# WSR 13-06-003 EMERGENCY RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed February 21, 2013, 8:38 a.m., effective February 22, 2013]

Effective Date of Rule: February 22, 2013.

Purpose: To extend the emergency rule filed on October 25, 2012, as WSR 12-22-003, which will expire February 22, 2013. The preproposal statement of inquiry (CR-101) was filed October 25, 2012, as WSR 12-22-004. The proposed rule-making notice (CR-102) was filed January 7, 2013, as WSR 13-03-021. The hearing date is scheduled for February 26, 2013. The department created emergency WAC to support ESHB 2592 - Extended foster care services. It is anticipated the permanent rule will be adopted by April 1, 2013.

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

Statutory Authority for Adoption: RCW 74.13.031.

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 25, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 25, Amended 2, Repealed 0.

Date Adopted: February 11, 2013.

Katherine I. Vasquez Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

WAC 388-25-0110 What is the effective date for termination of foster care payments? (1) The department ends payment on the day before the child actually leaves the foster home or facility. The department does not pay for the last day that a child is in a foster care home or facility.

- (2) The department terminates family foster care payments for children in family foster care effective the date:
  - (a) The child no longer needs foster care; or
- (b) The child no longer resides in foster care except as provided in WAC 388-25-0180; or
  - (c) The child reaches the age of eighteen.
- (i)If the child continues to attend, but has not finished, high school or an equivalent educational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty.
- (ii) If the child has applied and demonstrates he or she intends to timely enroll, or is enrolled and participating in a post-secondary education program, or a post-secondary vocational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child reaches his or her twenty-first birthday or is no longer enrolled in and participating in a post secondary program, whichever is earlier.
- (3) The department must terminate foster care payments for children in the behavior rehabilitative services program effective the date:
  - (a) The child no longer needs rehabilitative services; or
- (b) The child is no longer served through contracted rehabilitative services program except as provided in WAC 388-25-0030; or
- (c) The child reaches the age of eighteen and continues to attend, but has not finished, high school or an equivalent educational program and has a need for continued rehabilitative treatment services, the department may continue payments until the date the youth completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty.

#### **NEW SECTION**

WAC 388-25-0500 What is the legal basis of the extended foster care program? The legal authorities for the program are:

- (1) Revised Code of Washington: RCW 74.13.031 and RCW 13.34.267;
  - (2) United States Code: 42 USC sec. 671-675; and
- (3) The U.S. Department of Health and Human Services (DHHS) policy guidelines for states to use in determining a

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child's eligibility for participation in extended foster care programs.

# **NEW SECTION**

WAC 388-25-0502 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults in foster care at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth completes a secondary or post-secondary academic or vocational program.

# **NEW SECTION**

WAC 388-25-0504 What is extended foster care? Extended foster care is a program offered to young adults, age eighteen up to twenty-one, who turn eighteen while in foster care, to enable them to complete:

- (1) A high school diploma or general equivalency diploma;
  - (2) Post secondary or vocational education.

### **NEW SECTION**

WAC 388-25-0506 Who is eligible for extended foster care? To be eligible for the extended foster care program a youth, on his or her eighteenth birthday, must:

- (1) Be dependent under chapter 13.34 RCW;
- (2) Be placed in foster care (as defined in WAC 388-25-0508) by children's administration, and:
- (a) Be enrolled (as described in WAC 388-25-0512) in a high school or secondary education equivalency program; or
- (b) Be enrolled (as described in WAC 388-25-0512) in a post secondary academic or vocational education program; or
- (c) Have applied for and can demonstrate intent to timely enroll in a post secondary academic or vocational education program (as described in WAC 388-25-0514).

# **NEW SECTION**

WAC 388-25-0508 When is a youth considered to be "in foster care"? For the purpose of determining initial eligibility for the extended foster care program, a youth is in foster care if the youth is under children's administration (CA) placement and care authority, is placed by CA in out of home care, in relative care, licensed foster home, licensed group care, or other suitable person placement. Provided:

- (1) A youth who is temporarily away from a foster care placement in:
  - (a) A hospital;
  - (b) A drug/alcohol treatment facility;
  - (c) A mental health treatment facility; or
- (d) For less than thirty days in a county detention center is considered to be in foster care.
- (2) A youth who is temporarily away from his or her foster car e placement without permission of the case worker or care giver, but who is expected to return to foster care within twenty days, is considered to be in foster care for purposes of determining initial eligibility.

(3) A youth who is committed to juvenile rehabilitation administration custody and who resides in a foster home, group home, or community facility, as defined in RCW 74.15.020 (1)(a).

# **NEW SECTION**

WAC 388-25-0510 When is a youth not "in foster care"? For the purposes of determining initial eligibility for the extended foster care program, a youth is not in foster care if the youth is:

- (1) Placed with a parent;
- (2) In a dependency guardianship or chapter 13.36 RCW;
- (3) Committed to and residing in a juvenile rehabilitation administration (JRA) institution (as defined in RCW 13.30.-020(12)) or to the department of corrections; or
- (4) Absent from his/her foster care placement without permission of the case worker or care giver for more than twenty consecutive days.

# **NEW SECTION**

WAC 388-25-0512 How does a youth demonstrate enrollment in school? Enrollment in school is shown by documented registration or acceptance in:

- (1) **Secondary** a high school, secondary education equivalency program, or a state accredited on-line or other approved secondary education program.
- (2) **Post secondary** post secondary academic or vocational program.

# **NEW SECTION**

WAC 388-25-0514 How does a youth demonstrate he/she has applied for and intends to timely enroll in a post-secondary program? (1) Applied for intends to timely enroll in a post-secondary program is demonstrated by the youth:

- (a) Completing and submitting an application to a post secondary academic or vocational program; or
- (b) Providing proof of Free Application for Federal Student Aid (FAFSA) submission.
- (2) **Timely enroll** means participation in a post secondary program in the next reasonably available school term.

# **NEW SECTION**

WAC 388-25-0516 What if an eligible youth does not want to participate in the extended foster care program at age eighteen? Youth may elect to participate in the extended foster care program beginning on their eighteenth birthday. The law recognizes an eligible youth may need time beyond the eighteenth birthday to consider if they want continued foster care services. It provides a six-month grace period or a time for "trial independence", from date of youth's eighteenth birthday, to give the youth an opportunity to change their mind.

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#### **NEW SECTION**

WAC 388-25-0518 What is the trial independence or grace period? Trial independence is a period of time, up to six months, during which an eligible youth who did not elect to participate in extended foster care on their eighteenth birthday, may change their mind and participate in the program. During this period, the youth is not in extended foster care, but dismissal of the dependency action is postponed and children's administration is relieved of all supervisory and placement responsibility for the youth. If the youth does not request to participate in the extended foster care program within the six-month trial independence period, the dependency is dismissed and extended foster care is no longer available to the youth.

