-661-120 Membership. (1) The commission will consist of at least seven and no more than thirteen members chosen by the secretary of state to represent a range of recording offices by size, geographic regions of the state, and general expertise in electronic recording. A majority of the

commission must be county auditors, and other members may include assessors, treasurers, the state archivist, land title company representatives, escrow agents, mortgage brokers, or any other party the secretary of state deems appropriate. The commission will elect a chairperson from its members.

(2) Members serve at the pleasure of the secretary of state. Terms are two or three years, and there are no limits to how long a member can serve. Vacancies will be filled by the secretary of state upon notice of a vacancy from the member.

NEW SECTION

WAC 434-661-130 Meetings. Commission meetings will take place at least once a year and may occur at the annual Washington state association of county auditors recording conference. Additional meetings may be called by the secretary of state or the commission. All meeting dates and times will be posted on the secretary of state's web page.

NEW SECTION

WAC 434-661-140 Quorum. A simple majority of the regularly appointed commission members constitute a quorum. If seven positions are filled, the quorum is four.

NEW SECTION

WAC 434-661-150 Compensation. Commission members are not compensated for their service, but may be reimbursed for expenses incurred in the conduct of their official duties. Reimbursement is at current state rates for travel and all reimbursement requests must be received within thirty days of incurring the expense.

NEW SECTION

WAC 434-661-160 Retention of records. The state archivist will act as secretary for the commission and will ensure the retention and lawful disposition of records of the commission in accordance with chapter 40.14 RCW.

WSR 12-24-080

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 5, 2012, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-060.

Title of Rule and Other Identifying Information: Chapter 16-657 WAC, Retail pricing of motor and heating fuel, the department is proposing to repeal this entire chapter and move still relevant sections to chapter 16-662 WAC, Weights and measures—National handbooks.

Hearing Location(s): Washington State Department of Agriculture (WSDA), 1111 Washington Street S.E., 2nd Floor, Room 259, Olympia, WA 98504-2560, on January 9, 2013, at 10:00 a.m.

Date of Intended Adoption: January 11, 2013.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by January 9, 2013.

Assistance for Persons with Disabilities: Contact Henri Gonzales by January 2, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this chapter is to regulate the sale of retail motor fuel and home heating products and dispensers. There are five sections in the existing rule; two of the sections are outdated and obsolete, and one section is redundant, as it is appropriately addressed in chapter 16-662 WAC, Weights and measures—National handbooks, already. The remaining two sections of the chapter are proposed to be moved to chapter 16-662 WAC during a rule-making process that will run concurrently with this one.

Reasons Supporting Proposal: The entire rule with the exception of WAC 16-657-001 and 16-657-025 is outdated or already addressed elsewhere in regulation. The two sections that are still relevant are being updated and moved to chapter 16-662 WAC.

Statutory Authority for Adoption: RCW 19.94.190 and chapter 34.05 RCW.

Statute Being Implemented: RCW 19.94.190.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry Buendel, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No new costs will be incurred as a result of repealing the chapter and moving two of the sections, with minimal clarifying changes, into chapter 16-662 WAC.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05-328 (5)(a)(i).

December 5, 2012

Mary A. Martin Toohey

Assistant Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-657-001	Retail sales of motor fuels and home heating products.
WAC 16-657-010	Compliance schedule for retail motor fuel and home heating products dispensers.
WAC 16-657-025	Posting of motor fuel prices—Cash and credit sales.
WAC 16-657-030	Interim retail sales of home heating products.

WAC 16-657-040 Posting of alcohol blend gasolines.

WSR 12-24-081

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 5, 2012, 8:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-059.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National handbooks, the department is proposing to:

(1) Amend the existing rule to adopt, in whole or in part, the 2013 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195; NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality); and NIST Handbook 133 (Checking the Net Contents of Packaged Goods);

(2) Adopt the most recent version of NIST Handbook 105-1 through 8, which incorporates specifications and tolerances for metrology calibration;

(3) Move some of the existing requirements from chapter 16-657 WAC into chapter 16-662 WAC. Other provisions of chapter 16-657 WAC are proposed for repeal in a concurrent rule-making action; and

(4) Adopt modifications to the existing text to increase rule clarity and readability, and to conform to current industry and regulatory standards.

Hearing Location(s): Washington State Department of Agriculture (WSDA), 1111 Washington Street S.E., 2nd Floor, Room 259, Olympia, WA 98504-2560, on January 9, 2013, at 10:00 a.m.

