

WSR 13-13-063
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed June 18, 2013, 10:25 a.m., effective July 19, 2013]

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

Purpose: The rule change is needed to amend chapter 388-78A WAC to change the term "boarding home" to "assisted living facility" throughout the chapter in compliance with SHB 2056 passed in the 2011-2012 legislative session. The scope of this rule making is limited to the terminology change from "boarding home" to "assisted living facility."

Citation of Existing Rules Affected by this Order:
Amending WAC 388-78A-2010, 388-78A-2020, 388-78A-2030, 388-78A-2032, 388-78A-2035, 388-78A-2040, 388-78A-2050, 388-78A-2060, 388-78A-2070, 388-78A-2080, 388-78A-2090, 388-78A-2100, 388-78A-2110, 388-78A-2120, 388-78A-2130, 388-78A-2140, 388-78A-2150, 388-78A-2160, 388-78A-2170, 388-78A-2180, 388-78A-2190, 388-78A-2200, 388-78A-2202, 388-78A-2204, 388-78A-2206, 388-78A-2208, 388-78A-2210, 388-78A-2220, 388-78A-2230, 388-78A-2240, 388-78A-2250, 388-78A-2260, 388-78A-2270, 388-78A-2280, 388-78A-2290, 388-78A-2300, 388-78A-2305, 388-78A-2310, 388-78A-2320, 388-78A-2330, 388-78A-2340, 388-78A-2350, 388-78A-2360, 388-78A-2370, 388-78A-2380, 388-78A-2390, 388-78A-2400, 388-78A-2410, 388-78A-2420, 388-78A-2430, 388-78A-2440, 388-78A-2450, 388-78A-2460, 388-78A-2461, 388-78A-2462, 388-78A-2464, 388-78A-24641, 388-78A-24642, 388-78A-2465, 388-78A-2466, 388-78A-2467, 388-78A-2468, 388-78A-24681, 388-78A-2469, 388-78A-2470, 388-78A-24701, 388-78A-2471, 388-78A-2474, 388-78A-2480, 388-78A-2481, 388-78A-2482, 388-78A-2483, 388-78A-2484, 388-78A-2485, 388-78A-2486, 388-78A-2487, 388-78A-2488, 388-78A-2489, 388-78A-2490, 388-78A-2500, 388-78A-2510, 388-78A-2520, 388-78A-2522, 388-78A-2524, 388-78A-2525, 388-78A-2526, 388-78A-2527, 388-78A-2530, 388-78A-2540, 388-78A-2550, 388-78A-2560, 388-78A-2570, 388-78A-2580, 388-78A-2592, 388-78A-2593, 388-78A-2594, 388-78A-2595, 388-78A-2600, 388-78A-2610, 388-78A-2620, 388-78A-2630, 388-78A-2640, 388-78A-2650, 388-78A-2660, 388-78A-2665, 388-78A-2670, 388-78A-2680, 388-78A-2690, 388-78A-2700, 388-78A-2710, 388-78A-2720, 388-78A-2730, 388-78A-2732, 388-78A-2733, 388-78A-2734, 388-78A-2740, 388-78A-2750, 388-78A-2760, 388-78A-2770, 388-78A-2773, 388-78A-2775, 388-78A-2780, 388-78A-2783, 388-78A-2785, 388-78A-2787, 388-78A-2790, 388-78A-2800, 388-78A-2810, 388-78A-2820, 388-78A-2830, 388-78A-2840, 388-78A-2850, 388-78A-2860, 388-78A-2870, 388-78A-2880, 388-78A-2890, 388-78A-2900, 388-78A-2910, 388-78A-2920, 388-78A-2930, 388-78A-2940, 388-78A-2950, 388-78A-2960, 388-78A-2970, 388-78A-2980, 388-78A-2990, 388-78A-3000, 388-78A-3010, 388-78A-3030, 388-78A-3040, 388-78A-3050, 388-78A-3060, 388-78A-3070, 388-78A-3080, 388-78A-3090, 388-78A-3100, 388-78A-3110, 388-78A-3120, 388-78A-3130, 388-78A-3140, 388-78A-3152, 388-78A-3160, 388-78A-3170, 388-78A-3180,

388-78A-3190, 388-78A-3200, 388-78A-3210, 388-78A-3220, 388-78A-3230, 388-78A-3390, 388-78A-3400, 388-78A-3470 and 388-78A-4010.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 13-08-084 on April 3, 2013.

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 174, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 174, Repealed 0.

Date Adopted: June 18, 2013.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-78A WAC

((BOARDING HOME)) ASSISTED LIVING FACILITY LICENSING RULES

(Formerly chapter 246-316 WAC

Reviser's note: The typographical error in the above material occurred in the copy filed by the department of social and health services and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2010 Purpose. This chapter is written to implement chapter 18.20 RCW, to promote the safety and well-being of ((boarding home)) assisted living facility residents, to specify standards for ((boarding home)) assisted living facility operators, and to further establish requirements for the operation of ((boarding homes)) assisted living facilities.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse,

mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

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

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

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

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

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrator" means ~~((a boarding home))~~ an assisted living facility administrator who must be in active administrative charge of the ~~((boarding home))~~ assisted living facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care training and home care aide certification.

"Adult day services" means care and services provided to a nonresident individual by the ~~((boarding home))~~ assisted living facility on the ~~((boarding home))~~ assisted living facility premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a ~~((boarding home))~~ assisted living facility license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

~~((**"Boarding home"**))~~ **"Assisted living facility"** means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, ~~((a boarding home))~~ an assisted living facility that is licensed for three to six residents prior to or on July 1, 2000, may maintain its ~~((boarding home))~~ assisted living facility license as long as it is continually licensed as ~~((a boarding home))~~ an assisted living facility. ~~((**"Boarding home"**))~~ **"Assisted living facility"** does not include facilities certified as group training homes pursuant to RCW 71A.22.-040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. ~~((**"Boarding home"**))~~ **"Assisted living facility"** may also include persons associated with the ~~((boarding home))~~ assisted living facility to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing direct personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of ~~((a boarding home))~~ an assisted living facility, except volunteers who are directly supervised.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Direct supervision" means oversight by a person on behalf of the ~~((boarding home))~~ assisted living facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the ~~((boarding home))~~ assisted living facility either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the ~~((boarding home))~~ assisted living facility; or

(3) Intermittent nursing services, if provided directly or indirectly by the ~~((boarding home))~~ assisted living facility.

"Enforcement remedy" means one or more of the department's responses to ~~((a boarding home's))~~ an assisted living facility's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackage food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) ~~((Boarding home))~~ Assisted living facility unit where domiciliary services are not provided; or

(4) ~~((Boarding home))~~ Assisted living facility unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the ~~((boarding home))~~ assisted living facility license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Long-term care worker," as defined in RCW 74.39A.009, has the same meaning as the term "caregiver."

"Majority owner" means any person that owns:

(1) More than fifty percent interest; or

(2) If no one person owns more than fifty percent interest, the largest interest portion; or

(3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (~~((boarding homes))~~ assisted living facility), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the (~~(boarding home))~~ assisted living facility may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For (~~(boarding homes))~~ assisted living facilities licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For (~~(boarding homes))~~ assisted living facilities licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of (~~(a boarding home))~~ an assisted living facility in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by (~~(a boarding home))~~ an assisted living facility related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within (~~(a boarding home))~~ an assisted living facility. A nonresident individual may not receive from the (~~(boarding home))~~ assisted living facility:

(1) Domiciliary care directly or indirectly; or

(2) The items or services listed in the definition of "general responsibility for the safety and well-being of the resident", except as allowed under WAC 388-78A-2032 or when the person is receiving adult day services.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of ~~((a boarding home))~~ an assisted living facility:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the ~~((boarding home))~~ assisted living facility for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that ~~((boarding home))~~ assisted living facility if any person affiliated with the new licensee was affiliated with the prior licensee at the same ~~((boarding home))~~ assisted living facility. A person is considered affiliated with the licensee if the person is an applicant for the ~~((boarding home))~~ assisted living facility license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident; or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed ~~((boarding home))~~ assisted living facility and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the ~~((boarding home))~~ assisted living facility must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of ~~((boarding home))~~ assisted living facility services;

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

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

(2) Reasonable accommodations are not required if:

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

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the ~~((boarding home))~~ assisted living facility; or

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

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in ~~((a boarding home))~~ an assisted living facility, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the ~~((boarding home))~~ assisted living facility;

(3) Receives basic services; and

(4) Receives one or more of the services listed in the definition of "general responsibility for the safety and well-being of the resident," and may receive domiciliary care or respite care provided directly, or indirectly, by the ~~((boarding home))~~ assisted living facility. A nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, ~~((boarding home))~~ assisted living facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the ~~((boarding home))~~ assisted living facility and to receive information from the ~~((boarding home))~~ assisted living facility if there is no legal representative. The resident's representative may not be affiliated with the licensee,

((~~boarding home~~)) assisted living facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88-010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any ((~~boarding home~~)) assisted living facility employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW; or

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

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

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

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the ((~~boarding home~~)) assisted living facility. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

"Willful" means the deliberate, or nonaccidental, action or inaction by an alleged perpetrator that he/she knows or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 12-08-004, filed 3/22/12, effective 4/22/12)

WAC 388-78A-2030 ((~~Boarding home~~)) Assisted living facility license required. (1) ((~~A boarding home~~)) An assisted living facility license is required to operate or maintain ((~~a boarding home~~)) an assisted living facility as defined in chapter 18.20 RCW and this chapter.

(2) ((~~A boarding home~~)) An assisted living facility license is required when any person other than a family member provides housing, one or more basic services, and one or more of the following:

(a) Assumes general responsibility for the safety and well-being of the residents except as provided in WAC 388-78A-2032;

(b) Provides domiciliary care which includes:

(i) Providing assistance with activities of daily living, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2190;

(ii) Providing health support services, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2200; or

(iii) Providing intermittent nursing services, either directly or indirectly as described in WAC 388-78A-2310.

(3) ((~~A boarding home~~)) An assisted living facility license is required if the provision of items and services to a nonresident individual requires ongoing evaluation or assessment, ongoing care and service planning, ongoing intervention or ongoing monitoring of a nonresident individual's well-being as specified in this chapter.

(4) The ((~~boarding home~~)) assisted living facility may provide adult day services as defined in WAC 388-78A-2020 and as specified in WAC 388-78A-2360 to nonresident individuals, including independent living residents, on the ((~~boarding home~~)) assisted living facility premises.

AMENDATORY SECTION (Amending WSR 12-08-004, filed 3/22/12, effective 4/22/12)

WAC 388-78A-2032 ((~~Boarding home~~)) Assisted living facility license not required. (1) ((~~A boarding home~~)) An assisted living facility license is not required for the hous-

ing, or services, customarily provided under landlord tenant agreements governed by the residential tenant act, chapter 59.18 RCW, or when housing nonresident individuals who chose to participate in the programs or services in subsection (2) of this section when offered by the ~~((boarding home))~~ assisted living facility licensee or the licensee's contractor.

(2) ~~((A boarding home))~~ An assisted living facility license is not required for one or more of the following items and services that may, upon request of the nonresident individual, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

(e) Making and reminding of health care appointments;

(f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;

(g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident individual's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;

(h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;

(i) Assessment to determine cause of a fall;

(j) Nutrition management and education services;

(k) Dental services;

(l) Wellness programs as defined in WAC 388-78A-2020; or

(m) Services customarily provided under the landlord tenant agreements governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW.

(3) This section does not prohibit ~~((a boarding home))~~ an assisted living facility from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the ~~((boarding home))~~ assisted living facility may not require the use of any particular service provider.

AMENDATORY SECTION (Amending WSR 12-08-004, filed 3/22/12, effective 4/22/12)

WAC 388-78A-2035 Disclosure statement to nonresident individuals. (1) ~~((A boarding home))~~ An assisted living facility must provide each nonresident individual a disclosure statement upon admission and at the time that additional services are requested by the nonresident individual.

(2) The disclosure statement must notify the nonresident individual that:

(a) The resident rights of chapter 70.129 RCW do not apply to nonresident individuals;

(b) Licensing requirements for ~~((boarding homes))~~ assisted living facilities under this chapter do not apply to nonresident units; and

(c) The jurisdiction of the long-term care ombudsman does not apply to nonresident individuals and nonresident units.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2040 Other requirements. (1) The ~~((boarding home))~~ assisted living facility must comply with all other applicable federal, state, county and municipal statutes, rules, codes and ordinances, including without limitations those that prohibit discrimination.

(2) The ~~((boarding home))~~ assisted living facility must have its building approved by the Washington state fire marshal in order to be licensed.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2050 Resident characteristics. The ~~((boarding home))~~ assisted living facility may admit and retain an individual as a resident in ~~((a boarding home))~~ an assisted living facility only if:

(1) The ~~((boarding home))~~ assisted living facility can safely and appropriately serve the individual with appropriate available staff providing:

(a) The scope of care and services described in the ~~((boarding home's))~~ assisted living facility's disclosure information, except if the ~~((boarding home))~~ assisted living facility chooses to provide additional services consistent with RCW 18.20.300(4); and

(b) The reasonable accommodations required by state or federal law, including providing any specialized training to caregivers that may be required according to WAC 388-78A-2490 through 388-78A-2510;

(2) The individual does not require the frequent presence and frequent evaluation of a registered nurse, excluding those individuals who are receiving hospice care or individuals who have a short-term illness that is expected to be resolved within fourteen days as long as the ~~((boarding home))~~ assisted living facility has the capacity to meet the individual's identified needs; and

(3) The individual is ambulatory, unless the ~~((boarding home))~~ assisted living facility is approved by the Washington state director of fire protection to care for semiambulatory or nonambulatory residents.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2060 Preadmission assessment. The ~~((boarding home))~~ assisted living facility must conduct a preadmission assessment for each prospective resident that includes the following information, unless unavailable despite the best efforts of the ~~((boarding home))~~ assisted living facility:

(1) Medical history;

(2) Necessary and contraindicated medications;

(3) A licensed medical or health professional's diagnosis, unless the prospective resident objects for religious reasons;

- (4) Significant known behaviors or symptoms that may cause concern or require special care;
- (5) Mental illness diagnosis, except where protected by confidentiality laws;
- (6) Level of personal care needs;
- (7) Activities and service preferences; and
- (8) Preferences regarding other issues important to the prospective resident, such as food and daily routine.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2070 Timing of preadmission assessment. (1) Unless there is an emergency, the ~~((boarding home))~~ assisted living facility must complete the preadmission assessment of the prospective resident before each prospective resident moves into the ~~((boarding home))~~ assisted living facility.