# **NEW SECTION**

WAC 388-25-0520 Does an eligible youth who elects to participate in extended foster care on his or her eighteenth birthday receive a trial independence period? No, the trial independency period is only available to eligible youth who have not yet elected to participate in extended foster on their eighteenth birthday.

### **NEW SECTION**

WAC 388-25-0522 When does the six-month trial independence period end? The trial independence period ends six month after the eligible youth's eighteenth birthday, or when the youth elects to participate in the extended foster care program.

#### **NEW SECTION**

WAC 388-25-0524 If a youth does not remain enrolled in school during the trial independence period may the youth still elect to participate in the program? Yes, as long as the youth is enrolled (as described in WAC 388-25-0512 and or 388-25-0514) in an applicable education program at the time the youth elects to participate in extended foster care.

#### **NEW SECTION**

WAC 388-25-0526 Does a youth have to agree to participate in extended foster care program? Yes, a youth must agree to participate in extended foster care. A youth who reaches the age of eighteen years old is not required to continue to receive foster care services.

# **NEW SECTION**

WAC 388-25-0528 How does a youth agree to participate in extended foster care program? An eligible dependent youth can agree to participate by:

- (1) Signing an extended foster care agreement; or
- (2) For developmentally delayed youth, remaining in the foster care placement and continuing in an appropriate educational program.

#### **NEW SECTION**

WAC 388-25-0530 Where do youth obtain information about how to participate in the program Youth can contact:

- (1) Youth's attorney/CASA/GAL.
- (2) Youth's social worker.
- (3) Local children's administration office.
- (4) www.independence.wa.gov.
- (5) 1-866-END-HARM.

#### **NEW SECTION**

WAC 388-25-0532 Can a youth participating in the extended foster care program to complete a secondary education or equivalency program continue to receive extended foster care services to participate in a post secondary education program? Yes, if at the time the secondary program is completed, the youth is enrolled in, or has applied to, and can demonstrate they intend to timely enroll in, a post secondary academic or vocational program.

# **NEW SECTION**

WAC 388-25-0534 Is there a trial independence period for a youth who completes his or her secondary education program while participating in extended foster care and before the youth enters a post secondary program? No, if a youth completes a secondary education program while in extended foster care, the dependency will be dismissed and foster care services will end, unless the youth has enrolled in, or applied to and can demonstrate an intent to timely enroll in, a post secondary academic or vocational program.

# **NEW SECTION**

WAC 388-25-0536 What are CA's responsibilities to a vouth who is participating in extended foster care? Children's administration (CA) is required to have placement and care authority over the youth and to provide foster care services, including transition planning and independent living services, medical assistance through medicaid, and case management. Case management includes findings or approving a foster care placement for the youth, convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the youth, caseworker visits, and court-related duties, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the youth is progressing toward independence within state and federal mandates. CA has responsibility to inform the court of the status of the child (including health, safety, welfare, education status and continuing eligibility for extended foster care program).

#### **NEW SECTION**

WAC 388-25-0538 What is the CA's responsibility for the youth during the six-month trial independence period? Children's administration is relieved of all supervi-

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sory and placement responsibility for the youth during the trial independence period until the youth elects to participate in extended foster care or the dependency is dismissed.

# **NEW SECTION**

WAC 388-25-0540 How does CA determine a youth's continuing eligibility for extended foster care program? At least every six months, children's administration will determine if youth continues to:

- (1) Agree to participate in the extended foster care program.
  - (2) Be enrolled in an education program.
  - (3) Continue to reside in approved placement.
- (4) Comply with youth's responsibilities in WAC 388-25-0546.

#### **NEW SECTION**

WAC 388-25-0542 What are the legal rights of a dependent youth in extended foster care to travel out of state, buy a car or engage in other activities as an adult? The youth is a "child" for the purposes of the dependency and must comply with responsibilities in WAC 388-25-0546, otherwise the youth has the legal status and legal rights of an adult. The youth is responsible for their actions, including responsibility for purchases, driving, traveling or financial obligations related to the activities they participate in.

#### **NEW SECTION**

WAC 388-25-0544 What are the youth's rights in the extended foster care program? Youth have a right to:

- (1) An approved foster care placement.
- (2) Foster care services including medical assistance through medicaid.
  - (3) Participate in the court process as a party to the case.
- (4) Have an attorney appointed for them in dependency proceedings.
  - (5) End their participation in the program at any time.
  - (6) Referrals to community resources as appropriate.

#### **NEW SECTION**

WAC 388-25-0546 What must the youth do to remain in the extended foster care program? Unless otherwise authorized by court order the youth must:

- (1) Agree to participate in the program as expressed in the written extended foster care agreement;
- (2) Maintain standard of eligibility as set by the youth's academic program;
- (3) Participate in the case plan, including monthly health and safety visits;
- (4) Acknowledge that children's administration (CA) has responsibility for the youth's care and placement by authorizing CA to have access to records related to court-ordered medical, mental health, drug/alcohol treatment services, educational records needed to determine continuing eligibility for the program, and for additional necessary services; and
- (5) Remain in the approved foster care placement and follow placement rules. This means the youth will:

- (a) Stay in placement identified by CA or approved by the court:
- (b) Obtain approval from case worker and notify caregiver for extended absence from the placement of more than three days; and
- (c) Comply with court orders and any specific rules developed in collaboration by the youth, caregiver and social worker.

#### **NEW SECTION**

WAC 388-25-0548 When is a youth no longer eligible for the extended foster care program? A youth is no longer eligible for the extended foster care program and department will ask the court to dismiss the dependency when the youth:

- (1) Graduates from high school or equivalency program, and has not enrolled in, or applied for and demonstrated an intent to timely enroll in a post secondary academic or vocational program;
- (2) Graduates from a post secondary education or vocational program;
  - (3) Reaches their twenty-first birthday;
- (4) Is no longer participating or enrolled in high school, equivalency program, post secondary or vocational program;
  - (5) No longer agrees to participate in foster care services;
- (6) Fails or refuses to comply with youth responsibilities outlined in WAC 388-25-0546; or
- (7) Is incarcerated in an adult detention facility on a criminal conviction.

AMENDATORY SECTION (Amending WSR 06-22-030, filed 10/25/06, effective 11/25/06)

WAC 388-148-0010 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understand these rules:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Care provider" means any licensed or certified person or organization or staff member of a licensed organization that provides twenty-four-hour care for children.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child. Case managers are responsible for implementing the child's case plan, assisting in achieving those goals, and assisting with day-to-day problem solving.