Date of Intended Adoption: January 11, 2013.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by January 9, 2013.

Assistance for Persons with Disabilities: Contact Henri Gonzales by January 2, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 19.94.195 requires that the most current version of NIST Handbook 44 be adopted, in whole or in part. The department adopts the current version of NIST Handbook 44 with modifications, NIST Handbook 130 with modifications, and NIST Handbook 133 in order to maintain uniformity with other states where appropriate. For uniformity with national standards, the department follows provisions of NIST Handbook 105-1 through 8 in activities of its metrology laboratory. The proposal to add NIST Handbook 105 to the rule acknowledges this longstanding practice. Portions of existing chapter 16-657 WAC appear to be obsolete and are proposed for repeal in a concurrent rule-making process. To increase rule clarity and ease of stakeholder access, the department proposes that the remaining requirements in the existing chapter 16-657 WAC be moved to chapter 16-662 WAC.

Reasons Supporting Proposal: The purpose of this chapter is to establish requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and that are in effect in other states. The department is proposing to adopt the most recent version of NIST Handbook 44 (with modifications), 105, 130 (with modifications), and 133. The NIST handbooks are national consensus codes that establish industry standards for weighing and measuring devices, legal metrology, engine fuel quality, net contents of packaged goods, and specifications and tolerances for reference standards and field standard weights and measures. The department adopts these handbooks in order to maintain uniformity with other states where appropriate.

Statutory Authority for Adoption: RCW 19.94.190, 19.112.020, 19.112.140, and chapter 34.05 RCW.

Statute Being Implemented: RCW 19.94.190, 19.112.020, and 19.112.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry Buendel, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on small businesses in a regulated industry. WSDA has determined that WSDA-regulated small businesses may be impacted, but costs are not considered more than minor. WSDA has determined that an SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

December 5, 2012

Mary A. Martin Toohey
Assistant Director

Chapter 16-662 WAC

WEIGHTS AND MEASURES—NATIONAL HANDBOOKS AND RETAIL SALE OF MOTOR FUEL

AMENDATORY SECTION (Amending WSR 12-02-021, filed 12/28/11, effective 1/28/12)

WAC 16-662-100 Purpose. (1) This chapter establishes requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and ~~((that are in effect in other states))~~ published by the National Institute of Standards and Technology (NIST). This chapter also establishes requirements for the retail sale and advertising of motor fuel.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices

addressed in ~~((the National Institute of Standards and Technology (NIST)))~~ *NIST Handbook 44*;

(b) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

(c) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

(d) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*;

(e) Uniform examination procedure for price verification addressed in *NIST Handbook 130*; ~~((and))~~

(f) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*;

(g) Specifications and tolerances for reference standards and field standard weights and measures addressed in the *NIST Handbook 105* series; and

(h) Requirements for the retail sale and advertising of motor fuel.

(3)(a) *NIST Handbook 44*, *NIST Handbook 130* ~~((and))~~, *NIST Handbook 133*, and *NIST Handbooks 105* may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 ~~((They))~~ and are ~~((also))~~ available on the National Institute of Standards and Technology web site at <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm>.

(b) For information regarding the contents and application of these publications, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail wts&measures@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 12-08-041, filed 3/30/12, effective 4/30/12)

WAC 16-662-105 Standards adopted by the Washington state department of agriculture (WSDA). Except as otherwise modified in this chapter, the WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((2011)) <u>2013</u> Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>
(2) The procedures for checking the accuracy of the net contents of packaged goods	((2011)) <u>2013</u> Edition of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>

National standard for:	Contained in the:
(3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((2012)) <u>2013</u> Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> . Specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2012)) <u>2013</u> Edition.
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2012)) <u>2013</u> Edition.
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2012)) <u>2013</u> Edition.
(d) Definitions; standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2012)) <u>2013</u> Edition.
<u>(4) Specifications and tolerances for reference standards and field standard weights and measures</u>	<i>NIST Handbook 105-1, Specifications and Tolerances for Field Standard Weights (NIST Class F) - 1990;</i>
	<i>NIST Handbook 105-2, Specifications and Tolerances for Field Standard Measuring Flasks - 1996;</i>
	<i>NIST Handbook 105-3, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards - 2010;</i>