(2) The ~~((boarding home))~~ assisted living facility must ensure the preadmission assessment is completed within five calendar days of the resident moving into the ~~((boarding home))~~ assisted living facility when the resident moves in under emergency conditions.

(3) For the purposes of this section, "emergency" means any circumstances when the prospective resident would otherwise need to remain in an unsafe setting or be without adequate and safe housing.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2080 Qualified assessor. The ~~((boarding home))~~ assisted living facility must ensure the person responsible for completing a preadmission assessment of a prospective resident:

- (1) Has a master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have functional or cognitive disabilities; or
- (2) Has a bachelor's degree in social services, human services, behavioral sciences, or an allied field and three years social service experience working with adults who have functional or cognitive disabilities; or
- (3) Has a valid Washington state license to practice nursing, in accordance with chapters 18.79 RCW and 246-840 WAC; or
- (4) Is a physician with a valid state license to practice medicine; or
- (5) Has three years of successful experience acquired prior to September 1, 2004, assessing prospective and current ~~((boarding home))~~ assisted living facility residents in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2090 Full assessment topics. The ~~((boarding home))~~ assisted living facility must obtain sufficient information to be able to assess the capabilities, needs, and preferences for each resident, and must complete a full assessment addressing the following, within fourteen days of the resident's move-in date, unless extended by the department for good cause:

(1) Individual's recent medical history, including, but not limited to:

- (a) A licensed medical or health professional's diagnosis, unless the resident objects for religious reasons;
- (b) Chronic, current, and potential skin conditions; or
- (c) Known allergies to foods or medications, or other considerations for providing care or services.

(2) Currently necessary and contraindicated medications and treatments for the individual, including:

- (a) Any prescribed medications, and over-the-counter medications commonly taken by the individual, that the individual is able to independently self-administer, or safely and accurately direct others to administer to him/her;
- (b) Any prescribed medications, and over-the-counter medications commonly taken by the individual, that the individual is able to self-administer when he/she has the assistance of a caregiver; and
- (c) Any prescribed medications, and over-the-counter medications commonly taken by the individual, that the individual is not able to self-administer, and needs to have administered to him or her.

(3) The individual's nursing needs when the individual requires the services of a nurse on the ~~((boarding home))~~ assisted living facility premises.

(4) Individual's sensory abilities, including:

- (a) Vision; and
- (b) Hearing.

(5) Individual's communication abilities, including:

- (a) Modes of expression;
- (b) Ability to make self understood; and
- (c) Ability to understand others.

(6) Significant known behaviors or symptoms of the individual causing concern or requiring special care, including:

- (a) History of substance abuse;
- (b) History of harming self, others, or property; or
- (c) Other conditions that may require behavioral intervention strategies;
- (d) Individual's ability to leave the ~~((boarding home))~~ assisted living facility unsupervised; and

(e) Other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted in the ~~((boarding home))~~ assisted living facility.

(7) Individual's special needs, by evaluating available information, or if available information does not indicate the presence of special needs, selecting and using an appropriate tool, to determine the presence of symptoms consistent with, and implications for care and services of:

(a) Mental illness, or needs for psychological or mental health services, except where protected by confidentiality laws;

(b) Developmental disability;

(c) Dementia. While screening a resident for dementia, the ((boarding home)) assisted living facility must:

(i) Base any determination that the resident has short-term memory loss upon objective evidence; and

(ii) Document the evidence in the resident's record.

(d) Other conditions affecting cognition, such as traumatic brain injury.

(8) Individual's level of personal care needs, including:

(a) Ability to perform activities of daily living;

(b) Medication management ability, including:

(i) The individual's ability to obtain and appropriately use over-the-counter medications; and

(ii) How the individual will obtain prescribed medications for use in the ((boarding home)) assisted living facility.

(9) Individual's activities, typical daily routines, habits and service preferences.

(10) Individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort.

(11) Who has decision-making authority for the individual, including:

(a) The presence of any advance directive, or other legal document that will establish a substitute decision maker in the future;

(b) The presence of any legal document that establishes a current substitute decision maker; and

(c) The scope of decision-making authority of any substitute decision maker.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2100 On-going assessments. The ((boarding home)) assisted living facility must:

(1) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;

(2) Complete an assessment specifically focused on a resident's identified problems and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

(b) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2110 Resident participation in assessments. The ((boarding home)) assisted living facility must directly involve each resident or prospective resident, to the extent possible, along with any appropriate resident represen-

tative to the extent he or she is willing and capable, in the pre-admission assessment and on-going assessment process.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2120 Monitoring residents' well-being. The ((boarding home)) assisted living facility must:

(1) Observe each resident consistent with his or her assessed needs and negotiated service agreement;

(2) Identify any changes in the resident's physical, emotional, and mental functioning that are a:

(a) Departure from the resident's customary range of functioning; or

(b) Recurring condition in a resident's physical, emotional, or mental functioning that has previously required intervention by others.

(3) Evaluate, in order to determine if there is a need for further action:

(a) The changes identified in the resident per subsection (2) of this section; and

(b) Each resident when an accident or incident that is likely to adversely affect the resident's well-being, is observed by or reported to staff persons.

(4) Take appropriate action in response to each resident's changing needs.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-2130 Service agreement planning. The ((boarding home)) assisted living facility must:

(1) Develop an initial resident service plan, based upon discussions with the resident and the resident's representative if the resident has one, and the preadmission assessment of a qualified assessor, upon admitting a resident into ((a boarding home)) an assisted living facility. The ((boarding home)) assisted living facility must ensure the initial resident service plan:

(a) Integrates the assessment information provided by the department's case manager for each resident whose care is partially or wholly funded by the department or the health care authority;

(b) Identifies the resident's immediate needs; and

(c) Provides direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences.

(2) Complete the negotiated service agreement for each resident using the resident's preadmission assessment, initial resident service plan, and full assessment information, within thirty days of the resident moving in;

(3) Review and update each resident's negotiated service agreement consistent with WAC 388-78A-2120:

(a) Within a reasonable time consistent with the needs of the resident following any change in the resident's physical, mental, or emotional functioning; and

(b) Whenever the negotiated service agreement no longer adequately addresses the resident's current assessed needs and preferences.

(4) Review and update each resident's negotiated service agreement as necessary following an annual full assessment;

(5) Involve the following persons in the process of developing and updating a negotiated service agreement:

- (a) The resident;
 - (b) The resident's representative to the extent he or she is willing and capable, if the resident has one;
 - (c) Other individuals the resident wants included;
 - (d) The department's case manager, if the resident is a recipient of medicaid assistance, or any private case manager, if available; and
 - (e) Staff designated by the ~~((boarding home))~~ assisted living facility.
- (6) Ensure:
- (a) Individuals participating in developing the resident's negotiated service agreement:
 - (i) Discuss the resident's assessed needs, capabilities, and preferences; and
 - (ii) Negotiate and agree upon the care and services to be provided to support the resident; and
 - (b) Staff persons document in the resident's record the agreed upon plan for services.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2140 Negotiated service agreement contents. The ~~((boarding home))~~ assisted living facility must develop, and document in the resident's record, the agreed upon plan to address and support each resident's assessed capabilities, needs and preferences, including the following:

- (1) The care and services necessary to meet the resident's needs, including:
 - (a) The plan to monitor the resident and address interventions for current risks to the resident's health and safety that were identified in one or more of the following:
 - (i) The resident's preadmission assessment;
 - (ii) The resident's full assessments;
 - (iii) On-going assessments of the resident;
 - (b) The plan to provide assistance with activities of daily living, if provided by the ~~((boarding home))~~ assisted living facility;
 - (c) The plan to provide necessary intermittent nursing services, if provided by the ~~((boarding home))~~ assisted living facility;
 - (d) The plan to provide necessary health support services, if provided by the ~~((boarding home))~~ assisted living facility;
 - (e) The resident's preferences for how services will be provided, supported and accommodated by the ~~((boarding home))~~ assisted living facility.
- (2) Clearly defined respective roles and responsibilities of the resident, the ~~((boarding home))~~ assisted living facility staff, and resident's family or other significant persons in meeting the resident's needs and preferences. Except as specified in WAC 388-78A-2290 and 388-78A-2340(5), if a person other than a caregiver is to be responsible for providing care or services to the resident in the ~~((boarding home))~~ assisted living facility, the ~~((boarding home))~~ assisted living facility must specify in the negotiated service agreement an alternate plan for providing care or service to the resident in the event the necessary services are not provided. The

~~((boarding home))~~ assisted living facility may develop an alternate plan:

- (a) Exclusively for the individual resident; or
- (b) Based on standard policies and procedures in the ~~((boarding home))~~ assisted living facility provided that they are consistent with the reasonable accommodation requirements of state and federal law.
- (3) The times services will be delivered, including frequency and approximate time of day, as appropriate;
- (4) The resident's preferences for activities and how those preferences will be supported;
- (5) Appropriate behavioral interventions, if needed;
- (6) A communication plan, if special communication needs are present;
- (7) The resident's ability to leave the ~~((boarding home))~~ assisted living facility premises unsupervised; and
- (8) The ~~((boarding home))~~ assisted living facility must not require or ask the resident or the resident's representative to sign any negotiated service or risk agreement, that purports to waive any rights of the resident or that purports to place responsibility or liability for losses of personal property or injury on the resident.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2150 Signing negotiated service agreement. The ~~((boarding home))~~ assisted living facility must ensure that the negotiated service agreement is agreed to and signed at least annually by:

- (1) The resident, or the resident's representative if the resident has one and is unable to sign or chooses not to sign;
- (2) A representative of the ~~((boarding home))~~ assisted living facility duly authorized by the ~~((boarding home))~~ assisted living facility to sign on its behalf; and
- (3) Any public or private case manager for the resident, if available.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2160 Implementation of negotiated service agreement. The ~~((boarding home))~~ assisted living facility must provide the care and services as agreed upon in the negotiated service agreement to each resident unless a deviation from the negotiated service agreement is mutually agreed upon between the ~~((boarding home))~~ assisted living facility and the resident or the resident's representative at the time the care or services are scheduled.

~~((BOARDING HOME))~~ ASSISTED LIVING FACILITY SERVICES

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2170 Required ~~((boarding home))~~ assisted living facility services. (1) The ~~((boarding home))~~ assisted living facility must provide housing and assume general responsibility for the safety and well-being of each resi-

dent, as defined in this chapter, consistent with the resident's assessed needs and negotiated service agreement.

(2) The ~~((boarding homes))~~ assisted living facility must provide each resident with the following basic services, consistent with the resident's assessed needs and negotiated service agreement:

(a) **Activities** - Arranging for activities in accordance with WAC 388-78A-2180;

(b) **Housekeeping** - Providing a safe, clean and comfortable environment for each resident, including personal living quarters and all other resident accessible areas of the building;

(c) **Laundry** - Keeping the resident's clothing clean and in good repair, and laundering towels, washcloths, bed linens on a weekly basis or more often as necessary to maintain cleanliness;

(d) **Meals** - Providing meals in accordance with WAC 388-78A-2300; and

(e) **Nutritious snacks** - Providing nutritious snack items on a scheduled and nonscheduled basis, and providing nutritious snacks in accordance with WAC 388-78A-2300.

(3) The ~~((boarding home))~~ assisted living facility must:

(a) Provide care and services to each resident by staff persons who are able to communicate with the resident in a language the resident understands; or

(b) Make provisions for communications between staff persons and residents to ensure an accurate exchange of information.

(4) The ~~((boarding home))~~ assisted living facility must ensure each resident is able to obtain individually preferred personal care items when:

(a) The preferred personal care items are reasonably available; and

(b) The resident is willing and able to pay for obtaining the preferred items.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2180 Activities. The ~~((boarding home))~~ assisted living facility must:

(1) Provide space and staff support necessary for:

(a) Each resident to engage in independent or self-directed activities that are appropriate to the setting, consistent with the resident's assessed interests, functional abilities, preferences, and negotiated service agreement; and

(b) Group activities at least three times per week that may be planned and facilitated by caregivers consistent with the collective interests of a group of residents.

(2) Make available routine supplies and equipment necessary for activities described in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2190 Activities of daily living. Assistance with activities of daily living is an optional service that the ~~((boarding home))~~ assisted living facility may provide.

(1) If ~~((a boarding home))~~ an assisted living facility chooses not to provide assistance with activities of daily living:

(a) The ~~((boarding home))~~ assisted living facility must admit or retain only those residents who are independent in activities of daily living; except that

(b) A resident, or the resident's representative, may independently arrange for outside services to assist with activities of daily living.

(2) When ~~((a boarding home))~~ an assisted living facility chooses to provide, either directly or indirectly, assistance with activities of daily living, the ~~((boarding home))~~ assisted living facility must provide that assistance consistent with the reasonable accommodation requirements in state and federal laws.

(3) When ~~((a boarding home))~~ an assisted living facility chooses to provide, either directly or indirectly, assistance with activities of daily living, the ~~((boarding home))~~ assisted living facility must provide to each resident, consistent with the resident's assessed needs, minimal assistance with the following activities of daily living:

(a) **Bathing:** Minimal assistance with bathing means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to wash and dry all areas of the body as needed;

(ii) Stand-by assistance getting into and out of the tub or shower; and

(iii) Physical assistance limited to steadying the resident during the activity.

(b) **Dressing:** Minimal assistance with dressing means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to put on, take off, or lay out clothing, including prostheses when the assistance of a licensed nurse is not required;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(c) **Eating:** Minimal assistance with eating means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to eat and drink; and

(ii) Physical assistance limited to cutting food up, preparing food and beverages, and bringing food and fluids to the resident.

(d) **Personal hygiene:** Minimal assistance with personal hygiene means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding and cuing to comb hair, perform oral care and brush teeth, shave, apply makeup, and wash and dry face, hands and other areas of the body;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(e) **Transferring:** Minimal assistance in transferring means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminders or cuing to move between surfaces, for example to and from the bed, chair and standing;

(ii) Stand-by assistance during the activity; and
 (iii) Physical assistance limited to steadying the resident during self-transfers.