"Certification" means:

- (1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that it meets the minimum licensing requirements; or
- (2) Department licensing of a child-placing agency to certify that a foster home meets licensing requirements.

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- "Children" or "youth," for this chapter, means individuals who are:
- (1) Under eighteen years old, including expectant mothers under eighteen years old; or
- (2) Up to twenty-one years of age and pursuing a high school, equivalent course of study (GED), or vocational program or post secondary academic or post secondary vocational program;
- (3) Up to twenty-one years of age with developmental disabilities; or
- (4) Up to twenty-one years of age if under the custody of the Washington state juvenile rehabilitation administration.
- "Child-placing agency" means an agency licensed to place children for temporary care, continued care or adoption
- "Crisis residential center (CRC)" means an agency under contract with DSHS that provides temporary, protective care to children in a foster home, regular (semi-secure) or secure group setting.
- "Compliance agreement" means a written licensing improvement plan to address deficiencies in specific skills, abilities or other issues of a fully licensed home or facility in order to maintain and/or increase the safety and well-being of children in their care.
- "DCFS" means the division of children and family services.
  - "DDD" means division of developmental disabilities.
- "Department" means the department of social and health services (DSHS).
- "Developmental disability" is a disability as defined in RCW 71A.10.020.
  - "DLR" means the division of licensed resources.
- "Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.
- **"Foster-adopt"** means placement of a child with a foster parent(s) who intends to adopt the child, if possible.
- "Foster home or foster family home" means person(s) licensed to regularly provide care on a twenty-four-hour basis to one or more children in the person's home.
- **"Full licensure"** means an entity meets the requirements established by the state for licensing or approved as meeting state minimum licensing requirements.
- "Group care facility for children" means a location maintained and operated for a group of children on a twenty-four-hour basis.
- "Group receiving center" or "GRC" means a facility providing the basic needs of food, shelter, and supervision for more than six children placed by the department, generally for thirty or fewer days. A group receiving center is considered a group care program and must comply with the group care facility licensing requirements.
  - "Hearing" means the administrative review process.
- "I" refers to anyone who operates or owns a foster home, staffed residential home, and group facilities, including group homes, child-placing agencies, maternity homes, day treatment centers, and crisis residential centers.
  - "Infant" means a child under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the minimum licensing requirements.

#### "Licensor" means:

- (1) A division of licensed resources (DLR) employee at DSHS who:
- (a) Approves licenses or certifications for foster homes, group facilities, and child-placing agencies; and
- (b) Monitors homes and facilities to ensure that they continue to meet minimum health and safety requirements.
  - (2) An employee of a child-placing agency who:
- (a) Attests that foster homes supervised by the childplacing agency meets licensing requirements; and
- (b) Monitors those foster homes to ensure they continue to meet the minimum licensing standards.
  - "Maternity service" as defined in RCW 74.15.020.
- "Medically fragile" means the condition of a child who has a chronic illness or severe medical disabilities requiring regular nursing visits, extraordinary medical monitoring, or on-going (other than routine) physician's care.

# "Missing child" means:

- (1) Any child up to eighteen years of age for whom Children's Administration (CA) has custody and control (not including children in dependency guardianship) and:
  - (a) The child's whereabouts are unknown; and/or
- (b) The child has left care without the permission of the child's caregiver or CA.
- (2) Children who are missing are categorized under one of the following definitions:
- (a) "Taken from placement" means that a child's whereabouts are unknown, and it is believed that the child is being or has been concealed, detained or removed by another person from a court-ordered placement and the removal, concealment or detainment is in violation of the court order;
- (b) "Absence not authorized, whereabouts unknown" means the child is not believed to have been taken from placement, did not have permission to leave the placement, and there has been no contact with the child and the whereabouts of the child is unknown; or
- (c) "Absence not authorized, whereabouts known" means that a child has left his or her placement without permission and the social worker has some contact with the child or may periodically have information as to the whereabouts of the child.
- "Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.
- "Nonambulatory" means not able to walk or traverse a normal path to safety without the physical assistance of another individual.
- "Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.
- "Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.
- "Probationary license" means a license issued as part of a disciplinary action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an

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agreement aimed at correcting deficiencies to minimum licensing requirements.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, antidepressants and anti-anxiety medications.

"Relative" means a person who is related to the child as defined in RCW 74.15.020 (4)(a)(i), (ii), (iii), and (iv) only.

"Respite" means brief, temporary relief care provided to a child and his or her parents, legal guardians, or foster parents with the respite provider fulfilling some or all of the functions of the care-taking responsibilities of the parent, legal guardian, or foster parent.

"Secure facilities" means a crisis residential center that has locking doors and windows, or secured perimeters intended to prevent children from leaving without permission.

"Service plan" means a description of the services to be provided or performed and who has responsibility to provide or perform the activities for a child or child's family.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Social service staff" means a clinician, program manager, case manager, consultant, or other staff person who is an employee of the agency or hired to develop and implement the child's individual service and treatment plans.

"Staffed residential home" means a licensed home providing twenty-four-hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers. It may or may not be a family residence.

"Standard precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under standard precautions, blood or other potentially infectious materials of all people should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood or other bodily fluids.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We" or "our" refers to the department of social and health services, including DLR licensors and DCFS social workers.

**"You"** refers to anyone who operates a foster home, staffed residential home, and group facilities, including group homes, maternity programs, day treatment programs, crisis residential centers, group receiving centers, and child-placing agencies.

# WSR 13-06-006 EMERGENCY RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration) [Filed February 22, 2013, 10:09 a.m., effective February 24, 2013]

Effective Date of Rule: February 24, 2013.

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

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

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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

Reasons for this Finding: The department is proceeding with the permanent rule process. The department filed a CR-101 as WSR 12-20-076 on October 3, 2012, and is continuing to work with internal stakeholders to clarify the language. This emergency reflects some of that language.

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

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

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

Date Adopted: February 21, 2013.

Katherine I. Vasquez Rules Coordinator AMENDATORY SECTION (Amending WSR 11-22-043, filed 10/27/11, effective 11/27/11)

- WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:
  - (a) Understood: You express ideas clearly;
- (b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;
- (c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);
- (d) Rarely/never understood((-)): At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet((-)));
- (e) Age appropriate: Proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.
- "Activities of daily living (ADL)" means the following:
- (a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.
- (b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.
- (c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:
- (i) Foot care if you are diabetic or have poor circulation; or
- (ii) Changing bandages or dressings when sterile procedures are required.
- (d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.
- (e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.
- (f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.
- (g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining,

- activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.
- (h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.
- (i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.
- (j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.
- (k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.
- (l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.
- "Age appropriate" Proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.
- "Aged person" means a person sixty-five years of age or older.
- "Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.
- "Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.
- "Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.
- "Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.
- "Assistance available" means the amount of ((informal support)) assistance available for a task if ((the need)) status is coded:
  - (a) Partially met due to availability of other support; or
- (b) Shared benefit. The department determines the amount of the assistance available using one of four categories:
  - $((\frac{a}{a}))$  (i) Less than one-fourth of the time;
  - ((<del>(b)</del>)) (<u>ii)</u> One-fourth to one-half of the time;
- (((e))) (iii) Over one-half of the time to three-fourths of the time: or
  - $((\frac{d}{d}))$  (iv) Over three-fourths but not all of the time.