National standard for:	Contained in the:
	<u><i>NIST Handbook 105-4, Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers - 2010;</i></u>
	<u><i>NIST Handbook 105-5, Specifications and Tolerances for Field Standard Stopwatches - 1997;</i></u>
	<u><i>NIST Handbook 105-6, Specifications and Tolerances for Thermometers - 1997;</i></u>
	<u><i>NIST Handbook 105-7, Specifications and Tolerances for Dynamic Small Volume Provers - 1997;</i></u>
	<u><i>NIST Handbook 105-8, Specifications and Tolerances for Field Standard Weight Carts - 2003.</i></u>

AMENDATORY SECTION (Amending WSR 12-02-021, filed 12/28/11, effective 1/28/12)

WAC 16-662-110 Modifications to NIST Handbook 44. The WSDA adopts the following modifications to *NIST Handbook 44*, which is identified in WAC 16-662-105(1):

Modified Section:	Modification:
<u><i>NIST Handbook 44, 2013 Edition, Section 3-30, Liquid-Measuring Devices</i></u>	<u>The standards and specifications in <i>NIST Handbook 44, 2012 Edition Section 3-30. Liquid-Measuring Devices</i> will be used instead of the 2013 edition.</u>
<u><i>NIST Handbook 44, 2013 Edition, General Code: Section G-UR.4.1. Maintenance of Equipment</i></u>	In the last sentence of G-UR.4.1., Maintenance of Equipment, change the words "device user" to "device owner or operator." As a result of this modification, the last sentence of G-UR.4.1. will read: "Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator (see also Introduction, Section Q) shall not be considered "maintained in a proper operating condition.""
<u><i>NIST Handbook 44, 2012 Edition, Liquid-Measuring Devices: Section S.1.6.4.1. Unit Price</i></u>	At the end of the first sentence of S.1.6.4.1.(b), Unit Price, add the words "or after prepayment for the product but prior to its delivery." As a result of this modification, the sentence will read: "Whenever a grade, brand, blend, or mixture is offered for sale from a device at more than one unit price, then all of the unit prices at which that product is offered for sale shall be displayed or shall be capable of being displayed on the dispenser using controls available to the customer prior to the delivery of the product or after prepayment for the product but prior to its delivery."

AMENDATORY SECTION (Amending WSR 12-08-041, filed 3/30/12, effective 4/30/12)

WAC 16-662-115 Modifications to NIST Handbook 130. The WSDA adopts the following modifications to the listed sections of the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
(1) Section 2.20.1. Method of Retail Sale	Modify section 2.20.1. Method of Retail Sale. Type of Oxygenate must be Disclosed, to read: "All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.)"
(2) Section 2.20.2. Documentation for Dispenser Labeling Purposes	Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: "At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."
(3) Section 2.23. Animal Bedding	Add a new subsection which reads: "2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof."
(4) Section 2.31.2. Labeling of Retail Dispensers	Add a new subsection which reads: "2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel."" Add a new subsection which reads: "2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend)."
(5) Section 2.31.4. Exemption	Delete section 2.31.4.

The WSDA adopts the following modifications to the listed sections of the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
(1) Section ((2.1.3.)) 2.1.2. Gasoline-Ethanol Blends	Modify section ((2.1.3.)) 2.1.2. to read: "When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and either: (a) The base gasoline used for blending with ethanol shall meet the requirements of ASTM D4814; except that the base gasoline shall meet the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class as follows:

Modified Section:	Modification:
	<p>(1) Class 1 shall be 60°C (140°F) (2) Class 2 shall be 56°C (133°F) (3) Class 3 shall be 51°C (124°F) (4) Class 4 shall be 47°C (116°F) (5) Class 5 shall be 41°C (105°F)</p> <p>or</p> <p>(b) The blend shall meet the requirements of ASTM D4814."</p> <p>Add a new subsection to read: "(2.1.3.1.) <u>2.1.2.1.</u> Maximum Vapor Pressure. The maximum vapor pressure of a gasoline-ethanol blend shall not exceed ASTM D4814 limits by more than 1.0 psi for:</p> <p>(a) Only 9 to 10 volume percent ethanol blends from June 1 through September 15. (b) All blends of 1 to 10 volume percent ethanol from September 16 through May 31."</p>
(2) Section 2.12. Motor Oil	Delete section 2.12.
(3) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
(4) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
(5) Section 3.2.6. Method of Retail Sale	<p>Modify section 3.2.6. to read: "Type of Oxygenate must be Disclosed. All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)."</p>
(6) Section 3.2.7. Documentation for Dispenser Labeling Purposes	<p>Modify section 3.2.7. to read: "The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."</p>