(f) **Toileting:** Minimal assistance in toileting means the ((~~boarding home~~)) assisted living facility must provide the resident with occasional:

(i) Reminders and cuing to toilet, including resident self-care of ostomy or catheter, to wipe and cleanse, and to change and adjust clothing, protective garments and pads;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(g) **Mobility:** Minimal assistance in mobility means the ((~~boarding home~~)) assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to move between locations on the ((~~boarding home~~)) assisted living facility premises;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(4) The ((~~boarding home~~)) assisted living facility may choose to provide more than minimal assistance with activities of daily living consistent with state and federal law.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2200 Health support services. Health support services are an optional service that the ((~~boarding home~~)) assisted living facility may provide. The ((~~boarding home~~)) assisted living facility may choose to provide any of the following health support services; however, ((~~a boarding home~~)) an assisted living facility may or may not need to provide additional health support services to comply with the reasonable accommodation requirements in federal and state law. The ((~~boarding home~~)) assisted living facility may provide:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care; and
- (6) Developmental disabilities care.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2202 Respite—General. ((~~A boarding home~~)) An assisted living facility:

(1) May provide short term respite care;
 (2) Must limit the length of stay for an individual on respite to thirty calendar days or less; and

(3) Must not use respite as a placement pending the resident's admission to the ((~~boarding home~~)) assisted living facility.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2204 Respite—Information. When ((~~a boarding home~~)) an assisting living facility provides respite

care, before or at the time of admission, the ((~~boarding home~~)) assisted living facility must obtain sufficient information about the individual to meet the individual's anticipated needs. That information must include at a minimum:

(1) The resident's legal name;

(2) The name, phone number and address of the resident's representative, if applicable;

(3) The name and address of the adult family home, ((~~boarding home~~)) assisted living facility, or other location where the resident normally lives, with the name of a contact person and the contact person's phone number;

(4) The name, address, and telephone number of the resident's attending physician, and alternate physician if any;

(5) Medical and social history, which may be obtained from a respite care assessment and respite service plan performed by a case manager designated by an area agency on aging under contract with the department, and mental and physical assessment data; and

(6) Physician's orders for diet, medication, and routine care consistent with the resident's status on admission.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2206 Respite—Assessment. The ((~~boarding home~~)) assisted living facility must ensure that any individual on respite has assessments performed, where needed, and if the assessment of the individual shows symptoms of:

(1) Tuberculosis, follow required tuberculosis testing requirements; and

(2) Other infectious conditions or diseases, follow the appropriate infection control processes.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2208 Respite—Negotiated service agreement. With the participation of the individual, and where appropriate their representative, the ((~~boarding home~~)) assisted living facility must develop a negotiated service agreement, to maintain or improve the individual's health and functional status during their stay in the ((~~boarding home~~)) assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2210 Medication services. (1) ((~~A boarding home~~)) An assisted living facility providing medication service, either directly or indirectly, must:

(a) Meet the requirements of chapter 69.41 RCW Legend drugs—Prescription drugs, and other applicable statutes and administrative rules; and

(b) Develop and implement systems that support and promote safe medication service for each resident.

(2) The ((~~boarding home~~)) assisted living facility must ensure the following residents receive their medications as prescribed, except as provided for in WAC 388-78A-2230 and 388-78A-2250:

(a) Each resident who requires medication assistance and his or her negotiated service agreement indicates the ~~((boarding home))~~ assisted living facility will provide medication assistance; and

(b) If the ~~((boarding home))~~ assisted living facility provides medication administration services, each resident who requires medication administration and his or her negotiated service agreement indicates the ~~((boarding home))~~ assisted living facility will provide medication administration.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2220 Prescribed medication authorizations. (1) Before the ~~((boarding home))~~ assisted living facility may provide medication assistance or medication administration to a resident for prescribed medications, the ~~((boarding home))~~ assisted living facility must have one of the following:

- (a) A prescription label completed by a licensed pharmacy;
 - (b) A written order from the prescriber;
 - (c) A facsimile or other electronic transmission of the order from the prescriber; or
 - (d) Written documentation by a nurse of a telephone order from the prescriber.
- (2) The documentation required above in subsection (1) of this section must include the following information:
- (a) The name of the resident;
 - (b) The name of the medication;
 - (c) The dosage and dosage frequency of the medication; and
 - (d) The name of the prescriber.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2230 Medication refusal. (1) When a resident who is receiving medication assistance or medication administration services from the ~~((boarding home))~~ assisted living facility chooses to not take his or her medications, the ~~((boarding home))~~ assisted living facility must:

- (a) Respect the resident's right to choose not to take medication;
- (b) Document the time, date and medication the resident did not take;
- (c) Notify the physician of the refusal and follow any instructions provided, unless there is a staff person available who, acting within his or her scope of practice, is able to evaluate the significance of the resident not getting his or her medication, and such staff person:
 - (i) Conducts an evaluation; and
 - (ii) Takes the appropriate action, including notifying the prescriber or primary care practitioner when there is a consistent pattern of the resident choosing to not take his or her medications.

(2) The ~~((boarding home))~~ assisted living facility must comply with subsection (1) of this section, unless the prescriber or primary care practitioner has provided the ~~((boarding home))~~ assisted living facility with:

(a) Specific directions for addressing the refusal of the identified medication;

(b) The ~~((boarding home))~~ assisted living facility documents such directions; and

(c) The ~~((boarding home))~~ assisted living facility is able to fully comply with such directions.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2240 Nonavailability of medications. When the ~~((boarding home))~~ assisted living facility has assumed responsibility for obtaining a resident's prescribed medications, the ~~((boarding home))~~ assisted living facility must obtain them in a correct and timely manner.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2250 Alteration of medications. The ~~((boarding home))~~ assisted living facility must generally provide medications in the form they are prescribed when administering medications or providing medication assistance to a resident. The ~~((boarding home))~~ assisted living facility may provide medications in an altered form consistent with the following:

- (1) Alteration includes, but is not limited to, crushing tablets, cutting tablets in half, opening capsules, mixing powdered medications with foods or liquids, or mixing tablets or capsules with foods or liquids.
- (2) Residents must be aware that the medication is being altered or added to their food.
- (3) A pharmacist or other practitioner practicing within their scope of practice must determine that it is safe to alter a medication.
- (4) If the medication is altered, documentation of the appropriateness of the alteration must be on the prescription container, or in the resident's record.
- (5) Alteration of medications for self-administration with assistance is provided in accordance with chapter 246-888 WAC.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2260 Storing, securing, and accounting for medications. (1) The ~~((boarding home))~~ assisted living facility must secure medications for residents who are not capable of safely storing their own medications.

(2) The ~~((boarding home))~~ assisted living facility must ensure all medications under the ~~((boarding home's))~~ assisted living facility's control are properly stored:

- (a) In containers with pharmacist-prepared label or original manufacturer's label;
- (b) Together for each resident and physically separated from other residents' medications;
- (c) Separate from food or toxic chemicals;
- (d) In a locked compartment that is accessible only to designated responsible staff persons; and
- (e) In environments recommended on the medication label.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2270 Resident controlled medications. (1) The ~~((boarding home))~~ assisted living facility must ensure all medications are stored in a manner that prevents each resident from gaining access to another resident's medications.

(2) The ~~((boarding home))~~ assisted living facility must allow a resident to control and secure the medications that he or she self-administers or self-administers with assistance if the ~~((boarding home))~~ assisted living facility assesses the resident to be capable of safely and appropriately storing his or her own medications and the resident desires to do so.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2280 Medication organizers. (1) The ~~((boarding home))~~ assisted living facility must ensure no staff person other than a nurse or licensed pharmacist fills medication organizers for residents.

(2) The ~~((boarding home))~~ assisted living facility must ensure that any nurse who fills a medication organizer for a resident labels the medication organizer with:

- (a) The name of the resident;
- (b) The name of the medications in the organizer; and
- (c) The frequency of the dosage.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2290 Family assistance with medications and treatments. (1) ~~((A boarding home))~~ An assisted living facility may permit a resident's family member to administer medications or treatments or to provide medication or treatment assistance, including obtaining medications or treatment supplies, to the resident.

(2) The ~~((boarding home))~~ assisted living facility must disclose to the department, residents, the residents' legal representatives, if any, and if not the residents' representative if any, and to interested consumers upon request, information describing whether the ~~((boarding home))~~ assisted living facility permits such family administration or assistance and, if so, the extent of any limitations or conditions.

(3) If the ~~((boarding home))~~ assisted living facility allows family assistance with or administration of medications and treatments, and the resident and a family member(s) agree a family member will provide medication or treatment assistance, or medication or treatment administration to the resident, the ~~((boarding home))~~ assisted living facility must request that the family member submit to the ~~((boarding home))~~ assisted living facility a written plan for such assistance or administration that includes at a minimum:

- (a) By name, the family member who will provide the medication or treatment assistance or administration;
- (b) A description of the medication or treatment assistance or administration that the family member will provide, to be referred to as the primary plan;
- (c) An alternate plan if the family member is unable to fulfill his or her duties as specified in the primary plan;

(d) An emergency contact person and telephone number if the ~~((boarding home))~~ assisted living facility observes changes in the resident's overall functioning or condition that may relate to the medication or treatment plan; and

(e) Other information determined necessary by the ~~((boarding home))~~ assisted living facility.

(4) The plan for family assistance with medications or treatments must be signed and dated by:

- (a) The resident, if able;
- (b) The resident's representative, if any;
- (c) The resident's family member responsible for implementing the plan; and
- (d) A representative of the ~~((boarding home))~~ assisted living facility authorized by the ~~((boarding home))~~ assisted living facility to sign on its behalf.

(5) The ~~((boarding home))~~ assisted living facility may, through policy or procedure, require the resident's family member to immediately notify the ~~((boarding home))~~ assisted living facility of any changes in the medication or treatment plans for family assistance or administration.

(6) The ~~((boarding home))~~ assisted living facility must require that whenever a resident's family provides medication assistance or medication administration services, the resident's significant medications remain on the ~~((boarding home))~~ assisted living facility premises whenever the resident is on the ~~((boarding home))~~ assisted living facility premises.

(7) The ~~((boarding home's))~~ assisted living facility's duty of care shall be limited to: Observation of the resident for changes in overall functioning consistent with RCW 18.20.280; notification to the person or persons identified in RCW 70.129.030 when there are observed changes in the resident's overall functioning or condition, or when the ~~((boarding home))~~ assisted living facility is aware that both the primary and alternate plan are not implemented; and appropriately responding to obtain needed assistance when there are observable or reported changes in the resident's physical or mental functioning.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2300 Food and nutrition services. (1) The ~~((boarding home))~~ assisted living facility must:

- (a) Provide a minimum of three meals a day:
 - (i) At regular intervals;
 - (ii) With no more than fourteen hours between the evening meal and breakfast, unless the ~~((boarding home))~~ assisted living facility provides a nutritious snack after the evening meal and before breakfast.
- (b) Provide sufficient time and staff support for residents to consume meals;
- (c) Ensure all menus:
 - (i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (f) of this subsection;
 - (ii) Indicate the date, day of week, month and year;
 - (iii) Include all food and snacks served that contribute to nutritional requirements;
 - (iv) Are kept at least six months;

- (v) Provide a variety of foods; and
 - (vi) Are not repeated for at least three weeks, except that breakfast menus in ~~((boarding homes))~~ assisted living facilities that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.
 - (d) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC Food service;
 - (e) Serve nourishing, palatable and attractively served meals adjusted for:
 - (i) Age, gender and activities, unless medically contraindicated; and
 - (ii) Individual preferences to the extent reasonably possible.
 - (f) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;
 - (g) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The ~~((boarding home))~~ assisted living facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;
 - (h) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and
 - (i) Maintain a dining area or areas approved by the department with a seating capacity for fifty percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.
- (2) The ~~((boarding home))~~ assisted living facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:
- (a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The ~~((boarding home))~~ assisted living facility must ensure the diet manual is:
 - (i) Available to and used by staff persons responsible for food preparation;
 - (ii) Approved by a dietitian; and
 - (iii) Reviewed and updated as necessary or at least every five years.
 - (b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.
- (3) The ~~((boarding home))~~ assisted living facility may provide to a resident at his or her request and as agreed upon in the resident's negotiated service agreement, nonprescribed:
- (a) Modified or therapeutic diets;
 - (b) Nutritional concentrates or supplements.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2305 Food sanitation. The ~~((boarding home))~~ assisted living facility must:

- (1) Manage food, and maintain any on-site food service facilities in compliance with chapter 246-215 WAC, Food service;
- (2) Ensure employees working as food service workers obtain a food worker card according to chapter 246-217 WAC; and
- (3) Ensure a resident obtains a food worker card according to chapter 246-217 WAC whenever:
 - (a) The resident is routinely or regularly involved in the preparation of food to be served to other residents;
 - (b) The resident is paid for helping to prepare food; or
 - (c) The resident is preparing food to be served to other residents as part of an employment-training program.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2310 Intermittent nursing services.

- (1) Intermittent nursing services are an optional service that the ~~((boarding home))~~ assisted living facility may provide.
- (2) The ~~((boarding home))~~ assisted living facility may choose to provide any of the following intermittent nursing services through appropriately licensed and credentialed staff; however, the facility may or may not need to provide additional intermittent nursing services to comply with the reasonable accommodation requirements in federal or state law:
 - (a) Medication administration;
 - (b) Administration of health treatments;
 - (c) Diabetic management;
 - (d) Nonroutine ostomy care;
 - (e) Tube feeding; and
 - (f) Nurse delegation consistent with chapter 18.79 RCW.
- (3) The ~~((boarding home))~~ assisted living facility must clarify on the disclosure form any limitations, additional services, or conditions that may apply under this section.
- (4) In providing intermittent nursing services, the ~~((boarding home))~~ assisted living facility must observe the resident for changes in overall functioning and respond appropriately when there are observable or reported changes in the resident's physical, mental or emotional functioning.
- (5) The ~~((boarding home))~~ assisted living facility may provide intermittent nursing services to the extent permitted by RCW 18.20.160.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2320 Intermittent nursing services systems.