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- "Assistance with body care" means you need assistance with:
  - (a) Application of ointment or lotions;
  - (b) Trimming of toenails;
  - (c) Dry bandage changes; or
  - (d) Passive range of motion treatment.
- "Assistance with medication management" means you need assistance managing your medications. You are scored as:
- (a) Independent if you remember to take medications as prescribed and manage your medications without assistance.
- (b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.
- (c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.
- (d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.
- "Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.
- "Blind person" means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.
- "Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.
- "Child" means an individual less than eighteen years of age.
- "Chronic care management" means programs that provide care management and coordination activities for medical assistance clients receiving long-term care services and supports determined to be at risk for high medical costs.
- "Health action plan" means an individual plan which identifies health-related problems, interventions and goals.
- "Client" means an applicant for service or a person currently receiving services from the department.
- "Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
  - (b) The frequency of the behavior.
- "Decision making" means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:
- (a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.
- (b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.
- (c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.
- (d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.
- (e) Age appropriate: Proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.
- "Department" means the state department of social and health services, aging and disability services administration or its designee.
  - "Designee" means area agency on aging.
- <u>"Developmental milestones table"</u> is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.
- "Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:
  - (a) No difficulty in performing the activity;
- (b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or
- (c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).
- "Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.
- "Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.
  - "Home health agency" means a licensed:
- (a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or
- (b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:
  - (i) Private duty nursing; or

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- (ii) Skilled nursing services under an approved medicaid waiver program.
- "Income" means income as defined under WAC 388-500-0005.
- "Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.
  - "Disability" is described under WAC 388-511-1105.
- "Informal support" means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older. Examples of informal supports include but are not limited to: family members, friends, neighbors, school, childcare, after school activities, adult day health, church or community programs.
- "Institution" means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.
- "Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:
- (a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.
- (b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).
- (c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or wellbeing. This includes shopping with or for you.
- (d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.
- (e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.
- (f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.
- (g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).
- "Long-term care services" means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.
  - "Medicaid" is defined under WAC 388-500-0005.
- "Medically necessary" is defined under WAC 388-500-0005.
- "Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for

- income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.
- "New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:
- (a) The design, delivery and evaluation of services and supports;
- (b) Exercising control of decisions and resources, making their own decisions about health and well being;
  - (c) Determining how to meet their own needs;
- (d) Determining how and by whom these needs should be met; and
  - (e) Monitoring the quality of services received.
- "New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.
- "New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.
- "Own home" means your present or intended place of residence:
- (a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;
  - (b) In a building that you own;
  - (c) In a relative's established residence; or
- (d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.
- "Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.
  - "Personal aide" is defined in RCW 74.39.007.
- "Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.
  - "Physician" is defined under WAC 388-500-0005.
- "Plan of care" means assessment details and service summary generated by CARE.
- "Provider or provider of service" means an institution, agency, or person:
- (a) Having a signed department contract to provide longterm care client services; and
- (b) Qualified and eligible to receive department payment.
- "Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

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

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

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

- (a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;
- (b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;
- (c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;
- (d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);
- (e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or
- (f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:
  - (i) You were not able (e.g., walking, if paralyzed);
  - (ii) No provider was available to assist; or
  - (iii) You declined assistance with the task.
- "Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:
- (a) Independent if you received no help, set-up help, or supervision;
- (b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;
- (c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;
- (d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;
- (e) Total dependence if you needed the activity fully performed by others; or
- (f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

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

# "Shared benefit" means:

- (a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or
- (b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.
  - "SSI-related" is defined under WAC 388-475-0050.
- "Status" means the ((amount)) type and/or level of ((informal support)) assistance available for a task from informal supports, through shared benefit, or related to the developmental milestones as defined in WAC 388-106-0130. The department determines whether the ADL or IADL is:
- (a) Met, which means the ADL or IADL will be fully provided by an informal support;
- (b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;
- (c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; ((or))
  - (d) Shared benefit, which means:
- (i) A client and their paid caregiver both share in the benefit of an IADL task being performed; or
- (ii) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.
- (e) Age appropriate, which means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or
- (f) Client declines, which means you do not want assistance with the task.

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

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

- (a) No set-up or physical help provided by others;
- (b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);
  - (c) One-person physical assist provided;
  - (d) Two- or more person physical assist provided; or
  - (e) Activity did not occur during entire seven-day period.
  - "You/your" means the client.

AMENDATORY SECTION (Amending WSR 11-11-024, filed 5/10/11, effective 6/10/11)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home

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- **care?** (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.
- (2) The department will ((deduct from the)) adjust base hours to account for informal supports, shared benefit, and age appropriate functioning (as those terms are defined in WAC 388-106-0010), ((o+)) and other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:
- (a) The CARE tool determines the ((adjustment for)) status of informal supports ((by determining)), shared benefit, and age appropriate functioning; determines the amount of assistance available ((to meet your needs,)); assigns ((it)) a numeric ((percentage,)) value to those assessed indicators; and ((reduces)) adjusts the base hours assigned to the classification group by the numeric ((percentage)) value. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self ((Performance)) Administration	Status	Assistance Available	Value (( <del>Percentage</del> ))
((Self administration of	The rules to the right apply for all Self	Unmet	N/A	1
medications)) Medica-	Performance codes ((apply)) except	Met	N/A	0
tion Management	independent which is not counted as a	Decline	N/A	0
	qualifying ADL	Age appropriate functioning	N/A	<u>0</u>
			<1/4 time	.9
		David: - 11 4	1/4 to 1/2 time	.7
		Partially met	1/2 to 3/4 time	.5
			>3/4 time	.3
Unscheduled ADLs	Self Performance	Status	Assistance Available	Value (( <del>Percentage</del> ))
Bed mobility, transfer,	The rules to the right apply for all Self	Unmet	N/A	1
walk in room, eating, toi-	Performance codes except: Did not	Met	N/A	0
let use	occur/client not able and Did not	Decline	N/A	0
	occur/no provider = 1; Did not occur/client declined and independent are not counted((-)) as qualifying ADLs	Age appropriate functioning	N/A	<u>0</u>
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
			Assistance	Value
Scheduled ADLs	Self Performance	Status	Available	((Percentage))
Dressing,	The rules to the right apply for all Self	Unmet	N/A	1
personal hygiene,	Performance codes except: Did not	Met	N/A	0
bathing	occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent which are not counted((-)) as qualifying ADLs	Decline	N/A	0
		Age appropriate functioning	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
			1/2 to 3/4 time	.35
			>3/4 time	.15
			Assistance	Value
IADLs	Self Performance	Status	Available	(( <del>Percentage</del> ))
Meal preparation,	The rules to the right apply for all Self	Unmet	N/A	1
Ordinary housework,	Performance codes ((apply)) except	Met	N/A	0
Essential shopping	independent is not counted((-)) as a qualifying IADL	Decline	N/A	0
	HYMING TADE	Age appropriate functioning	<u>N/A</u>	<u>0</u>