Modified Section:	Modification:
(7) Section 3.8.2. Labeling Requirements	Add a new subsection which reads: "(c) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)."
(8) Section 3.9.2. Retail Dispenser Labeling	Add a new subsection which reads: "(c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol.)"
(9) Section 3.13. Oil	Delete section 3.13.
(10) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.
(11) Section 3.15.2. Labeling of Retail Dispensers	Add a new subsection which reads: "3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel."" Add a new subsection which reads: "3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend)."
(12) Section 3.15.4. Exemption	Delete section 3.15.4.

NEW SECTION

WAC 16-662-140 Retail sales of motor fuels. All devices used for retail motor fuel sales shall:

- (1) Display the price per gallon or price per liter as set forth in *NIST Handbook 44* adopted under this chapter;
- (2) Indicate the amount of fuel delivered during a single retail transaction as set forth in *NIST Handbook 44* adopted under this chapter;
- (3) Compute and display the selling price per unit as set forth in *NIST Handbook 44* adopted under this chapter;
- (4) Compute and display the total selling price for a single retail transaction as set forth in *NIST Handbook 44* adopted under this chapter; and
- (5) Provide a receipt for retail transactions as set forth in *NIST Handbook 44* adopted under this chapter.

NEW SECTION

WAC 16-662-145 Posting of motor fuel prices—Cash and credit sales. The following rules apply to the posting of prices of retail sales of motor fuels. As used herein, motor fuel means any fuel used in motor vehicles including, but not limited to, gasoline, diesel, propane, and alcohol-gasoline blends. As used herein, motor vehicles shall include all wheeled motorized vehicles, and all boats and airplanes.

- (1) The posted or advertised price of motor fuel at retail outlets must be available to all consumers. The grade of fuel and any condition or qualification required to obtain the posted price must be clearly displayed in letters of contrasting color at least one-half the size of the posted price and immediately adjacent thereto.
- (2) A cash price may be posted or advertised if the posting of the price clearly shows it to be limited to cash pur-

chases. The information shall be in letters at least one-half the size of the posted price and immediately adjacent thereto.

- (3) Cash and credit sales. If a retailer elects to establish separate islands or individual dispensers for cash and credit sales, the islands or dispensers shall be clearly marked as such in letters at least six inches in height and of proportional width.
- (4) Posted prices of motor fuels at retail outlets shall include all federal, state, and local taxes.

WSR 12-24-082
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed December 5, 2012, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-18-066.

Title of Rule and Other Identifying Information: Moving and nonmoving traffic violations defined, WAC 308-104-160.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507, (check in at counter on first floor), on January 9, 2013, at 3:00 p.m.

Date of Intended Adoption: January 10, 2013.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by January 8, 2013.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by January 8, 2013, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update WAC

308-104-160 to provide a definition for "moving violations" and "nonmoving violations" for purposes of RCW 46.20.-2891, 46.65.020, and chapter 308-104 WAC.

Reasons Supporting Proposal: Required by chapter 82, Laws of 2012.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.2891, 46.20.291, and 46.65.020.

Statute Being Implemented: RCW 46.20.2891.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule does not regulate or impact business activities.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

December 5, 2012

Damon Monroe
Rules Coordinator

Moving Violations

AMENDATORY SECTION (Amending WSR 00-18-070, filed 9/1/00, effective 10/2/00)

WAC 308-104-160 Moving and nonmoving violations defined. ((A "nonmoving violation" as used in)) For purposes of RCW 46.20.2891, 46.65.020, and this chapter, the term "moving violation" means any violation of vehicle laws listed in this section that is committed by the driver of a vehicle, while the vehicle is moving. However, being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is also considered a moving violation for the purposes of this section. Parking violations, equipment violations or paperwork violations relating to insurance, registration, licensing and inspection are considered "nonmoving violations." ((shall mean any violation or traffic infraction in Title 46 RCW, other than those)) Moving violations are those violations included in the following list or violations of substantially similar laws, administrative regulations, local laws, ordinances, regulations, or resolutions of a political subdivision of this state, the federal government, or any other state:

(1) Driving while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502;

(2) Physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.504;

(3) Vehicular homicide, as defined by RCW 46.61.520;