- (1) When ~~((a boarding home))~~ an assisted living facility provides intermittent nursing services to any resident, either directly or indirectly, the ~~((boarding home))~~ assisted living facility must:
 - (a) Develop and implement systems that support and promote the safe practice of nursing for each resident; and
 - (b) Ensure the requirements of chapters 18.79 RCW and 246-840 WAC are met.
- (2) The ~~((boarding home))~~ assisted living facility providing nursing services, either directly or indirectly, must ensure that the nursing services systems include:
 - (a) Nursing services supervision;

- (b) Nurse delegation, if provided;
 - (c) Initial and on-going assessments of the nursing needs of each resident;
 - (d) Development of, and necessary amendments to, the nursing component of the negotiated service agreement for each resident;
 - (e) Implementation of the nursing component of each resident's negotiated service agreement; and
 - (f) Availability of the supervisor, in person, by pager, or by telephone, to respond to residents' needs on the ~~((boarding home))~~ assisted living facility premises as necessary.
- (3) The ~~((boarding home))~~ assisted living facility must ensure that all nursing services, including nursing supervision, assessments, and delegation, are provided in accordance with applicable statutes and rules, including, but not limited to:
- (a) Chapter 18.79 RCW, Nursing care;
 - (b) Chapter 18.88A RCW, Nursing assistants;
 - (c) Chapter 246-840 WAC, Practical and registered nursing;
 - (d) Chapter 246-841 WAC, Nursing assistants; and
 - (e) Chapter 246-888 WAC, Medication assistance.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2330 Tube feeding. (1) Tube feeding services are an optional service that ~~((a boarding home))~~ an assisted living facility may provide.

(2) The ~~((boarding home))~~ assisted living facility must provide intermittent nursing services to develop and implement the nursing component of the negotiated service agreement, administer feedings and necessary medications, and provide routine care of the tube insertion site whenever any resident requiring tube feeding is not able to:

- (a) Independently and safely manage:
 - (i) Maintenance of the tube insertion site;
 - (ii) Necessary medication administration through the tube; and
 - (iii) Feeding administration through the tube.
 - (b) Arrange for an outside resource to provide:
 - (i) Maintenance of the tube insertion site;
 - (ii) Necessary medication administration through the tube; and
 - (iii) Feeding administration through the tube.
- (3) The ~~((boarding home))~~ assisted living facility is not required to provide nursing services to a resident simply because the resident requires tube feeding if the resident can either independently manage or arrange for an outside resource to perform the tasks specified in subsection (2)(a) and (b) of this section.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2340 Resident-arranged services. (1) The ~~((boarding home))~~ assisted living facility must allow a resident to arrange to receive on-site care and services from:

- (a) A practitioner, licensed under Title 18 RCW regulating health care professions; and

(b) A home health, hospice, or home care agency licensed under chapter 70.127 RCW.

(2) The ~~((boarding home))~~ assisted living facility may permit the resident or the resident's legal representative, if any, to independently arrange for other persons to provide on-site care and services to the resident.

(3) The ~~((boarding home))~~ assisted living facility is not required to supervise the activities of a person providing care or services to a resident when the resident or resident's representative has independently arranged for or contracted with the person.

(4) The ~~((boarding home))~~ assisted living facility may establish policies and procedures that describe reasonable limitations, conditions, or requirements that must be met prior to an outside service provider being allowed on-site.

(5) When the resident or the resident's representative, if any, independently arranges for outside services under subsection (1) of this section, the ~~((boarding home's))~~ assisted living facility's duty of care, and any negligence that may be attributed thereto, shall be limited to: The responsibilities described under subsection (3) of this section; observation of the resident for changes in overall functioning, consistent with RCW 18.20.280; notification to the person or persons identified in RCW 70.129.030 when there are observed changes in the resident's overall functioning or condition; and appropriately responding to obtain needed assistance when there are observable or reported changes in the resident's physical or mental functioning.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2350 Coordination of health care services. (1) The ~~((boarding home))~~ assisted living facility must coordinate services with external health care providers to meet the residents' needs, consistent with the resident's negotiated service agreement.

(2) The ~~((boarding home))~~ assisted living facility must develop, implement and inform residents of the ~~((boarding home's))~~ assisted living facility's policies regarding how the ~~((boarding home))~~ assisted living facility interacts with external health care providers, including:

(a) The conditions under which health care information regarding a resident will be shared with external health care providers, consistent with chapter 70.02 RCW; and

(b) How residents' rights to privacy will be protected, including provisions for residents to authorize the release of health care information.

(3) The ~~((boarding home))~~ assisted living facility may disclose health care information about a resident to external health care providers without the resident's authorization if the conditions in RCW 70.02.050 are met.

(4) If the conditions in RCW 70.02.050 are not met, the ~~((boarding home))~~ assisted living facility must request, but may not require, a resident to authorize the ~~((boarding home))~~ assisted living facility and the external health care provider to share the resident's health care information when:

- (a) The ~~((boarding home))~~ assisted living facility becomes aware that a resident is receiving health care ser-

vices from a source other than the ~~((boarding home))~~ assisted living facility; and

(b) The resident has not previously authorized the ~~((boarding home))~~ assisted living facility to release health care information to an external health care provider.

(5) When a resident authorizes the release of health care information or resident authorization is not required under RCW 70.02.050, the ~~((boarding home))~~ assisted living facility must contact the external health care provider and coordinate services.

(6) When authorizations to release health care information are not obtained, or when an external health care provider is unresponsive to the ~~((boarding home's))~~ assisted living facility's efforts to coordinate services, the ~~((boarding home))~~ assisted living facility must:

(a) Document the ~~((boarding home's))~~ assisted living facility's actions to coordinate services;

(b) Provide notice to the resident of the risks of not allowing the ~~((boarding home))~~ assisted living facility to coordinate care with the external provider; and

(c) Address known associated risks in the resident's negotiated service agreement.

(7) When coordinating care or services, the ~~((boarding home))~~ assisted living facility must:

(a) Integrate relevant information from the external provider into the resident's preadmission assessment and reassessment, and when appropriate, negotiated service agreement; and

(b) Respond appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2360 Adult day services. (1) The ~~((boarding home))~~ assisted living facility may, but is not required to, provide an adult day services program for non-residents.

(2) If adult day services are provided, the ~~((boarding home))~~ assisted living facility must:

(a) Ensure each adult day services client receives appropriate supervision and agreed upon care and services during the time spent in the day services program;

(b) Ensure the care and services provided to adult day services clients do not compromise the care and services provided to ~~((boarding home))~~ assisted living facility residents;

(c) Ensure the total number of residents plus adult day services clients does not exceed the ~~((boarding home's))~~ assisted living facility's maximum facility capacity;

(d) Only accept adult day services clients who are appropriate for ~~((boarding home))~~ assisted living facility care and services, consistent with WAC 388-78A-2050;

(e) Provide sufficient furniture for the comfort of day services clients, in addition to furniture provided for residents;

(f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day services client;

(g) Investigate and document incidents and accidents involving adult day services clients consistent with WAC 388-78A-2700;

(h) Maintain a separate register of adult day services clients; and

(i) Maintain a record for each adult day services client.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2370 Dementia care. (1) The ~~((boarding home))~~ assisted living facility must, to the fullest extent reasonably possible, obtain for each resident who has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7):

(a) Information regarding the resident's significant life experiences, including:

(i) Family members or other significant relationships;

(ii) Education and training;

(iii) Employment and career experiences;

(iv) Religious or spiritual preferences;

(v) Familiar roles or sources of pride and pleasure.

(b) Information regarding the resident's ability or inability to:

(i) Articulate his or her personal needs; and

(ii) Initiate activity.

(c) Information regarding any patterns of resident behavior that express the resident's needs or concerns that the resident is not able to verbalize. Examples of such behaviors include, but are not limited to:

(i) Agitation;

(ii) Wandering;

(iii) Resistance to care;

(iv) Social isolation; and

(v) Aggression.

(2) The ~~((boarding home))~~ assisted living facility, in consultation with the resident's family or others familiar with the resident, must evaluate the significance and implications of the information obtained per subsection (1) of this section and integrate appropriate aspects into an individualized negotiated service agreement for the resident.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2380 Restricted egress. ~~((A boarding home))~~ An assisted living facility must ensure all of the following conditions are present before moving residents into units or buildings with exits that may restrict a resident's egress:

(1) Each resident, or a person authorized under RCW 7.70.065 to provide consent on behalf of the resident, consents to living in such unit or building.

(2) Each resident assessed as being cognitively and physically able to safely leave the ~~((boarding home))~~ assisted living facility is able to do so independently without restriction.

(3) Each resident, assessed as being cognitively able to safely leave the ~~((boarding home))~~ assisted living facility and who has physical challenges that make exiting difficult, is able to leave the ~~((boarding home))~~ assisted living facility

when the resident desires and in a manner consistent with the resident's negotiated service agreement.

(4) Each resident who is assessed as being unsafe to leave the ~~((boarding home))~~ assisted living facility unescorted is able to leave the ~~((boarding home))~~ assisted living facility consistent with his or her negotiated service agreement.

(5) Areas from which egress is restricted are equipped throughout with an approved automatic fire detection system and automatic fire sprinkler system electrically interconnected with a fire alarm system that transmits an alarm off site to a twenty-four hour monitoring station.

(6) Installation of special egress control devices in all proposed construction issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must conform to standards adopted by the state building code council.

(7) Installation of special egress control devices in all construction issued a project number by construction review services before September 1, 2004 for construction related to this section, must conform to the following:

(a) The egress control device must automatically deactivate upon activation of either the sprinkler system or the smoke detection system.

(b) The egress control device must automatically deactivate upon loss of electrical power to any one of the following:

- (i) The egress control device itself;
- (ii) The smoke detection system; or
- (iii) The means of egress illumination.

(c) The egress control device must be capable of being deactivated by a signal from a switch located in an approved location.

(d) An irreversible process which will deactivate the egress control device must be initiated whenever a manual force of not more than fifteen pounds is applied for two seconds to the panic bar or other door-latching hardware. The egress control device must deactivate within an approved time period not to exceed a total of fifteen seconds. The time delay must not be field adjustable.

(e) Actuation of the panic bar or other door-latching hardware must activate an audible signal at the door.

(f) The unlatching must not require more than one operation.

(g) A sign must be provided on the door located above and within twelve inches of the panic bar or other door-latching hardware reading:

"Keep pushing. The door will open in fifteen seconds. Alarm will sound."

The sign lettering must be at least one inch in height and must have a stroke of not less than one-eighth inch.

(h) Regardless of the means of deactivation, relocking of the egress control device must be by manual means only at the door.

(8) The ~~((boarding home))~~ assisted living facility must have a system in place to inform and permit visitors, staff persons and appropriate residents how they can exit without sounding the alarm.

(9) Units or buildings from which egress is restricted are equipped with a secured outdoor space for walking which:

- (a) Is accessible to residents without staff assistance;

(b) Is surrounded by walls or fences at least seventy-two inches high;

(c) Has areas protected from direct sunshine and rain throughout the day;

(d) Has walking surfaces that are firm, stable, slip-resistant and free from abrupt changes and are suitable for individuals using wheelchairs and walkers; and

(e) Has suitable outdoor furniture.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2390 Resident records. The ~~((boarding home))~~ assisted living facility must maintain adequate records concerning residents to enable the ~~((boarding home))~~ assisted living facility:

(1) To effectively provide the care and services agreed upon with the resident; and

(2) To respond appropriately in emergency situations.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2400 Protection of resident records. The ~~((boarding home))~~ assisted living facility must:

(1) Maintain a systematic and secure method of identifying and filing resident records for easy access;

(2) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.129 RCW;

(3) Allow authorized representatives of the department and other authorized regulatory agencies access to resident records;

(4) Provide any resident or other individual or organization access to resident records upon written consent of the resident or the resident's representative, unless state or federal law provide for broader access;

(5) Allow authorized agents, such as a management company, to use resident records solely for the purpose of providing care and services to residents and ensure that agents do not disclose such records except in a manner consistent with law; and

(6) Maintain ownership and control of resident records, except that resident records may be transferred to a subsequent person licensed by the department to operate the ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2410 Content of resident records. The ~~((boarding home))~~ assisted living facility must organize and maintain resident records in a format that the ~~((boarding home))~~ assisted living facility determines to be useful and functional to enable the effective provision of care and services to each resident. Active resident records must include the following:

(1) Resident identifying information, including resident's:

(a) Name;

(b) Birth date;

- (c) Move-in date; and
- (d) Sleeping room identification.
- (2) Current name, address, and telephone number of:
 - (a) Resident's primary health care provider;
 - (b) Resident's representative, if the resident has one;
 - (c) Individual(s) to contact in case of emergency, illness or death; and
 - (d) Family members or others, if any, the resident requests to be involved in the development or delivery of services for the resident.
- (3) Resident's written acknowledgment of receipt of:
 - (a) Required disclosure information prior to moving into the ~~((boarding home))~~ assisted living facility; and
 - (b) Information required by long-term care resident rights per RCW 70.129.030.
- (4) The resident's assessment and reassessment information.
- (5) Clinical information such as admission weight, height, blood pressure, temperature, blood sugar and other laboratory tests required by the negotiated service agreement.
- (6) The resident's negotiated service agreement consistent with WAC 388-78A-2140.
- (7) Any orders for medications, treatments, and modified or therapeutic diets, including any directions for addressing a resident's refusal of medications, treatments, and prescribed diets.
- (8) Medical and nursing services provided by the ~~((boarding home))~~ assisted living facility for a resident, including:
 - (a) A record of providing medication assistance and medication administration, which contains:
 - (i) The medication name, dose, and route of administration;
 - (ii) The time and date of any medication assistance or administration;
 - (iii) The signature or initials of the person providing any medication assistance or administration; and
 - (iv) Documentation of a resident choosing to not take his or her medications.
 - (b) A record of any nursing treatments, including the signature or initials of the person providing them.
- (9) Documentation consistent with WAC 388-78A-2120 Monitoring resident well-being.
- (10) Staff interventions or responses to subsection (9) of this section, including any modifications made to the resident's negotiated service agreement.
- (11) Notices of and reasons for relocation as specified in RCW 70.129.110.
- (12) The individuals who were notified of a significant change in the resident's condition and the time and date of the notification.
- (13) When available, a copy of any legal documents in which:
 - (a) The resident has appointed another individual to make his or her health care, financial, or other decisions;
 - (b) The resident has created an advance directive or other legal document that establishes a surrogate decision maker in the future and/or provides directions to health care providers; and

- (c) A court has established guardianship on behalf of the resident.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2420 Record retention. (1) The ~~((boarding home))~~ assisted living facility must maintain on the ~~((boarding home))~~ assisted living facility premises in a resident's active record(s) all relevant information and documentation necessary for meeting a resident's current assessed needs.