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			<1/4 time	.3
		Partially met or	1/4 to 1/2 time	.2
		Shared benefit	1/2 to 3/4 time	.1
			>3/4 time	.05
			Assistance	Value
IADLs	Self Performance	Status	Available	((Percentage))
Travel to medical	The rules to the right apply for all Self	Unmet	N/A	1
	Performance codes ((apply)) except	Met	N/A	0
	independent which is not counted((-)) as	Decline	N/A	0
	a qualifying IADL	Age appropriate	N/A	0
		functioning		
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3

Key:

- (b) To determine the amount ((of reduction)) adjusted for informal support, shared benefit and/or age appropriate functioning, the ((value percentages)) numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours ((reduced for informal supports)). Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).
- (3) ((Also, the department will adjust in-home base hours when:
- (a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:
  - (i) Meal preparation;
  - (ii) Housekeeping;
  - (iii) Shopping; and
  - (iv) Wood supply.
- (b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.
- (4))) Effective July 1, 2012, after ((deductions)) adjustments are made to your base hours, as described in ((subsections (2) and (3))) subsection (2), the department may add on hours based on ((your living environment)) offsite laundry, living more than forty-five minutes from essential services, and wood supply:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.  The status used for the rules to the right is for housekeeping.	((N/A)) Unmet	N/A	8
	Met	<u>N/A</u>	<u>0</u>
	<u>Declines</u>	N/A	<u>0</u>
	Age appropri- ate	N/A	<u>0</u>
	Partially met or Shared benefit:	≤1/4 time	8
		between 1/4 to 1/2 time	<u>6</u>
		between 1/2 to 3/4 time	4
		>3/4 time	2
Client is >45 minutes from	Unmet	N/A	5
essential services (which means	Met	N/A	0
he/she lives more than 45 min-	Declines	N/A	0
utes one-way from a full-service market). The status used for the rules to the right is essential shopping.	Age appropri- ate	N/A	<u>0</u>
		<1/4 time	5
	Partially met or	between 1/4 to 1/2 time	4
	Shared benefit	between 1/2 to 3/4 time	(( <del>2</del> )) <u>3</u>
		>3/4 time	2

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<sup>&</sup>gt; means greater than

<sup>&</sup>lt; means less than

Condition	Status	Assistance Available	Add On Hours
Wood supply used as sole source	Unmet	N/A	8
of heat.	Met	N/A	0
	Declines	N/A	0
	Age appropri- ate	N/A	<u>0</u>
		<1/4 time	8
	Partially met <u>or</u>	between 1/4 to 1/2 time	6
	Shared benefit	between 1/2 to 3/4 time	4
		>3/4 time	2

(((5))) (4) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC 388-106-1445.

(((6))) (5) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to ((meet)) address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

 $((\frac{7}{)}))$  (6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

- (a) Personal care services from a home care agency provider and/or an individual provider.
- (b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.
- (c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.
- (d) A home health aide ((if you are eligible)) (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300 ((or 388-106-0500)).
- (e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).
- (f) The purchase of New Freedom consumer directed services (NFCDS).
  - (7) If you are a child applying for personal care services:
- (a) The department will complete a CARE assessment and use the developmental milestones table below when assessing your ability to perform personal care tasks.
- (b) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (d), unless the circumstances in subpart (c) below apply.
- (c) The department may code status as other than age appropriate for an ADL, despite your self performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (d) below, if the department determines during your assessment that your

level of functioning is related to your disability and not primarily due to your age and the frequency and/or the duration of assistance required for a personal care task is not typical for a person of your age.

(d)

<u>(a)</u>			
Developmental Milestones for Activities of Daily Living (ADLS)			
ADL	Self-Performance	Developmental  Age Range	
Medication Management	Independent Self-Directed Assistance Required Must Be Administered	Birth through the 17th year	
Locomotion in Room	Independent Supervision Limited Extensive	Birth through the 3rd year	
	<u>Total</u>	Birth through the 1st year	
<u>Locomotion Outside</u> <u>Room</u>	Independent Supervision	Birth through the 5th year	
	<u>Limited</u> <u>Extensive</u>	Birth through the 3rd year	
	Total	Birth through the 1st year	
Walk in Room	Independent Supervision Limited Extensive	Birth through the 3rd year	
	<u>Total</u>	Birth through the 1st year	
Bed Mobility	Independent Supervision Limited Extensive	Birth through the 2nd year	
	<u>Total</u>	Birth through the 1st year	
Transfers	Independent Supervision Limited Extensive Total	Birth through the 2nd year	
Toilet Use	Independent Supervision Limited Extensive	Birth through the 7th year	
	<u>Total</u>	Birth through the 3rd year	
Eating	Independent Supervision Limited Extensive Total	Birth through the 2nd year	
Bathing	Independent Supervision	Birth through the 11th year	
	Physical help/Trans- fer only Physical help/part of bathing	Birth through the 7th year	
	<u>Total</u>	Birth through the 4th year	
Dressing	Independent Supervision	Birth through the 11th year	

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Developmental Milestones for Activities of Daily Living			
(ADLS)			
		<u>Developmental</u>	
<u>ADL</u>	Self-Performance	Age Range	
	Limited	Birth through the 7th	
	<u>Extensive</u>	<u>year</u>	
	<u>Total</u>	Birth through the 4th	
		<u>year</u>	
Personal Hygiene	<u>Independent</u>	Birth through the 11th	
	Supervision	<u>year</u>	
	<u>Limited or extensive</u>	Birth through the 7th	
		<u>year</u>	
	<u>Total</u>	Birth through the 4th	
		<u>year</u>	

(e) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "age appropriate" as indicated by the developmental milestones table for IADLs below in subpart (g).

(f) If the department determines during your assessment that frequently and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department may code status as other than "age appropriate" for an IADL.