(4) Vehicular assault, as defined by RCW 46.61.522;

(5) Reckless driving, as defined by RCW 46.61.500;

(6) Racing, as defined by RCW 46.61.530;

(7) Embracing, as defined by RCW 46.61.665;

(8) Hit and run (injury, death, striking the body of a deceased person, or occupied vehicle), as defined by RCW 46.52.020;

(9) Attempting to elude a police vehicle, as defined by RCW 46.61.024;

(10) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.342, 46.20.345, or 46.20.-394((~~or 46.20.420~~));

(11) Reckless endangerment of roadway workers, as defined in RCW 46.61.527;

(12) Driver under twenty-one driving or being in physical control of a motor vehicle after consuming alcohol, as defined in RCW 46.61.503;

(13) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;

(14) Open container violation (driver), as defined by RCW 46.61.519;

(15) Negligent driving in the first degree, as defined by RCW 46.61.5249;

(16) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;

(17) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;

(18) Disobey road sign, as defined by RCW 46.61.050, ((and)) 46.61.070, or 46.61.450;

(19) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.015, 46.61.020, 46.61.021, or 46.61.-022;

(20) Disobey school patrol, as defined by RCW 46.61.-385;

(21) Speed too fast for conditions, as defined by RCW 46.61.400;

(22) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;

(23) Speeding in a school zone, as defined by RCW 46.61.440;

(24) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;

(25) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;

(26) Failure to keep to the right, as defined by RCW 46.61.100 or 46.61.105;

(27) Wrong way on a one-way street or rotary traffic island, as defined by RCW 46.61.135;

(28) Improper lane change or travel, as defined by RCW 46.61.140;

(29) Straddling or driving over centerline, as defined by RCW 46.61.140;

(30) Driving on the wrong side of the road, as defined by RCW 46.61.150;

(31) Crossing divider, as defined by RCW 46.61.150;

(32) Improper entrance to or exit from freeway, as defined by RCW 46.61.155;

(33) Violating restrictions on a limited access highway while driving a motor vehicle, as defined by RCW 46.61.160;

~~((34))~~ (34) High occupancy vehicle lane violation, as defined by RCW 46.61.165;

~~((34))~~ (35) Improper overtaking or passing, as defined by RCW 46.61.110, 46.61.115, 46.61.120, 46.61.125, ~~((35))~~ 46.61.130, or 46.61.428;

~~((35))~~ (36) Passing stopped school bus, as defined by RCW 46.61.370;

~~((36))~~ (37) Passing stopped private carrier bus, as defined by RCW 46.61.375;

~~((37))~~ (38) Following ~~((38))~~ too closely, as defined by RCW 46.61.145;

~~((38))~~ (39) Following fire apparatus, as defined by RCW 46.61.635;

~~((39))~~ (40) Crossing fire hose, as defined by RCW 46.61.640;

~~((40))~~ (41) Driving on sidewalk, as defined by RCW 46.61.606;

~~((41))~~ (42) Driving through safety zone, as defined by RCW 46.61.260;

~~((42))~~ (43) Driving with wheels off roadway, as defined by RCW 46.61.670;

~~((43))~~ (44) Impeding traffic, as defined by RCW 46.61.100, 46.61.425, or 46.20.427;

~~((44))~~ (45) Improper turn, as defined by RCW 46.61.290;

~~((45))~~ (46) Prohibited turn, as defined by RCW 46.61.295;

~~((46))~~ (47) Failure to signal or improper signal, as defined by RCW 46.61.305, 46.61.310, or 46.61.315;

~~((47))~~ (48) Improper backing, as defined by RCW 46.61.605;

~~((48))~~ (49) Unlawful operation of motorcycle on roadway, as defined by RCW 46.61.608, ~~46.61.612,~~ or 46.61.614;

~~((49))~~ (50) Reckless endangerment, as defined by RCW 9A.36.050;

~~((50))~~ (51) Failure to maintain control, as defined by RCW 46.61.445;

~~((51))~~ (52) Violation of license restriction(s), as defined by RCW 46.20.041 or 46.20.740;

~~((52))~~ (53) Violation of instruction permit restrictions, as defined by RCW 46.20.055;

~~((53))~~ (54) Violation of out-of-service order, as defined by RCW 46.25.090;

~~((54))~~ (55) Obstructed vision or control, as defined by RCW 46.61.615;