(2) The ~~((boarding home))~~ assisted living facility may remove outdated information from the resident's active records that is no longer significant or relevant to the resident's current assessed service and care needs, and maintain it in an inactive record that must remain on the ~~((boarding home))~~ assisted living facility premises as long as the resident remains in the ~~((boarding home))~~ assisted living facility.

(3) The ~~((boarding home))~~ assisted living facility must maintain all documentation filed in a closed resident record, on the ~~((boarding home))~~ assisted living facility premises for six months after the date the resident leaves the ~~((boarding home))~~ assisted living facility and on the ~~((boarding home))~~ assisted living facility premises or another location for five years after the date the resident leaves the ~~((boarding home))~~ assisted living facility.

(4) All active, inactive, and closed resident records must be available for review by department staff and other authorized persons.

(5) If ~~((a boarding home))~~ an assisted living facility ceases to operate as a licensed ~~((boarding home))~~ assisted living facility, the most recent licensee must make arrangements to ensure that the former residents' records are retained according to the times specified in this section and are available for review by department staff and other authorized individuals.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2430 Resident review of records. (1) The ~~((boarding home))~~ assisted living facility must assemble all records pertaining to a resident and make them available to a resident within twenty-four hours of the resident's or the resident's representative's request to review the resident's records per RCW 70.129.030.

(2) The ~~((boarding home))~~ assisted living facility must provide to the resident or the resident's representative, photocopies of the records or any portions of the records pertaining to the resident, within two working days of the resident's or resident's representative's request for the records.

(a) For the purposes of this section, "working days" means Monday through Friday, except for legal holidays.

(b) The ~~((boarding home))~~ assisted living facility may charge the resident or the resident's representative a fee not to exceed twenty-five cents per page for the cost of photocopying the resident's record.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2440 Resident register. (1) The ~~((boarding home))~~ assisted living facility must maintain in the ~~((boarding home))~~ assisted living facility a single current register of all ~~((boarding home))~~ assisted living facility residents, their roommates and identification of the rooms in which such persons reside or sleep.

(2) The ~~((boarding home))~~ assisted living facility must maintain a readily available permanent, current book, computer file, or register with entries in ink or typewritten, of all individuals who resided in the ~~((boarding home))~~ assisted living facility within the past five years, including:

- (a) Move-in date;
- (b) Full name;
- (c) Date of birth;
- (d) Date of moving out;
- (e) Reason for moving out; and
- (f) Location and address to which the resident was discharged.

(3) The ~~((boarding home))~~ assisted living facility must make this register immediately available to:

- (a) Authorized department staff;
- (b) Representatives of the long-term care ombudsman's office; and
- (c) Representatives of the Washington state fire marshal when conducting fire safety inspections.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2450 Staff. (1) Each ~~((boarding home))~~ assisted living facility must provide sufficient, trained staff persons to:

- (a) Furnish the services and care needed by each resident consistent with his or her negotiated service agreement;
- (b) Maintain the ~~((boarding home))~~ assisted living facility free of safety hazards; and
- (c) Implement fire and disaster plans.

(2) The ~~((boarding home))~~ assisted living facility must:

- (a) Develop and maintain written job descriptions for the administrator and each staff position and provide each staff person with a copy of his or her job description before or upon the start of employment;
- (b) Verify staff persons' work references prior to hiring;
- (c) Verify prior to hiring that staff persons have the required licenses, certification, registrations, or other credentials for the position, and that such licenses, certifications, registrations, and credentials are current and in good standing;
- (d) Document and retain for twelve weeks, weekly staffing schedules, as planned and worked;
- (e) Ensure all resident care and services are provided only by staff persons who have the training, credentials, experience and other qualifications necessary to provide the care and services;
- (f) Ensure at least one caregiver, who is eighteen years of age or older and has current cardiopulmonary resuscitation and first-aid cards, is present and available to assist residents at all times:

(i) When one or more residents are present on the ~~((boarding home))~~ assisted living facility premises; and

(ii) During ~~((boarding home))~~ assisted living facility activities off of the ~~((boarding home))~~ assisted living facility premises.

(g) Ensure caregiver provides on-site supervision of any resident voluntarily providing services for the ~~((boarding home))~~ assisted living facility;

(h) Provide staff orientation and appropriate training for expected duties, including:

(i) Organization of ~~((boarding home))~~ the assisted living facility;

(ii) Physical ~~((boarding home))~~ assisted living facility layout;

(iii) Specific duties and responsibilities;

(iv) How to report resident abuse and neglect consistent with chapter 74.34 RCW and ~~((boarding home))~~ assisted living facility policies and procedures;

(v) Policies, procedures, and equipment necessary to perform duties;

(vi) Needs and service preferences identified in the negotiated service agreements of residents with whom the staff persons will be working; and

(vii) Resident rights, including without limitation, those specified in chapter 70.129 RCW.

(i) Develop and implement a process to ensure caregivers:

(i) Acquire the necessary information from the preadmission assessment, on-going assessment and negotiated service agreement relevant to providing services to each resident with whom the caregiver works;

(ii) Are informed of changes in the negotiated service agreement of each resident with whom the caregiver works; and

(iii) Are given an opportunity to provide information to responsible staff regarding the resident when assessments and negotiated service agreements are updated for each resident with whom the caregiver works.

(j) Ensure all caregivers have access to resident records relevant to effectively providing care and services to the resident.

(3) The ~~((boarding home))~~ assisted living facility must:

(a) Protect all residents by ensuring any staff person suspected or accused of abuse, neglect, financial exploitation, or abandonment does not have access to any resident until the ~~((boarding home))~~ assisted living facility investigates and takes action to ensure resident safety;

(b) Not interfere with the investigation of a complaint, coerce a resident or staff person regarding cooperating with a complaint investigation, or conceal or destroy evidence of alleged improprieties occurring within the ~~((boarding home))~~ assisted living facility;

(c) Prohibit staff persons from being directly employed by a resident or a resident's family during the hours the staff person is working for the ~~((boarding home))~~ assisted living facility;

(d) Maintain the following documentation on the ~~((boarding home))~~ assisted living facility premises, during employment, and at least two years following termination of employment:

(i) Staff orientation and training or certification pertinent to duties, including, but not limited to:

(A) Training required by chapter 388-112 WAC;

(B) Home care aide certification as required by this chapter and chapter 246-980 WAC;

(C) Cardiopulmonary resuscitation;

(D) First aid; and

(E) HIV/AIDS training.

(ii) Disclosure statements and background checks as required in WAC 388-78A-2461 through 388-78A-2471; and

(iii) Documentation of contacting work references and professional licensing and certification boards as required by subsection (2) of this section.

(4) The ~~((boarding home))~~ assisted living facility is not required to keep on the ~~((boarding home))~~ assisted living facility premises, staff records that are unrelated to staff performance of duties. Such records include, but are not limited to, pay records, and health and insurance benefits for staff.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2460 Quality assurance committee.

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any ~~((boarding home))~~ assisted living facility licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;

(b) The administrator; and

(c) Three other members from the staff of the ~~((boarding home))~~ assisted living facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) If the ~~((boarding home))~~ assisted living facility refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the ~~((boarding home))~~ assisted living facility has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the ~~((boarding home))~~ assisted living facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with ~~((boarding home))~~ assisted

living facility requirements, the documents are not protected as quality assurance committee documents when in the possession of the department.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against ~~((a boarding home))~~ an assisted living facility.

(7) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2461 Background checks—General.

(1) Background checks conducted by the department and required in this chapter include:

(a) Washington state name and date of birth background checks; and

(b) After January 7, 2012, a national fingerprint background check in accordance with RCW 74.39A.056.

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the ~~((boarding home))~~ assisted living facility.

(3) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.051.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2462 Background checks—Who is required to have. (1) Applicants for ~~((a boarding home))~~ an assisted living facility license, as defined in WAC 388-78A-2740, must have the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(2) The ~~((boarding home))~~ assisted living facility must ensure that the administrator and all caregivers employed directly or by contract after January 7, 2012 have the following background checks:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(3) The ~~((boarding home))~~ assisted living facility must ensure that the following individuals have a Washington state name and date of birth background check:

(a) Volunteers who are not residents, and students who may have unsupervised access to residents;

(b) Staff persons who are not caregivers or administrators;

(c) Managers who do not provide direct care to residents; and

(d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2464 Background checks—Process—Background authorization form. Before the ((~~boarding home~~)) assisted living facility employs, directly or by contract, an administrator, staff person or caregiver, or accepts any volunteer, or student, the home must:

(1) Require the person to complete a DSHS background authorization form; and

(2) Send the completed form to the department's background check central unit, including any additional documentation and information requested by the department.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-24641 Background checks—Washington state name and date of birth background check. If the results of the Washington state name and date of birth background check indicate the person is disqualified by having a conviction listed in WAC 388-78A-2470 subsections (1) through (6), or by having a finding listed in WAC 388-78A-2470 subsections (7) through (9), then the ((~~boarding home~~)) assisted living facility must:

(1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and

(2) Not allow a volunteer or student to have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-24642 Background checks—National fingerprint background check. (1) Administrators and all caregivers who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the ((~~boarding home~~)) assisted living facility must not employ, directly or by contract, an administrator or caregiver who has been convicted of a crime or has a finding that is disqualifying under WAC 388-78A-2470.

(3) The ((~~boarding home~~)) assisted living facility may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2465 Background check—Results—Inform. (1) After receiving the results of the Washington state name and date of birth background check, the ((~~boarding home~~)) assisted living facility must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(2) After receiving the result letter for the national fingerprint background check, the ((~~boarding home~~)) assisted living facility must inform the person:

(a) Of the national fingerprint background check result letter;

(b) That they may request a copy of the national fingerprint check result letter; and

(c) That any additional information requested can only be obtained from the department's background check central unit.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2466 Background checks—Washington state name and date of birth background check—Valid for two years—National fingerprint background check—Valid indefinitely. (1) A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The ((~~boarding home~~)) assisted living facility must ensure:

(a) A new DSHS background authorization form is submitted to the department's background check central unit every two years for all administrators, caregivers, staff persons, volunteers and students; and

(b) There is a valid Washington state name and date of birth background check for all administrators, caregivers, staff persons, volunteers and students.

(2) A national fingerprint background check is valid for an indefinite period of time. The ((~~boarding home~~)) assisted living facility must ensure there is a valid national fingerprint background check completed for all administrators and caregivers hired after January 7, 2012. To be considered valid, the national fingerprint background check must be initiated and completed through the department's background check central unit after January 7, 2012.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2467 Background check—Sharing by health care facilities. In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may

not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, ~~((a boarding home))~~ an assisted living facility license under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The ~~((boarding home))~~ assisted living facility has no reason to believe the individual has or may have a disqualifying conviction or finding as described in WAC 388-78A-2470.

(2) The ~~((boarding home))~~ assisted living facility may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. The ~~((boarding home))~~ assisted living facility may conditionally hire an administrator, caregiver, or staff person directly or by contract, pending the result of the Washington state name and date of birth background check, provided that the ~~((boarding home))~~ assisted living facility:

(1) Submits the background authorization form for the person to the department no later than one business day after he or she starts working;

(2) Requires the person to sign a disclosure statement indicating if they have been convicted of a crime or have a finding that is disqualifying under WAC 388-78A-2470;

(3) Has received three positive references for the person;

(4) Does not allow the person to have unsupervised access to any resident;

(5) Ensures direct supervision of the administrator, all caregivers, and staff persons; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-24681 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check. The ~~((boarding home))~~ assisted living facility may provisionally employ a caregiver

and an administrator hired after January 7, 2012 for one hundred and twenty-days and allow the caregiver or administrator to have unsupervised access to residents when:

(1) The caregiver or administrator is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2469 Background check—Disclosure statement. (1) The ~~((boarding home))~~ assisted living facility must require each administrator, caregiver, staff person, volunteer and student, prior to starting his or her duties, to make disclosures of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the person under penalty of perjury.

(2) The department may require the ~~((boarding home))~~ assisted living facility or any administrator, caregiver, staff person, volunteer or student to complete additional disclosure statements or background authorization forms if the department has reason to believe that offenses specified in WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2470 Background check—Employment-disqualifying information. The ~~((boarding home))~~ assisted living facility must not employ or allow an administrator, caregiver, or staff person, to have unsupervised access to residents, as defined in RCW 43.43.830, if the person has been:

(1) Convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since the last conviction;

(2) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree, and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(3) Convicted of the manufacture, delivery, or possession with intent to manufacture or deliver drugs under one of the following laws:

(a) Violation of the Imitation Controlled Substances Act (VICSA);

(b) Violation of the Uniform Controlled Substances Act (VUCSA);

(c) Violation of the Uniform Legend Drug Act (VULDA); or

(d) Violation of the Uniform Precursor Drug Act (VUPDA);

(4) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(5) Convicted of criminal mistreatment;

(6) Convicted of a crime in any federal or state court, and the department determines that the crime is equivalent to a crime described in this section;

(7) Found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;

(8) Found to have abused or neglected a child and that finding is:

(a) Listed on the department's background check central unit report; or

(b) Disclosed by the individual, except for finding made before December, 1998.

(9) Found to have abused, neglected, financially exploited or abandoned a vulnerable adult and that finding is:

(a) Listed on any registry, including the department's registry;

(b) Listed on the department's background check central unit report; or

(c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information. (1) If the background check results show that an employee or prospective employee has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the ((~~boarding home~~)) assisted living facility must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the ((~~boarding home~~)) assisted living facility.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2471 Background check—Confidentiality—Use restricted—Retention. The ((~~boarding home~~)) assisted living facility must ensure that all disclosure statements, background authorization forms, background check results and related information are:

(1) Maintained on-site in a confidential and secure manner;

(2) Used for employment purposes only;

(3) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, persons or health care facilities authorized by chapter 43.43 RCW; and

(4) Retained and available for department review during the individual's employment or association with a facility and for at least two years after termination of the employment or association.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2474 Training and home care aide certification requirements. (1) The ((~~boarding home~~)) assisted living facility must ensure staff persons hired before January 7, 2012 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The ((~~boarding home~~)) assisted living facility must ensure all ((~~boarding home~~)) assisted living facility administrators, or their designees, and caregivers hired on or after January 7, 2012 meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) The ((~~boarding home~~)) assisted living facility must ensure that all staff receive appropriate training and orientation to perform their specific job duties and responsibilities.