(g)

<b>Developmental Milestones for Instrumental Activities of Daily Living</b>			
		<b>Developmental</b>	
<u>IADL</u>	Self Performance	Age Range	
<u>Telephone</u>	Independent	Birth through the 17th	
Transportation	Supervision	<u>year</u>	
Essential	Limited		
Shopping	Extensive		
Wood Supply	<u>Total</u>		
Housework			
<u>Finances</u>			
Meal Preparation			

(h) The department presumes that children have legally responsible parents or other responsible adults who provide support for comprehension, decision-making, memory and continence issues. These items will be coded as indicated by the additional developmental milestones table in subpart (i) below.

(i)

Additional Developmental Milestones coding			
		<b>Developmental</b>	
CARE panel	<b>Selection</b>	Age Range	
Speech/Hearing:	By others client is=	Birth through the 2nd	
Comprehension	Age Appropriate	<u>year</u>	
Psych Social:	Can MMSE be admin-	Birth through the 17th	
<u>MMSE</u>	istered?=No	<u>year</u>	
Psych Social:	Recent memory=	Birth through the 11th	
Memory/Short Term	Age appropriate	<u>year</u>	
Psych Social:	Long Term mem-	Birth through the 11th	
Memory/Long Term	ory=Age appropriate	<u>year</u>	
Psych Social:	Interview=unable to	Birth through the 11th	
<u>Depression</u>	<u>obtain</u>	<u>year</u>	
Psych Social:	Rate how client makes	Birth through the 11th	
Decision Making	decision=Age appro-	<u>year</u>	
	<u>priate</u>		

Additional Developmental Milestones coding		
		<u>Developmental</u>
CARE panel	<b>Selection</b>	Age Range
Bladder/Bowel:	Bladder/Bowel Con-	Birth through the 11th
	trol:	<u>year</u>
	Continent	
	<u>Usually Continent</u>	
	Occasionally Inconti-	
	<u>nent</u>	
	Frequently Incontinent	
Bladder/Bowel:	Bladder/Bowel Con-	Birth through the 5th
	trol:	<u>year</u>
	Incontinent all or most	
	of the time	
Bladder/Bowel:	Appliance and pro-	Birth through the 3rd
	grams=Potty Training	<u>year</u>

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded age appropriate as determined under subsection (7), the department will assess for any informal supports or shared benefit available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide support to them.

(a) The department will code status as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

(b) The department will presume that you have informal supports, defined in WAC 388-106-0130, available to assist you with your ADLs and IADLs over three-fourths but not all of the time. This presumption may be rebutted if you provide specific information during your assessment to indicate why you do not have support available three-fourths or more of the time to assist you with a particular ADL or IADL.

(c) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(d) When you are living with your legally responsible parent(s), the department will take into account their legal obligation to care for you when determining the availability of informal supports. Legally responsible parents include natural parents, step-parents, and adoptive parents. Generally, a legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided and that prevent a legally responsible parent from providing for your personal care needs when determining the amount of informal support available to you.

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# WSR 13-07-022 EMERGENCY RULES OFFICE OF

#### **INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2013-04—Filed March 12, 2013, 4:49 p.m., effective March 12, 2013, 4:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: Provide health plan issuers with specific guidance regarding form and rate filing of nongrandfathered individual and small group health plans for the 2014 benefit year, in relation to ensuring that an issuer's product and plan filing is substantially equal to the essential health benefits (EHB)-benchmark plan, and that the actuarial values for each EHB category are substantially equal to the EHB-benchmark plan. The rules identify the specific services that are classified to the ten EHB categories, as found in the base-benchmark plan and the supplemental-benchmark plans; habilitative services are defined and benefit limitation and scope for those services are set forth in the rule. Changes from a prior emergency rule reflect grammatical changes, and changes required by the final federal rules issued on EHBs.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.241, 48.21.320, 48.44.460, 48.44.341, 48.46.291, 48.46.530, and 48.43.715.

Other Authority: P.L. 111-148, section 1302 (2010); 45 C.F.R. 147.150; 45 C.F.R. 155.170; 45 C.F.R. 156.20; 45 C.F.R. 156.110; 45 C.F.R. 156.115; 45 C.F.R. 156.125; 45 C.F.R. 156.130.

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

Reasons for this Finding: Health plan issuers must replace currently offered nongrandfathered individual and small group plans for the 2014 benefit year due to a number of required changes pursuant to federal health care reform. The deadline for state decisions to approve or disapprove proposed replacement products is July 31, 2013. To meet this deadline, products must be filed for review by the commissioner not later than April 1, 2013. This emergency rule provides issuers with the necessary information to ensure that products are timely filed, so that issuers are able to participate in the individual and small group health plan markets in Washington.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 0, Repealed 0.

Date Adopted: March 12, 2013.

Mike Kreidler Insurance Commissioner

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-08 issue of the Register.

# WSR 13-07-024 EMERGENCY RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Services Administration)
[Filed March 13, 2013, 10:06 a.m., effective March 13, 2013, 10:06 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending WAC 388-106-0300 and 388-106-0305 in order to restore dental services under the COPES waiver as required by the legislature in 2011. The department received approval for this action from the Centers for Medicare and Medicaid in 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0300 and 388-106-0305.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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

Reasons for this Finding: This emergency filing is necessary in order to preserve public health, by restoring dental services available under the COPES waiver. The emergency filing is also necessary to officially implement a requirement of the 2011 budget. The department is also proceeding with the permanent rule process by filing a CR-101.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

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ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: March 12, 2013.

Katherine I. Vasquez Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-15-087, filed 7/18/12, effective 8/18/12)

- WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPES:
- (1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.
- (2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.
- (3) Environmental modifications, if the minor physical adaptations to your home:
- (a) Are necessary to ensure your health, welfare and safety;
- (b) Enable you to function with greater independence in the home:
  - (c) Directly benefit you medically or remedially;
  - (d) Meet applicable state or local codes; and
- (e) Are not adaptations or improvements, which are of general utility or add to the total square footage.
- (4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:
  - (a) You are homebound and live in your own home;
  - (b) You are unable to prepare the meal;
- (c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and
- (d) Receiving this meal is more cost-effective than having a paid caregiver.
- (5) Home health aide service tasks in your own home, if the service tasks:
- (a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;
- (b) Are beyond the amount, duration or scope of medicaid reimbursed home health services as described in WAC 182-551-2120 and are in addition to those available services;
- (c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and
  - (d) Do not replace medicare home health services.
- (6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:
  - (i) You live alone in your own home;
- (ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or
- (iii) No one in your home, including you, can secure help in an emergency.
  - (b) A medication reminder if you:
  - (i) Are eligible for a PERS unit;