~~((55))~~ (56) Carrying persons or animals outside of vehicle, as defined by RCW 46.61.660;

~~((56))~~ (57) Carrying passenger in towed vehicle, as defined by RCW 46.61.625;

~~((57))~~ (58) Coasting on downgrade, as defined by RCW 46.61.630;

~~((58))~~ (59) Violation of child restraint requirements, as defined by RCW 46.61.687;

~~((59))~~ (60) Carrying child under the age of five years old on motorcycle, as defined by RCW 46.37.530;

~~((60))~~ (61) Carrying passenger improperly on motorcycle, as defined by RCW 46.61.610;

~~((61))~~ (62) No helmet, goggles, mirrors, windshield or face shield, as defined by RCW 46.37.530;

~~((62))~~ (62) Motorcycle handlebars above maximum height, as defined by RCW 46.61.611;

(63) Operating moped on freeway or sidewalk, as defined by RCW 46.61.710;

(64) ~~(Illegal, improper, defective, or missing vehicle equipment, as defined by RCW 46.37.010;~~

(65) Driving without lights, as defined by RCW 46.37.020;

~~((66))~~ (65) Failure to dim lights, as defined by RCW 46.37.230;

~~((67))~~ (66) Operating motorcycle without lights, as defined by RCW 46.37.522;

~~((68))~~ (67) No lamp, reflector, or flag on extended load, as defined by RCW 46.37.140;

~~((69))~~ (68) ~~Unnecessary noise, as defined by RCW 46.37.380;~~

~~((70))~~ (68) Wearing earphones or viewing television in vehicle, as defined by RCW 46.37.480;

~~((71))~~ (69) ~~Permitting illegal vehicle operation, as defined by RCW 46.20.343 or 46.61.675;~~

~~((72))~~ (69) Failure to secure load, as defined by RCW 46.37.490;

~~((73))~~ (70) Spilling load, as defined by RCW 46.61.655; and

~~((74))~~ (71) Improper towing, as defined by RCW 46.44.070.

WSR 12-24-088

PROPOSED RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed December 5, 2012, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-060.

Title of Rule and Other Identifying Information: WAC 182-502-0010 When the medicaid agency enrolls, 182-502-0012 When the department does not enroll, 182-502-0014 Review and consideration of an applicant's history, 182-502-0016 Continuing requirements, and 182-502-0020 Health care record requirements.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on January 8, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 9, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on January 8, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by January 1, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending current rules and implementing new rules on provider screening and enrollment in response to the Patient Protection and Affordable Care Act.

Reasons Supporting Proposal: Implementation of these rules is required by federal law and required to maintain federally delegated or authorized programs.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: 42 C.F.R. 455.

Rule is necessary because of federal law, 42 C.F.R. 455.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting:

Jason R. P. Crabbe, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1346; Implementation and Enforcement: George Wagner, P.O. Box 45505, Olympia, WA 98504-5505, (360) 725-1455.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules are exempt from [a] small business economic impact statement per RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

December 5, 2012
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-15-015, filed 7/10/12, effective 9/1/12)

WAC 182-502-0010 When the medicaid agency enrolls. (1) Nothing in this chapter obligates the medicaid agency to enroll any eligible health care professional, health care entity, supplier or contractor of service who requests enrollment.

(2) To enroll as a provider with the ~~((medicaid))~~ agency, a health care professional, health care entity, supplier or contractor of service must, on the date of application:

(a) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules. Persons or entities outside of Washington state, see WAC 182-502-0120;

(b) Be enrolled with medicare, when required in specific program rules;

(c) Have current professional liability coverage, individually or as a member of a group;

(d) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(e) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;

(f) Sign, without modification, a core provider agreement (CPA) (HCA 09-015), disclosure of ownership form, and debarment form ~~((09-048))~~ (HCA 09-016) or a contract with the agency ~~((Note: Section 13 of the CPA, 09-048 (REV. 08/2005), is hereby rescinded. The medicaid agency and each provider signing a core provider agreement will hold each other harmless from a legal action based on the~~

~~negligent actions or omissions of either party under the terms of the agreement))~~);

(g) Agree to accept the payment from the ~~((medicaid))~~ agency as payment in full (in accordance with 42 C.F.R. § 447.15 acceptance of state payment as payment in full and WAC 182-502-0160 billing a client);