(4) The ((~~boarding home~~)) assisted living facility must ensure all persons listed in subsection (2) of this section, obtain the home-care aide certification.

(5) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements. Continuing education requirements still apply as outlined in chapter 388-112 WAC.

(6) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2480 Tuberculosis—Testing—Required. (1) The ((~~boarding home~~)) assisted living facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.

(2) For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any ((~~boarding home~~)) assisted living facility employee or temporary employee of the ((~~boarding home~~)) assisted living facility, excluding volunteers and contractors.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2481 Tuberculosis—Testing method—Required. The ((~~boarding home~~)) assisted living facility must ensure that all tuberculosis testing is done through either:

(1) Intradermal (Mantoux) administration with test results read:

- (a) Within forty-eight to seventy-two hours of the test; and
- (b) By a trained professional; or
- (2) A blood test for tuberculosis called interferon-gamma release assay (IGRA).

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2482 Tuberculosis—No testing. The ((boarding home)) assisted living facility is not required to have a staff person tested for tuberculosis if the staff person has:

- (1) A documented history of a previous positive skin test, with ten or more millimeters induration;
- (2) A documented history of a previous positive blood test; or
- (3) Documented evidence of:
- (a) Adequate therapy for active disease; or
- (b) Completion of treatment for latent tuberculosis infection preventive therapy.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2483 Tuberculosis—One test. The ((boarding home)) assisted living facility is only required to have a staff person take one test if the staff person has any of the following:

- (1) A documented history of a negative result from a previous two step skin test done no more than one to three weeks apart; or
- (2) A documented negative result from one skin or blood test in the previous twelve months.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2484 Tuberculosis—Two step skin testing. Unless the staff person meets the requirement for having no skin testing or only one test, the ((boarding home)) assisted living facility choosing to do skin testing, must ensure that each staff person has the following two-step skin testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2485 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the ((boarding home)) assisted living facility must:

- (1) Ensure that the staff person has a chest X-ray within seven days;
- (2) Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and

- (3) Follow the recommendation of the resident or staff person's health care provider.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2486 Tuberculosis—Negative test result. The ((boarding home)) assisted living facility may be required by the public health provider or licensing authority to ensure that staff persons with negative test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis;
- (2) When tuberculosis symptoms are present; or
- (3) For periodic testing as determined by the public health provider.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2487 Tuberculosis—Declining a skin test. The ((boarding home)) assisted living facility must ensure that a staff person take the blood test for tuberculosis if they decline the skin test.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2488 Tuberculosis—Reporting—Required. The ((boarding home)) assisted living facility must:

- (1) Report any staff person or resident with tuberculosis symptoms or a positive chest X ray to the appropriate health care provider, or public health provider;
- (2) Follow the infection control and safety measures ordered by the staff person's health care provider including a public health provider;
- (3) Institute appropriate infection control measures;
- (4) Apply living or work restrictions where residents or staff persons are, or may be, infectious and pose a risk to other residents and staff persons; and
- (5) Ensure that staff person's caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2489 Tuberculosis—Test records. The ((boarding home)) assisted living facility must:

- (1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the ((boarding home)) assisted living facility;
- (2) Make the records readily available to the appropriate health provider and licensing agency,
- (3) Retain the records for at least two years after the date the staff person either quits or is terminated; and
- (4) Provide the staff person a copy of his/her test results.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2490 Specialized training for developmental disabilities. The ~~((boarding home))~~ assisted living facility must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the ~~((boarding home))~~ assisted living facility has a developmental disability as defined in WAC 388-823-0040, that is the resident's primary special need.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2500 Specialized training for mental illness. The ~~((boarding home))~~ assisted living facility must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness, whenever at least one of the residents in the ~~((boarding home))~~ assisted living facility has a mental illness that is the resident's primary special need and is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, and:

- (1) Who has received the diagnosis or treatment within the previous two years; and
- (2) Whose diagnosis was made by, or treatment provided by, one of the following:
 - (a) A licensed physician;
 - (b) A mental health professional;
 - (c) A psychiatric advanced registered nurse practitioner;
 or
 - (d) A licensed psychologist.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2510 Specialized training for dementia. The ~~((boarding home))~~ assisted living facility must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the ~~((boarding home))~~ assisted living facility has a dementia that is the resident's primary special need and has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7).

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2520 Administrator qualifications—General. (1) The licensee must appoint an administrator who is:

- (a) At least twenty-one years old;
 - (b) Not a resident of the ~~((boarding home))~~ assisted living facility; and
 - (c) Qualified to perform the administrator's duties specified in WAC 388-78A-2560.
- (2) The licensee must only appoint as ~~((a boarding home))~~ an assisted living facility administrator an individual

who meets the requirements of at least one of the following sections in WAC 388-78A-2522 through 388-78A-2527.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2522 Administrator qualifications—Prior to 2004. The individual was actively employed as ~~((a boarding home))~~ an assisted living facility administrator and met existing qualifications on September 1, 2004.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2524 Administrator qualifications—Certification of training, and three years experience. Prior to assuming duties as a boarding home administrator, the individual has met the following qualifications:

- (1) Obtained certification of completing a recognized administrator training as referenced in WAC 388-78A-2521; and
- (2) Has three years paid experience:
 - (a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or
 - (b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2525 Administrator qualifications—Associate degree, certification of training, and two years experience. The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section:

- (1) Obtains certification of completing a recognized administrator training course as referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or
- (2) Has two years paid experience:
 - (a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or
 - (b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the

provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2526 Administrator qualifications—Bachelor's degree, certification of training, and one year experience. The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section.

(1) Obtains certification of completing a recognized administrator training course and referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or

(2) Has one year paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, (~~(boarding home)~~) assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, (~~(boarding home)~~) assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2527 Administrator qualifications—Five years experience. Before assuming duties as an administrator, the individual has five years of paid experience:

(1) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, (~~(boarding home)~~) assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(2) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, (~~(boarding home)~~) assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2530 Qualifying administrator training program. Before the licensee appoints an individual who must have completed a qualifying administrator training program in order to qualify as (~~(a boarding home)~~) an assisted living facility administrator, the licensee must verify the individual has completed the training and obtain documentation from the individual that the training program met the following requirements:

(1) The department was notified of the beginning date of the administrator training program;

(2) The administrator training program was at least six months in duration following notification of the department;

(3) Only training, supervision, and experience occurring following notification of the department were credited to the qualifying training;

(4) The supervising administrator met the qualifications to be an administrator specified in WAC 388-78A-2520;

(5) The trainee was a full-time employee of (~~(a boarding home)~~) an assisted living facility and spent at least forty percent of his/her time for six months of the training program performing administrative duties customarily assigned to (~~(boarding home)~~) assisted living facility administrators or included in the job description of the administrator for the (~~(boarding home)~~) assisted living facility in which the training occurred;

(6) The supervising administrator was present on-site at the (~~(boarding home)~~) assisted living facility during the time the trainee performed administrator duties;

(7) The supervising administrator spent a minimum of one hundred direct contact hours with the trainee during the six months supervising and consulting with the trainee;

(8) Both the trainee and supervising administrator signed documentation of the trainee's qualifying experience and the supervising administrator's performance of required oversight duties; and

(9) The individual completing the qualifying administrator training program maintains the documentation of completing the program.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2540 Administrator requirements. The licensee must ensure the (~~(boarding home)~~) assisted living facility administrator:

(1) Meets the training requirements under chapter 388-112 WAC; and

(2) Knows and understands how to apply Washington state statutes and administrative rules related to the operation of (~~(a boarding home)~~) an assisted living facility; and

(3) Meets the administrator qualification requirements referenced in WAC 388-78A-2520 through 388-78A-2527.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2550 Administrator training documentation. The (~~(boarding home)~~) assisted living facility

must maintain for department review, documentation of the administrator completing:

- (1) Training required by chapter 388-112 WAC;
- (2) Department training in an overview of Washington state statutes and administrative rules related to the operation of ~~((a boarding home))~~ an assisted living facility;
- (3) As applicable, certification from a department-recognized national accreditation health or personal care organization; and
- (4) As applicable, the qualifying administrator-training program.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2560 Administrator responsibilities.

The licensee must ensure the administrator:

- (1) Directs and supervises the overall twenty-four-hour-per-day operation of the ~~((boarding home))~~ assisted living facility;
- (2) Ensures residents receive adequate care and services that meet the standards of this chapter;
- (3) Is readily accessible to meet with residents;
- (4) Complies with the ~~((boarding home's))~~ assisted living facility's policies;
- (5) When the administrator is not available on the premises, either:
 - (a) Is available by telephone or electronic pager; or
 - (b) Designates a person approved by the licensee to act in place of the administrator. The designee must be:
 - (i) Qualified by experience to assume designated duties; and
 - (ii) Authorized to make necessary decisions and direct operations of the ~~((boarding home))~~ assisted living facility during the administrator's absence.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2570 Notification of change in administrator. The licensee must notify the department in writing within ten calendar days of the effective date of a change in the ~~((boarding home))~~ assisted living facility administrator. The notice must include the full name of the new administrator and the effective date of the change.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2580 Use of home health/home care.

If ~~((a boarding home))~~ an assisted living facility licensee also has a home health or home care license, the licensee may not provide care or services to nonresident individuals living in independent living units on the ~~((boarding home))~~ assisted living facility premises under the home health or home care license if:

- (1) The licensee assumes general responsibility for the safety and well-being of the individual;
- (2) The individual requiring such services is not able to receive them in his or her own home and is required to move to another room as a condition for receiving such services;

(3) The individual receiving such services is required to receive them from the licensee as a condition for residing in the building, and is not free to receive such services from any appropriately licensed provider of his or her choice; or

(4) The licensee provides other care or services to the individual that falls under the jurisdiction of ~~((boarding home))~~ assisted living facility licensing and this chapter.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2592 Management agreements—Licensee. (1) The licensee is responsible for:

- (a) The daily operations and provisions of services in the ~~((boarding home))~~ assisted living facility (see 388-78A-2730 (1)(a));
- (b) Ensuring the ~~((boarding home))~~ assisted living facility is operated in a manner consistent with all laws and rules applicable to ~~((boarding homes))~~ assisted living facilities (see 388-78A-2730 (1)(b));
- (c) Ensuring the manager acts in conformance with a department approved management agreement; and
- (d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

(2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the ~~((boarding home))~~ assisted living facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(3) The licensee and manager must act in accordance with the terms of the department-approved management agreements. If the department determines they are not, then the department may take licensing action.

(4) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and manager.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2593 Management agreements—Terms of agreement. Management agreements, at a minimum must:

- (1) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;
- (2) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;
- (3) Provide for the maintenance and retention of all records in accordance with this chapter and other applicable laws;
- (4) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;
- (5) Require the manager to immediately send copies of inspections and notices of noncompliance to the licensee;
- (6) State that the licensee is responsible for reviewing, acknowledging and signing all ~~((boarding home))~~ assisted living facility initial and renewal license applications;

(7) State that the manager and licensee will review the management agreement annually and notify the department of any change according to applicable regulations;

(8) Acknowledge that the licensee is the party responsible for complying with all laws and rules applicable to ~~((boarding homes))~~ assisted living facilities;

(9) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the ~~((boarding home))~~ assisted living facility and care of the residents, including but not limited to, staffing plans, orientation and training;

(10) State the manager will not represent itself, or give the appearance it is the licensee; and

(11) State that a duly authorized manager may execute resident leases or agreements on behalf of the licensee, but all such resident leases or agreements must be between the licensee and the resident.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2594 Management agreements—Department review. Upon receipt of a proposed management agreement, the department may require:

(1) The proposed or current licensee or manager to provide additional information or clarification;

(2) Any changes necessary to:

(a) Bring the management agreement into compliance with this chapter; and

(b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.

(3) The licensee to participate in monthly meetings and quarterly on-site visits to the ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2595 Management agreements—Resident funds. (1) If the management agreement delegates day-to-day management of resident funds to the manager, the licensee:

(a) Retains all fiduciary and custodial responsibility for funds that have been deposited with the ~~((boarding home))~~ assisted living facility by the resident;

(b) Is directly accountable to the residents for such funds; and

(c) Must ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance.

(2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:

(a) Provide the licensee with a monthly accounting of the resident funds; and

(b) Meet all legal requirements related to holding, and accounting for, resident funds.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2600 Policies and procedures. (1) The ~~((boarding home))~~ assisted living facility must develop and implement policies and procedures in support of services that are provided and are necessary to:

(a) Maintain or enhance the quality of life for residents including resident decision-making rights;

(b) Provide the necessary care and services for residents, including those with special needs;

(c) Safely operate the ~~((boarding home))~~ assisted living facility; and

(d) Operate in compliance with state and federal law, including, but not limited to, chapters 7.70, 11.88, 11.92, 11.94, 69.41, 70.122, 70.129, and 74.34 RCW, and any rules promulgated under these statutes.

(2) The ~~((boarding home))~~ assisted living facility must develop, implement and train staff persons on policies and procedures to address what staff persons must do:

(a) Related to suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;

(b) When there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;

(c) When a substitute decision maker is no longer appropriate;

(d) When a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to, any action staff persons must take related to advance directives and emergency care;

(e) When a resident does not have a personal physician or health care provider;

(f) In response to medical emergencies;

(g) When there are urgent situations in the ~~((boarding home))~~ assisted living facility requiring additional staff support;

(h) In the event of an internal or external disaster, consistent with WAC 388-78A-2700;

(i) To supervise and monitor residents, including accounting for residents who leave the premises;

(j) To appropriately respond to aggressive or assaultive residents, including, but not limited to:

(i) Actions to take if a resident becomes violent;

(ii) Actions to take to protect other residents; and

(iii) When and how to seek outside intervention.

(k) To prevent and limit the spread of infections consistent with WAC 388-78A-2610;

(l) To manage residents' medications, consistent with WAC 388-78A-2210 through 388-78A-2290; sending medications with a resident when the resident leaves the premises;

(m) When services related to medications and treatments are provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;

(n) Related to food services consistent with chapter 246-215 WAC and WAC 388-78A-2300;

(o) Regarding the safe operation of any ~~((boarding home))~~ assisted living facility vehicles used to transport residents, and the qualifications of the drivers;

(p) To coordinate services and share resident information with outside resources, consistent with WAC 388-78A-2350;

(q) Regarding the management of pets in the ((boarding home)) assisted living facility, if permitted, consistent with WAC 388-78A-2620;

(r) When receiving and responding to resident grievances consistent with RCW 70.129.060; and

(s) Related to providing respite care services consistent with RCW 18.20.350, if respite care is offered.