- (ii) Do not have a caregiver available to provide the service; and
- (iii) Are able to use the reminder to take your medications.
  - (7) Skilled nursing, if the service is:
- (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and
- (b) Beyond the amount, duration or scope of medicaidreimbursed home health services as provided under WAC 182-551-2100.
- (8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:
  - (a) Medically necessary under WAC 182-500-0700;
- (b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
- (c) Directly medically or remedially beneficial to you; and
- (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare.
- (9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:
  - (a) Adjusting to a serious impairment;
  - (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.
  - (10) Transportation services, when the service:
- (a) Provides access to community services and resources to meet your therapeutic goal;
  - (b) Is not diverting in nature; and
- (c) Is in addition to and does not replace the medicaidbrokered transportation or transportation services available in the community.
  - (11) Nurse delegation services, when:
- (a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;
- (b) Your medical condition is considered stable and predictable by the delegating nurse; and
- (c) Services are provided in compliance with WAC 246-840-930.
- (12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.
  - (a) Nursing assessment/reassessment;
  - (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;
- (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any

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skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.
- (13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:
- (a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and
- (b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.
- (14) Adult day health services as described in WAC 388-71-0706 when you are:
- (a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:
- (i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;
- (ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and
- (iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.
- (b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.
  - (c) You are not eligible for adult day health if you:
- (i) Can independently perform or obtain the services provided at an adult day health center;
  - (ii) Have referred care needs that:
- (A) Exceed the scope of authorized services that the adult day health center is able to provide;
- (B) Do not need to be provided or supervised by a licensed nurse or therapist;
  - (C) Can be met in a less structured care setting;
- (D) In the case of skilled care needs, are being met by paid or unpaid caregivers;
- (E) Live in a nursing home or other institutional facility; or
- (F) Are not capable of participating safely in a group care setting.
- (15) Adult comprehensive dental services as defined in WAC 182-535-1050 through 182-535-1550, when you are age twenty-one or older and the service is not covered by medicaid state plan services.
- (a) The services do not include crowns, endodontics, orthodontics, and oral surgeries not related to preventive or restorative oral health.
- (b) All payments to providers will be made by the health care authority under chapter 182-535 WAC.

AMENDATORY SECTION (Amending WSR 12-15-087, filed 7/18/12, effective 8/18/12)

- WAC 388-106-0305 What services may I receive under COPES if I live in a residential facility? If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPES:
- (1) Personal care services as defined under WAC 388-106-0010.
- (2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:
  - (a) Medically necessary under WAC 388-500-0005; and
- (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and
- (c) Directly medically or remedially beneficial to you; and
- (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and
- (e) In addition to and do not replace the services required by the department's contract with a residential facility.
- (3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:
  - (a) Adjusting to a serious impairment;
  - (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers
  - (4) Transportation services, when the service:
- (a) Provides access to community services and resources to meet a therapeutic goal;
  - (b) Is not diverting in nature;
- (c) Is in addition to and does not replace the medicaidbrokered transportation or transportation services available in the community; and
- (d) Does not replace the services required by DSHS contract in residential facilities.
  - (5) Skilled nursing, when the service is:
- (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;
- (b) Beyond the amount, duration or scope of medicaidreimbursed home health services as provided under WAC 388-551-2100; and
- (c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).
- (6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

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- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;
- (d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.
  - (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.
- (7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:
- (a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.
- (b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.
- (8) Adult day health services as described in WAC 388-71-0706 when you are:
- (a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:
- (i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;
- (ii) You are at risk for deteriorating health deteriorating functional ability, or institutionalization; and
- (iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.
- (b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.
  - (c) You are not eligible for adult day health if you:
- (i) Can independently perform or obtain the services provided at an adult day health center;
  - (ii) Have referred care needs that:
- (A) Exceed the scope of authorized services that the adult day health center is able to provide;
- (B) Do not need to be provided or supervised by a licensed nurse or therapist;
  - (C) Can be met in a less structured care setting;
- (D) In the case of skilled care needs, are being met by paid or unpaid caregivers;
- (E) Live in a nursing home or other institutional facility; or
- (F) Are not capable of participating safely in a group care setting.
- (9) Adult comprehensive dental services as defined in WAC 182-535-1050 through 182-535-1550, when you are

- age twenty-one or older, and the service is not covered by medicaid state plan services.
- (a) The services do not cover crowns, endodontics, orthodontics, and oral surgeries not related to preventive or restorative oral health.
- (b) All payments to providers will be made by the health care authority under chapter 182-535 WAC.

# WSR 13-07-036 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-45—Filed March 13, 2013, 3:24 p.m., effective March 30, 2013]

Effective Date of Rule: March 30, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency regulation is needed to allow an early fishing opportunity for juveniles, seniors, and anglers with a disability who possess a department of fish and wildlife designated harvester card. Following this early opening for these fishing groups, the lake will close until the last Saturday in April. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 13, 2013.

Philip Anderson Director

# **NEW SECTION**

WAC 232-28-61900Z Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.) Not-

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withstanding the provisions of WAC 232-28-619, effective March 30 through April 7, 2013, juveniles, holders of a senior license, and anglers with a disability who possess a designated harvester companion card may fish in those waters of Vance Creek Pond #1.

#### **REPEALER**

The following section of the Washington Administrative Code is repealed effective April 8, 2013:

WAC 232-28-61900Z

Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.)

# WSR 13-07-038 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-43—Filed March 14, 2013, 8:53 a.m., effective May 4, 2013, 7:00 a.m.]

Effective Date of Rule: May 4, 2013, 7:00 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500F; and amending WAC 220-56-325.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. Harvestable amounts of spot shrimp are available, but only enough recreational shares exist for a limited number of open days in these marine areas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 14, 2013.

Philip Anderson Director

# **NEW SECTION**

WAC 220-56-32500F Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325, effective 7:00 a.m. May 4 through May 31, 2013, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 7, 8-1, 8-2, 9, 10, 11, 12 and the Discovery Bay Shrimp District, except as provided for in this section:

- 1) Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then north of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then north of a line due west from Lime Kiln Point light to the international boundary open May 4 at 7:00 a.m., also open May 8-11, 15-18 and 29-31.
- 2) Marine Area 7 south of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then south of a line from Davis Point on Lopez Island to Cattle Point on San Juan Island, then south of a line due west from Lime Kiln Point light to the international boundary open May 4 at 7:00 a.m., then open Wednesday through Saturday each week.
- 3) Marine Areas 8-1, 8-2, 9, 10 and 11 Open May 4 and 8 from 7:00 a.m. through 3:00 p.m., and divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on those open days in Marine Area 8-2.
- 4) Marine Area 12 Open May 4, 8, 15, 18 and 22 from 9:00 a.m. through 1:00 p.m.
- 5) Discovery Bay Shrimp District Open May 4, 8, 15, 18 and 22 from 7:00 a.m. through 3:00 p.m.

#### REPEALER

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

WAC 220-56-32500F Shrimp—Areas and seasons.