(h) Fully disclose ownership, employees who manage and other control ~~((information))~~ interests (e.g., member of a board of directors or office), as requested by the agency. Indian health services clinics are exempt from this requirement. If payment for services is to be made to a group practice, partnership, or corporation, the group, partnership, or corporation must enroll and ~~((obtain a CPA number))~~ provide its national provider identifier (NPI) (if eligible for an NPI) to be used for submitting claims as the billing provider ~~((All owners must be identified and fully disclosed in the application))~~; ~~((and))~~

(i) Have screened employees and contractors with whom they do business prior to hiring or contracting to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42((-)) U.S.C. 1320c-5;

(j) Pass the agency's screening process, including license verifications, data base checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare; and

(k) Agree to pay an application fee, if required by CMS under 42 C.F.R. 455.460.

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

WAC 182-502-0012 When the ~~((department))~~ medicaid agency does not enroll. (1) The ~~((department))~~ medicaid agency does not enroll a health care professional, health care entity, supplier or contractor of service for reasons which include, but are not limited to, the following:

(a) The ~~((department))~~ agency determines that:

(i) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC ~~((388-502-0030))~~ 182-502-0030 (1)(a)); or

(ii) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC ~~((388-502-0030))~~ 182-502-0030 (1)(b)).

(b) The health care professional, health care entity, supplier or contractor of service:

(i) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(ii) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(iii) Has been disciplined based on allegation of sexual misconduct or admitted to sexual misconduct;

(iv) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(v) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(vi) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(vii) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(viii) Fails a background check, including a fingerprint-based criminal background check, performed by the ~~((department))~~ agency. See WAC ~~((388-502-0014))~~ 182-502-0014 and ~~((388-502-0016))~~ 182-502-0016; ~~((or))~~

(ix) Does not have sufficient liability insurance according to WAC ~~((388-502-0016))~~ 182-502-0016 for the scope of practice; or

(x) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.

(2) The ~~((department))~~ agency may not pay for any health care service, drug, supply or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service whose application for a core provider agreement (CPA) has been denied or terminated.

(3) The ~~((department))~~ agency may not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service who does not have a current CPA with the ~~((department))~~ agency when the ~~((department))~~ agency determines there is a potential danger to a client's health and/or safety.

(4) Nothing in this chapter precludes the ~~((department))~~ agency from entering into other forms of written agreements with a health care professional, health care entity, supplier or contractor of service.

(5) If the ~~((department))~~ agency denies an enrollment application, the applicant does not have any dispute rights within the ~~((department))~~ agency.

(6) Under 42 C.F.R. 455.470, the agency:

(a) Will impose a temporary moratorium on enrollment when directed by CMS; or

(b) May initiate and impose a temporary moratorium on enrollment when approved by CMS.

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

WAC 182-502-0014 Review and consideration of an applicant's history. (1) The ~~((department))~~ medicaid agency may consider enrolling a health care professional, health care entity, supplier or contractor of service for reasons which include, but are not limited to, the following:

(a) The ~~((department))~~ agency determines that:

(i) There is not a quality of care issue with significant risk factors that endanger client health ~~((and))~~ or safety, or both;

(ii) There are not risk factors that affect the credibility, honesty, or veracity of the applicant; and

(ii) The applicant is not likely to repeat the violation that led to a restriction or sanction.

(b) The health care professional, health care entity, supplier or contractor of service has:

(i) Been excluded from participation in medicare, medicaid, or any other federally funded health care program but is not currently excluded; or

(ii) A history of probation, suspension, termination, revocation, or a surrendered professional license, certification, accreditation, or registration as defined under chapter 18.130 RCW but currently has an active license, certification, accreditation, or registration; or

(iii) A restricted or limited professional license, certification, accreditation, or registration as defined under RCW 18.130.160; or

(iv) A history of denial, limitation, suspension or termination of participation or privileges by any health care institution, plan, facility, clinic, or state agency for quality of care issues or inappropriate billing practices and the quality of care issue or inappropriate billing practices have been corrected to the ~~((department's))~~ agency's satisfaction.

(2) The ~~((department may conduct a background check))~~ agency conducts a screening process as specified in WAC 182-502-0010 (2)(j) on any applicant applying for a core provider agreement (CPA) or enrolling to provide services to eligible clients.

(3) The ~~((department's))~~ agency's response to a review of a request for enrollment is based on the information available to the ~~((department))~~ agency at the time of application.