(3) The ((boarding home)) assisted living facility must make the policies and procedures specified in subsection (2) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2610 Infection control. (1) The ((boarding home)) assisted living facility must institute appropriate infection control practices in the ((boarding home)) assisted living facility to prevent and limit the spread of infections.

(2) The ((boarding home)) assisted living facility must:

(a) Develop and implement a system to identify and manage infections;

(b) Restrict a staff person's contact with residents when the staff person has a known communicable disease in the infectious stage that is likely to be spread in the ((boarding home)) assisted living facility setting or by casual contact;

(c) Provide staff persons with the necessary supplies, equipment and protective clothing for preventing and controlling the spread of infections;

(d) Provide all resident care and services according to current acceptable standards for infection control;

(e) Perform all housekeeping, cleaning, laundry, and management of infectious waste according to current acceptable standards for infection control;

(f) Report communicable diseases in accordance with the requirements in chapter 246-100 WAC.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2620 Pets. If ((a boarding home)) an assisted living facility allows pets to live on the premises, the ((boarding home)) assisted living facility must:

(1) Develop, implement and disclose to potential and current residents, policies regarding:

(a) The types of pets that are permitted in the ((boarding home)) assisted living facility; and

(b) The conditions under which pets may be in the ((boarding home)) assisted living facility.

(2) Ensure animals living on the ((boarding home)) assisted living facility premises:

(a) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state;

(b) Are certified by a veterinarian to be free of diseases transmittable to humans;

(c) Are restricted from central food preparation areas.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2630 Reporting abuse and neglect. (1) The ((boarding home)) assisted living facility must ensure that each staff person:

(a) Makes a report to the department's Aging and Disability Services Administration Complaint Resolution Unit hotline consistent with chapter 74.34 RCW in all cases where the staff person has reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred; and

(b) Makes an immediate report to the appropriate law enforcement agency and the department consistent with chapter 74.34 RCW of all incidents of suspected sexual abuse or physical abuse of a resident.

(2) The ((boarding home)) assisted living facility must prominently post so it is readily visible to staff, residents and visitors, the department's toll-free telephone number for reporting resident abuse and neglect.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2640 Reporting significant change in a resident's condition. (1) The ((boarding home)) assisted living facility must consult with the resident's representative, the resident's physician, and other individual(s) designated by the resident as soon as possible whenever:

(a) There is a significant change in the resident's condition;

(b) The resident is relocated to a hospital or other health care facility; or

(c) The resident dies.

(2) The ((boarding home)) assisted living facility must notify any agency responsible for paying for the resident's care and services as soon as possible whenever:

(a) The resident is relocated to a hospital or other health care facility; or

(b) The resident dies.

(3) Whenever the conditions in subsection (1) or (2) of this section occur, the ((boarding home)) assisted living facility must document in the resident's records:

(a) The date and time each individual was contacted; and

(b) The individual's relationship to the resident.

(4) In case of a resident's death, the ((boarding home)) assisted living facility must notify the coroner if required by RCW 68.50.010.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2650 Reporting fires and incidents. The ((boarding home)) assisted living facility must immediately report to the department's aging and disability services administration:

(1) Any accidental or unintended fire, or any deliberately set but improper fire, such as arson, in the ((boarding home)) assisted living facility;

(2) Any unusual incident that required implementation of the ~~((boarding home's))~~ assisted living facility's disaster plan, including any evacuation of all or part of the residents to another area of the ~~((boarding home))~~ assisted living facility or to another address; and

(3) Circumstances which threaten the ~~((boarding home's))~~ assisted living facility's ability to ensure continuation of services to residents.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2660 Resident rights. The ~~((boarding home))~~ assisted living facility must:

(1) Comply with chapter 70.129 RCW, Long-term care resident rights;

(2) Ensure all staff persons provide care and services to each resident consistent with chapter 70.129 RCW;

(3) Not use restraints on any resident;

(4) Promote and protect the residents' exercise of all rights granted under chapter 70.129 RCW;

(5) Provide care and services to each resident in compliance with applicable state statutes related to substitute health care decision making, including chapters 7.70, 70.122, 11.88, 11.92, and 11.94 RCW;

(6) Reasonably accommodate residents consistent with applicable state and/or federal law; and

(7) Not allow any staff person to abuse or neglect any resident.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2665 Resident rights—Notice—Policy on accepting medicaid as a payment source. The ~~((boarding home))~~ assisted living facility must fully disclose the facility's policy on accepting medicaid payments. The policy must:

(1) Clearly state the circumstances under which the ~~((boarding home))~~ assisted living facility provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;

(2) Be provided both orally and in writing in a language that the resident understands;

(3) Be provided to prospective residents, before they are admitted to the home;

(4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

(5) Be written on a page that is separate from other documents and be written in a type font that is at least fourteen point; and

(6) Be signed and dated by the resident and be kept in the resident record after signature.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2670 Services by resident for ~~((boarding home))~~ assisted living facility. If a resident per-

forms services for the ~~((boarding home))~~ assisted living facility, the ~~((boarding home))~~ assisted living facility must ensure:

(1) The resident freely volunteers to perform the services without coercion or pressure from staff persons;

(2) The resident performing services does not supervise, or is not placed in charge of, other residents; and

(3) If the resident regularly performs voluntary services for the benefit of the ~~((boarding home))~~ assisted living facility, the volunteer activity is addressed in the resident's negotiated service agreement.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2680 Electronic monitoring equipment—Audio monitoring and video monitoring. (1)

Except as provided in this section or in WAC 388-78A-2690, the ~~((boarding home))~~ assisted living facility must not use the following in the facility or on the premises:

(a) Audio monitoring equipment; or

(b) Video monitoring equipment if it includes an audio component.

(2) The ~~((boarding home))~~ assisted living facility may video monitor and video record activities in the facility or on the premises, without an audio component, only in the following areas:

(a) Entrances and exits as long as the cameras are:

(i) Focused only on the entrance or exit doorways; and

(ii) Not focused on areas where residents gather.

(b) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas;

(c) Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and

(d) Designated smoking areas, subject to the following conditions:

(i) Residents have been assessed as needing supervision for smoking;

(ii) A staff person watches the video monitor at any time the area is used by such residents;

(iii) The video camera is clearly visible;

(iv) The video monitor is not viewable by general public; and

(v) The facility notifies all residents in writing of the use of video monitoring equipment.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2690 Electronic monitoring equipment—Resident requested use. (1) The ~~((boarding home))~~ assisted living facility must not use audio or video monitoring equipment to monitor any resident unless:

(a) The resident has requested the monitoring; and

(b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.

(2) If the resident requests audio or video monitoring, before any electronic monitoring occurs, the ~~((boarding home))~~ assisted living facility must ensure:

(a) That the electronic monitoring does not violate chapter 9.73 RCW;

(b) The resident has identified a threat to the resident's health, safety or personal property;

(c) The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and

(d) The resident and the ~~((boarding home))~~ assisted living facility have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.

(3) The ~~((boarding home))~~ assisted living facility must:

(a) Reevaluate the need for the electronic monitoring with the resident at least quarterly; and

(b) Have each reevaluation in writing, signed and dated by the resident.

(4) The ~~((boarding home))~~ assisted living facility must immediately stop electronic monitoring if the:

(a) Resident no longer wants electronic monitoring;

(b) Roommate objects or withdraws the consent to the electronic monitoring; or

(c) The resident becomes unable to give consent.

(5) For the purpose of consenting to video electronic monitoring without an audio component, the term "resident" includes the resident's surrogate decision maker.

(6) For the purposes of consenting to any audio electronic monitoring, the term "resident" includes:

(a) The individual residing in the ~~((boarding home))~~ assisted living facility; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to electronic monitoring of the resident.

(7) If a resident's decision maker consents to audio electronic monitoring as specified in (6) above, the ~~((boarding home))~~ assisted living facility must maintain a copy of the court order authorizing such consent in the resident's record.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2700 Safety measures and disaster preparedness. (1) The ~~((boarding home))~~ assisted living facility must take necessary action to promote the safety of each resident whenever the resident is on the ~~((boarding home))~~ assisted living facility premises or under the supervision of staff persons, consistent with the resident's negotiated service agreement.

(2) The ~~((boarding home))~~ assisted living facility must:

(a) Maintain the premises free of hazards;

(b) Maintain any vehicles used for transporting residents in a safe condition;

(c) Investigate and document investigative actions and findings for any alleged or suspected neglect or abuse or exploitation, accident or incident jeopardizing or affecting a resident's health or life. The ~~((boarding home))~~ assisted living facility must:

(i) Determine the circumstances of the event;

(ii) When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and

(ii) Protect other residents during the course of the investigation.

(d) Provide appropriate hardware on doors of storage rooms, closets and other rooms to prevent residents from being accidentally locked in;

(e) Provide, and tell staff persons of, a means of emergency access to resident-occupied bedrooms, toilet rooms, bathing rooms, and other rooms;

(f) Provide emergency lighting or flashlights in all areas of the ~~((boarding home))~~ assisted living facility. For all ~~((boarding homes))~~ assisted living facilities first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the ~~((boarding home))~~ assisted living facility must provide emergency lighting in all areas of the ~~((boarding home))~~ assisted living facility;

(g) Make sure first-aid supplies are:

(i) Readily available and not locked;

(ii) Clearly marked;

(iii) Able to be moved to the location where needed; and

(iv) Stored in containers that protect them from damage, deterioration, or contamination.

(h) Make sure first-aid supplies are appropriate for:

(i) The size of the ~~((boarding home))~~ assisted living facility;

(ii) The services provided;

(iii) The residents served; and

(iv) The response time of emergency medical services.

(i) Develop and maintain a current disaster plan describing measures to take in the event of internal or external disasters, including, but not limited to:

(i) On-duty staff persons' responsibilities;

(ii) Provisions for summoning emergency assistance;

(iii) Plans for evacuating residents from area or building;

(iv) Alternative resident accommodations;

(v) Provisions for essential resident needs, supplies and equipment including water, food, and medications; and

(vi) Emergency communication plan.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2710 Disclosure of services. (1) The ~~((boarding home))~~ assisted living facility must disclose to residents, the resident's representative, if any, and interested consumers upon request, the scope of care and services it offers, on the department's approved disclosure forms. The disclosure form shall not be construed as an implied or express contract between the ~~((boarding home))~~ assisted living facility and the resident, but is intended to assist consumers in selecting ~~((boarding home))~~ assisted living facility services.

(2) The ~~((boarding home))~~ assisted living facility must provide the services disclosed.

(3) The ~~((boarding home))~~ assisted living facility must provide a minimum of thirty days written notice to the residents and the residents' representatives, if any:

(a) Before the effective date of any decrease in the scope of care or services provided by the ~~((boarding home))~~ assisted

living facility, due to circumstances beyond the (~~boarding home's~~) assisted living facility's control; and

(b) Before the effective date of any voluntary decrease in the scope of care or services provided by the (~~boarding home~~) assisted living facility, and any such decrease in the scope of services provided will not result in the discharge of one or more residents.

(4) The (~~boarding home~~) assisted living facility must provide a minimum of ninety days written notice to the residents and the residents' representative, if any, before the effective date of any voluntary decrease in the scope of care or services provided by the (~~boarding home~~) assisted living facility, and any such decrease in the scope of services provided will result in the discharge of one or more residents.

(5) If the (~~boarding home~~) assisted living facility increases the scope of services that it chooses to provide, the (~~boarding home~~) assisted living facility must promptly provide written notice to the residents and residents' representative, if any, and must indicate the date on which the increase in the scope of care or services is effective.

(6) When the care needs of a resident exceed the disclosed scope of care or services that (~~a boarding home~~) an assisted living facility provides, the (~~boarding home~~) assisted living facility may exceed the care or services disclosed consistent with RCW 70.129.030(3) and 70.129.110 (3)(a).

(7) Even though the (~~boarding home~~) assisted living facility may disclose that it can provide certain care or services to residents or prospective residents or residents' representative, if any, the (~~boarding home~~) assisted living facility may deny admission to a prospective resident when the (~~boarding home~~) assisted living facility determines that the needs of the prospective resident cannot be met, as long as the (~~boarding home~~) assisted living facility operates in compliance with state and federal law, including reasonable accommodation requirements and RCW 70.129.030(3).

(8) The (~~boarding home~~) assisted living facility must notify prospective residents of their rights regarding health care decision making consistent with applicable state and federal laws and rules, before or at the time the individual moves into the (~~boarding home~~) assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2720 Timing of disclosure. (1) The (~~boarding home~~) assisted living facility must provide the disclosure form completed by the (~~boarding home~~) assisted living facility:

(a) In response to a request by a prospective resident or his or her representative, if any, for written information about the (~~boarding home's~~) assisted living facility's services and capabilities; or

(b) At the time the (~~boarding home~~) assisted living facility provides an application for residency, an admission agreement or contract, if not previously received by the prospective resident or his or her representative, if any.

(2) The (~~boarding home~~) assisted living facility is not required to provide the disclosure of care and services contained on the department's approved disclosure forms:

- (a) In advertisements;
- (b) In general marketing information to the public; or
- (c) To persons seeking general information regarding residential care resources in the community.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2730 Licensee's responsibilities. (1) The (~~boarding home~~) assisted living facility licensee is responsible for:

(a) The operation of the (~~boarding home~~) assisted living facility;

(b) Complying at all times with the requirements of this chapter, chapter 18.20 RCW, and other applicable laws and rules; and

(c) The care and services provided to the (~~boarding home~~) assisted living facility residents.

(2) The licensee must:

(a) Maintain the occupancy level at or below the licensed resident bed capacity of the (~~boarding home~~) assisted living facility;

(b) Maintain and post in a size and format that is easily read, in a conspicuous place on the (~~boarding home~~) assisted living facility premises:

(i) A current (~~boarding home~~) assisted living facility license, including any related conditions on the license;

(ii) The name, address and telephone number of:

(A) The department;

(B) Appropriate resident advocacy groups; and

(C) The state and local long-term care ombudsman with a brief description of ombudsman services.