# WSR 13-07-047 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-46—Filed March 15, 2013, 3:15 p.m., effective March 17, 2013]

Effective Date of Rule: March 17, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

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notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Recent analysis of the current whitefish and steelhead fisheries within the Methow and Chewuch River systems indicates that the maximum take limit on natural origin steelhead has been met. In addition, take limits for the Chewuch and upper Methow River whitefish fisheries have been reached, necessitating a closure on whitefish as well as steelhead angling. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 15, 2013

Joe Stohr for Philip Anderson Director

#### **NEW SECTION**

WAC 232-28-61900A Exceptions to statewide rules—Columbia, Okanogan, Similkameen, Wenatchee and Icicle rivers Notwithstanding the provisions of WAC 232-28-619, effective one hour after official sunset on March 17, 2013, in waters of the Columbia, Okanogan, Similkameen, Wenatchee and Icicle Rivers, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

- (1) Mandatory retention of adipose fin-clipped steel-head: Daily limit of two (2) hatchery steelhead, 20-inch minimum size. Hatchery steelhead are identified by a clipped adipose fin with a healed scar in its location.
- (2) Adipose-present steelhead must be released unharmed and cannot be removed from the water prior to release.
- (3) Night closure and selective gear rules remain in effect, except bait allowed on mainstem Columbia River.
- (4) Whitefish anglers must follow selective gear rules in areas open to steelhead fishing. No bait is allowed. Daily whitefish limit is fifteen (15) fish.
- (a) A person may fish for steelhead in the Columbia River from Rock Island Dam to the boundary markers below Wells Dam, and from the Highway 173 Bridge in Brewster to 400 feet below Chief Joseph Dam.
- (b) A person may fish for steelhead in the Wenatchee River from the mouth to 400 feet below Tumwater Dam, including the Icicle River from the mouth to 500 feet down-

stream of the Leavenworth National Fish Hatchery Barrier Dam.

- (c) A person may fish for steelhead in the Okanogan River from the mouth upstream to the Highway 97 Bridge in Oroville. However, effective one hour after sunset on March 17, 2013, closed from the first powerline crossing downstream of the Hwy 155 Bridge in Omak (Coulee Dam Credit Union Building) to the mouth of Omak Creek, and from the Tonasket Lagoons Park boat launch to the Tonasket Bridge (4th Street).
- (d) A person may fish for steelhead in the Similkameen River from the mouth upstream to 400 feet below Enloe Dam
- (e) A person may fish for whitefish in the Wenatchee River from the mouth to the Hwy 2 bridge at Leavenworth.
- (5) It is unlawful to fish for whitefish in the following waters:
- (a) Entiat River: Upstream from the Alternate Highway 97 Bridge near the mouth of the Entiat River, to Entiat Falls.
- (b) Methow River: From the mouth (Hwy 97 Bridge in Pateros) to the falls above Brush Creek.
- (c) Chewuch River: From the mouth (Winthrop) to Pasayten wilderness boundary.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective one hour after official sunset March 17, 2013:

WAC 232-28-61900Y

Exceptions to statewide rules—Columbia, Icicle, Methow, Okanogan, Similkameen, and Wenatchee rivers. (13-39)

The following section of the Washington Administrative Code is repealed effective one hour after official sunset March 31, 2013:

WAC 232-28-61900A

Exceptions to statewide rules—Columbia, Entiat, Icicle, Okanogan, Similkameen, and Wenatchee rivers.

# WSR 13-07-066 EMERGENCY RULES OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-08—Filed March 19, 2013, 11:58 a.m., effective March 19, 2013, 11:58 a.m.]

Effective Date of Rule: Immediately.

Purpose: To provide issuers with the state specific requirements for applying geographic rating area factors to nongrandfathered individual and small group health benefit plans for 2014.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200.

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Other Authority: Section 2701 of the PHSA; 45 C.F.R. 147.102.

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

Reasons for this Finding: Absent state specific designation of the geographic rating areas, the federal government's default geographic rating area would apply. Medical care costs vary in different regions of the state. The application of the federal default for this premium rate factor would result in premium rates that do not account for these variations.

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

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

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

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

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

Date Adopted: March 19, 2013.

Mike Kreidler Insurance Commissioner

#### **NEW SECTION**

WAC 284-170-250 Geographic rating area factor development. (1) For nongrandfathered individual or small group health plans offered, issued or renewed on or after January 1, 2014, if an issuer elects to adjust its premium rates based on geographic area, the issuer must use the geographic rating areas designated in WAC 284-170-252.

- (2) The premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic rating area, must not be more than 1.15.
- (a) King County is the index geographic rating area for purposes of calculating the premium ratio. The geographic rating area factor for the index area must be set at 1.00.
- (b) A health-status related factor may not be used to establish a rating factor for a geographic rating area. Health factor means any of the following:
  - (i) Health status of enrollees or the population in an area;
- (ii) Medical condition of enrollees or the population in an area, including both physical and mental illnesses;
  - (iii) Claims experience;
  - (iv) Health services utilization in the area;
- (v) Medical history of enrollees or the population in an area:
- (vi) Genetic information of enrollees or the population in an area;
- (vii) Disability status of enrollees or the population in an area:

- (viii) Other evidence of insurability applicable to the area
- (3) Assignment of a factor to a geographic rating area must be actuarially sound and based on provider reimbursement differences. An issuer must fully document the basis for the assigned rating factors in the actuarial memo submitted with a rate filing.
- (4) The geographic rating area factors must be applied uniformly to individuals or small groups applying for or receiving coverage from the issuer.
- (5) For out-of-state enrollees covered under a health benefit plan issued to a Washington resident, an issuer must apply the geographic rating area factor based on the primary subscriber's Washington residence. For out-of-state enrollees who are covered under a health benefit plan issued through an employer whose primary place of business is Washington, an issuer must apply the geographic rating area factor based on the employer's primary place of business.
- (6) This section does not apply to stand alone dental plans offered on the Washington health benefit exchange.

#### **NEW SECTION**

WAC 284-170-252 Geographic rating area designation. (1) The following geographic rating areas are designated for Washington state for nongrandfathered individual and small group plans:

Area 1: Index geographic rating area: King County.

Area 2: Clallam, Cowlitz, Grays Harbor, Island, Jefferson, Mason, Lewis, Kitsap, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom counties.

Area 3: Clark, Klickitat, and Skamania counties.

Area 4: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties.

- Area 5: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Okanogan, Walla Walla, Whitman, and Yakima counties.
- (2) The commissioner will review the geographic rating area designation in this section not more frequently than every three years, beginning January 31, 2016. The commissioner will publish changes in the geographic rating area designation within sixty days of the review date.

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