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

WAC 182-502-0016 Continuing requirements. (1) To continue to provide services for eligible clients and be paid for those services, a provider must:

(a) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(b) Provide all services according to federal and state laws and rules, ~~((department))~~ medicaid agency billing instructions, numbered memoranda issued by the ~~((department))~~ agency, and other written directives from the ~~((department))~~ agency;

(c) Inform the ~~((department))~~ agency of any changes to the provider's application or contract, including but not limited to, changes in:

(i) Ownership (see WAC ~~((388-502-0018))~~ 182-502-0018);

(ii) Address or telephone number;

(iii) Professional practicing under the billing provider number; or

(iv) Business name.

(d) Retain a current professional state license, registration, certification and ~~((or))~~ applicable business license for the service being provided, and update the ~~((department))~~ agency of all changes;

(e) Inform the ((department)) agency in writing within seven calendar days of changes applicable to the provider's clinical privileges;

(f) Inform the ((department)) agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s), including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Screen employees and contractors with whom they do business prior to hiring or contracting, and on a monthly ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5((-);

(h) Report immediately to the ((department)) agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5. See WAC ((388-502-0010)) 182-502-0010 (2)(j);

(i) Pass ~~((a background check, when the department requires such information to fully evaluate))~~ any portion of the agency's screening process as specified in WAC 182-502-0010 (2)(j) when the agency requires such information to reassess a provider;

(j) Maintain professional and general liability coverage requirements, if not covered under agency, center, or facility, in the amounts identified by the ((department)) medicaid agency;

(k) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct; ~~((and))~~

(l) Furnish documentation or other assurances as determined by the ((department)) agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice; and

(m) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information including, but not limited to, disclosures;

(ii) Submitting forms as required by the agency including, but not limited to, a new core provider agreement; and

(iii) Passing the agency's screening process as specified in WAC 182-502-0010 (2)(j).

(2) A provider may contact the ((department)) agency with questions regarding its programs. However, the ((department's)) agency's response is based solely on the information provided to the ((department's)) agency's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the ((department's)) agency's programs.

(3) The ((department)) agency may refer the provider to the appropriate state health professions quality assurance commission.

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

WAC 182-502-0020 Health care record requirements. This section applies to providers, as defined under WAC ((388-500-0005)) 182-500-0085 and under WAC ((388-538-050)) 182-538-050. Providers must:

(1) Maintain documentation in the client's medical or health care records to verify the level, type, and extent of services provided to each client to fully justify the services and billing, including, but not limited to:

(a) Client's name and date of birth;

(b) Dates of services;

(c) Name and title of person performing the service;

(d) Chief complaint or reason for each visit;

(e) Pertinent past and present medical history;

(f) Pertinent findings on examination at each visit;

(g) Medication(s) or treatment prescribed and/or administered;

(h) Name and title of individual prescribing or administering medication(s);

(i) Equipment and/or supplies prescribed or provided;

(j) Name and title of individual prescribing or providing equipment and/or supplies;

(k) Detailed description of treatment provided;

(l) Subjective and objective findings;

(m) Clinical assessment and diagnosis;

(n) Recommendations for additional treatments, procedures, or consultations;

(o) Radiographs (X rays), diagnostic tests and results;

(p) Plan of treatment and/or care, and outcome;

(q) Specific claims and payments received for services;

(r) Correspondence pertaining to client dismissal or termination of health care practitioner/patient relationship;

(s) Advance directives, when required under WAC ((388-501-0125)) 182-501-0125;

(t) Patient treatment agreements (examples: Opioid agreement, medication and treatment compliance agreements); and

(u) Informed consent documentation.

(2) Keep legible, accurate, and complete charts and records;

(3) Meet any additional record requirements of the department of health (DOH);

(4) Assure charts are authenticated by the person who gave the order, provided the care, or performed the observation, examination, assessment, treatment or other service to which the entry pertains;

(5) Make charts and records available to the ((department)) medicaid agency, its contractors or designees, and the United States Department of Health and Human Services (DHHS) upon request, for six years from the date of service or longer if required specifically by federal or state law or regulation. The ((department)) agency does not separately reimburse for copying of health care records, reports, client charts and/or radiographs, and related copying expenses; and

(6) Permit the ~~((department))~~ agency, DHHS, and its agents or designated contractors, access to its physical facilities and its records to enable the ~~((department))~~ agency and DHHS to conduct audits, inspections, or reviews without prior announcement.