(ii) A copy of the report, including the cover letter, and plan of correction of the most recent full inspection conducted by the department.

(c) Ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance to the department.

(3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services in the (~~boarding home~~) assisted living facility.

(4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.

(5) The licensee must appoint the (~~boarding home~~) assisted living facility administrator consistent with WAC 388-78A-2520.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2732 Liability insurance required—Ongoing. The (~~boarding home~~) assisted living facility must:

(1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-78A-2733 and 388-78A-2734; and

(2) Have evidence of liability insurance coverage available if requested by the department.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2733 Liability insurance required—Commercial general liability insurance or business liability insurance coverage. The ((~~boarding home~~)) assisted living facility must have commercial general liability insurance or business liability insurance that includes:

- (1) Coverage for the acts and omissions of any employee and volunteer;
- (2) Coverage for bodily injury, property damage, and contractual liability;
- (3) Coverage for premises, operations, independent contractor, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract; and
- (4) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) General aggregate at two million dollars.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2734 Liability insurance required—Professional liability insurance coverage. The ((~~boarding home~~)) assisted living facility must have professional liability insurance or error and omissions insurance if the ((~~boarding home~~)) assisted living facility licensee has a professional license, or employs professionally licensed staff. The insurance must include:

- (1) Coverage for losses caused by errors and omissions of the ((~~boarding home~~)) assisted living facility, its employees, and volunteers; and
- (2) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) Aggregate at two million dollars.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2740 Licensee qualifications. The department must consider separately and jointly as applicants each person named in the application for ((~~a boarding home~~)) an assisted living facility license.

- (1) If the department finds any person unqualified as specified in WAC 388-78A-3190, the department must deny, terminate, or not renew the license.
- (2) If the department finds any person unqualified as specified in WAC 388-78A-3170, the department may deny, terminate, or not renew the license.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2750 Application process. To apply for ((~~a boarding home~~)) an assisted living facility license, a person must:

- (1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;
- (2) Submit all relevant attachments specified in the application;
- (3) Submit department background authorization forms;
- (4) Sign the application;
- (5) Submit the license fee as specified in WAC 388-78A-3230;
- (6) Submit verification that construction plans have been approved by construction review services;
- (7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;
- (8) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and
- (9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.
- (10) A license must be issued only to the person who applied for the license.
- (11) A license may not exceed twelve months in duration and expires on a date set by the department.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2760 Necessary information. In making a determination whether to issue ((~~a boarding home~~)) an assisted living facility license, in addition to the information for each person named in the application, the department may review other documents and information the department deems relevant, including inspection and complaint investigation findings for each facility with which the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the applicant has been affiliated.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2770 Change in licensee/change of ownership—When change in licensee is required. The licensee of ((~~a boarding home~~)) an assisted living facility must change whenever the following events occur, including, but not limited to:

- (1) The licensee's form of legal organization is changed (e.g., a sole proprietor forms a partnership or corporation);
- (2) The licensee transfers ownership of the ((~~boarding home~~)) assisted living facility business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the ((~~boarding home~~)) assisted living facility is also transferred;
- (3) The licensee dissolves, or consolidates or merges with another legal organization and the licensee's legal organization does not survive;
- (4) If, during any continuous twenty-four-month period, fifty percent or more of the "**licensed entity**" is transferred, whether by a single transaction or multiple transactions, to:

(a) A different person (e.g., new or former shareholders or partners); or

(b) A person that had less than a five percent ownership interest in the ~~((boarding home))~~ assisted living facility at the time of the first transaction.

(5) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the licensee's control of the ~~((boarding home))~~ assisted living facility. As used in this section, "control" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the licensee or ~~((boarding home))~~ assisted living facility, whether through ownership, voting control, by agreement, by contract or otherwise.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2773 Change in licensee/change of ownership—When change in licensee not required. The licensee is not required to change when only the following, without more, occur:

(1) The licensee contracts with a party to manage the ~~((boarding home))~~ assisted living facility enterprise for the licensee pursuant to an agreement as specified in WAC 388-78A-2590; or

(2) The real property or personal property assets of the ~~((boarding home))~~ assisted living facility are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee or ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2775 Change in licensee/change of ownership—Application. (1) The prospective licensee must complete, sign and submit to the department a change of ownership application prior to the proposed date of change in licensee.

(2) The annual ~~((boarding home))~~ assisted living facility license fee, if a license fee is due, must accompany the change in ownership application.

(3) The prospective licensee must submit the following information that must be submitted along with the change of ownership application:

(a) Evidence of control of the real estate on which the ~~((boarding home))~~ assisted living facility is located, such as a purchase and sales agreement, lease contract, or other appropriate document; and

(b) Any other information requested by the department.

(4) The prospective licensee must submit the completed application to the department within the applicable timeframes of WAC 388-78A-2785 or 388-78A-2787.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-2780 Change in licensee/change of ownership—Notice to department and residents. (1) In order to change the licensee of ~~((a boarding home))~~ an

assisted living facility, the current licensee must notify the following in writing of the proposed change in licensee:

(a) The department; and

(b) All residents, or resident representatives (if any).

(2) The licensee must include the following information in the written notice:

(a) Name of the present licensee and prospective licensee;

(b) Name and address of the ~~((boarding home))~~ assisted living facility for which the licensee is being changed;

(c) Date of proposed change; and

(d) If the ~~((boarding home))~~ assisted living facility contracts with the department, health care authority or other public agencies that may make payments for residential care on behalf of residents, the anticipated effect, such as discharge from the ~~((boarding home))~~ assisted living facility, the change of licensee will have on residents whose care and services are supported through these contracts.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2783 Change in licensee/change of ownership—Relinquishment of license. (1) On the effective date of the change in licensee, the current ~~((boarding home))~~ assisted living facility licensee is required to relinquish their ~~((boarding home))~~ assisted living facility license.

(2) To relinquish a license, the licensee must mail the department the ~~((boarding home))~~ assisted living facility license along with a letter, addressed to the department, stating licensee's intent to relinquish the ~~((boarding home))~~ assisted living facility license to the department.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2785 Change in licensee/change of ownership—Ninety days notice. The current ~~((boarding home))~~ assisted living facility licensee must provide written notice to the department and residents, or resident representatives (if any), ninety calendar days prior to the date of the change of licensee, if the proposed change of ~~((boarding home))~~ assisted living facility licensee is anticipated to result in the discharge or transfer of any resident.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2787 Change in licensee/change of ownership—Sixty days notice. The current ~~((boarding home))~~ assisted living facility licensee must provide written notice to the department and residents, or resident representatives (if any), at least sixty calendar days prior to the date of the change of licensee, if the proposed change of ~~((boarding home))~~ assisted living facility licensee is not anticipated to result in the discharge or transfer of any resident.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2790 Annual renewal. To renew ((~~a boarding home~~)) an assisted living facility license, the ((~~boarding home~~)) assisted living facility must:

- (1) Submit a completed license renewal application on forms designated by the department, at least thirty days prior to the license expiration date;
- (2) Sign the application;
- (3) Submit the annual license fee as specified in WAC 388-78A-3230; and
- (4) If the licensee's agent prepares a renewal application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained on the renewal application.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-2800 Changes in licensed bed capacity. To change the licensed bed capacity in ((~~a boarding home~~)) an assisted living facility, the ((~~boarding home~~)) assisted living facility must:

- (1) Submit a completed request for approval to the department at least one day before the intended change;
- (2) Submit the prorated fee for additional beds if applicable; and
- (3) Post an amended license obtained from the department, indicating the new bed capacity.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2810 Criteria for increasing licensed bed capacity. Before the licensed bed capacity in ((~~a boarding home~~)) an assisted living facility may be increased, the ((~~boarding home~~)) assisted living facility must:

- (1) Obtain construction review services' review and approval of the additional rooms or beds, and related auxiliary spaces, if not previously reviewed and approved; and
- (2) Ensure the increased licensed bed capacity does not exceed the maximum facility capacity as determined by the department.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2820 Building requirements and exemptions. (1) To get a building approved for licensing, a person must:

- (a) Design plans according to the building code, local codes and ordinances, and this chapter;
- (b) Submit construction documents, including any change orders and addenda to:
 - (i) Construction review services per WAC 388-78A-2850 and include:
 - (A) A minimum of two sets of final construction drawings complying with the requirements of this chapter, stamped by a Washington state licensed architect or engineer; and

(B) A functional program description; and
(ii) Local county or municipal building departments per local codes to obtain necessary building permits.

(c) Conform to the approved construction documents during construction in accordance with chapter 18.20 RCW;

(d) Obtain written approval from construction review services prior to deviating from approved construction documents;

(e) Provide construction review services with a:

(i) Written notice of completion date;

(ii) Copy of reduced floor plan(s); and

(iii) Copy of certificate of occupancy issued by the local building department; and

(f) Obtain authorization from the department prior to providing ((~~boarding home~~)) assisted living facility services in the new construction area.

(2) The department may exempt the ((~~boarding home~~)) assisted living facility from meeting a specific requirement related to the physical environment if the department determines the exemption will not:

(a) Jeopardize the health or safety of residents;

(b) Adversely affect the residents' quality of life; or

(c) Change the fundamental nature of the ((~~boarding home~~)) assisted living facility operation into something other than ((~~a boarding home~~)) an assisted living facility.

(3) ((~~A boarding home~~)) An assisted living facility wishing to request an exemption must submit a written request to the department, including:

(a) A description of the requested exemption; and

(b) The specific WAC requirement for which the exemption is sought.

(4) The ((~~boarding home~~)) assisted living facility may not appeal the department's denial of a request for an exemption.

(5) The ((~~boarding home~~)) assisted living facility must retain a copy of each approved exemption in the ((~~boarding home~~)) assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2830 Conversion of licensed nursing homes. (1) If a person intends to convert a licensed nursing home building into a licensed ((~~boarding home~~)) assisted living facility, the building must meet all ((~~boarding home~~)) assisted living facility licensing requirements specified in this chapter and chapter 18.20 RCW unless the licensee has a contract with the department to provide enhanced adult residential care services in the ((~~boarding home~~)) assisted living facility per RCW 18.20.220.

(2) If the licensee provides contracted enhanced adult residential care services in the building converted from a licensed nursing home into a licensed ((~~boarding home~~)) assisted living facility, the ((~~boarding home~~)) assisted living facility licensing requirements for the physical structure are considered to be met if the most recent nursing home inspection report for the nursing home building demonstrates compliance, and compliance is maintained, with safety standards and fire regulations:

(a) As required by RCW 18.51.140; and

(b) Specified in the applicable building code, as required by RCW 18.51.145, including any waivers that may have been granted, except that the licensee must ensure the building meets the licensed ~~((boarding home))~~ assisted living facility standards, or their functional equivalency, for:

- (i) Resident to bathing fixture ratio required per WAC 388-78A-3030;
- (ii) Resident to toilet ratio required per WAC 388-78A-3030;
- (iii) Corridor call system required per WAC 388-78A-2930;
- (iv) Resident room door closures; and
- (v) Resident room windows required per WAC 388-78A-3010.

(3) If the licensee does not continue to provide contracted enhanced adult residential care services in the ~~((boarding home))~~ assisted living facility converted from a licensed nursing home, the licensee must meet all ~~((boarding home))~~ assisted living facility licensing requirements specified in this chapter and chapter 18.20 RCW.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2840 Licenses for multiple buildings.

(1) The licensee may have multiple buildings operating under a single ~~((boarding home))~~ assisted living facility license if:

- (a) All of the buildings are located on the same property with the same legal description; or
- (b) All of the buildings are located on contiguous properties undivided by:
 - (i) Public streets, not including alleyways used primarily for delivery services or parking; or
 - (ii) Other land that is not owned and maintained by the owners of the property on which the ~~((boarding home))~~ assisted living facility is located.

(2) The licensee must have separate ~~((boarding homes))~~ assisted living facility licenses for buildings that are not located on the same or contiguous properties.

(3) Buildings that construction review services reviewed only as an addition to, or a remodel of, an existing ~~((boarding home))~~ assisted living facility must not have separate ~~((boarding home))~~ assisted living facility licenses.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2850 Required reviews of building plans. (1) A person or ~~((boarding home))~~ assisted living facility must notify construction review services of all planned construction regarding ~~((boarding homes))~~ an assisted living facility prior to beginning work on any of the following:

- (a) A new building or portion thereof to be used as ~~((a boarding home))~~ an assisted living facility;
- (b) An addition of, or modification or alteration to an existing ~~((boarding home))~~ assisted living facility, including, but not limited to, the ~~((boarding home's))~~ assisted living facility's:
 - (i) Physical structure;
 - (ii) Electrical fixtures or systems;

- (iii) Mechanical equipment or systems;
 - (iv) Fire alarm fixtures or systems;
 - (v) Fire sprinkler fixtures or systems;
 - (vi) Carpeting;
 - (vii) Wall coverings 1/28 inch thick or thicker; or
 - (viii) Kitchen or laundry equipment.
- (c) A change in the department-approved use of an existing ~~((boarding home))~~ assisted living facility or portion of ~~((a boarding home))~~ an assisted living facility; and
- (d) An existing building or portion thereof to be converted for use as ~~((a boarding home))~~ an assisted living facility.

(2) A person or ~~((boarding home))~~ assisted living facility does not need to notify construction review services of the following:

- (a) Repair or maintenance of equipment, furnishings or fixtures;
- (b) Replacement of equipment, furnishings or fixtures with equivalent equipment, furnishings or fixtures;
- (c) Repair or replacement of damaged construction if the repair or replacement is performed according to construction documents approved by construction review services within eight years preceding the current repair or replacement;
- (d) Painting; or
- (e) Cosmetic changes that do not affect resident activities, services, or care and are performed in accordance with the current edition of the building code.

(3) The ~~((boarding home))~~ assisted living facility must submit plans to construction review services as directed by construction review services and consistent with WAC 388-78A-2820 for approval prior to beginning any construction. The plans must provide an analysis of likely adverse impacts on current ~~((boarding home))~~ assisted living facility residents and plans to eliminate or mitigate such adverse impacts.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2860 Relocation of residents during construction. (1) Prior to moving residents out of the ~~((boarding home))~~ assisted living facility during construction, the ~~((boarding home))~~ assisted living facility must:

- (a) Notify the residents and the residents' representatives at least thirty days prior to the anticipated move date, of the required move and their options consistent with chapter 70.129 RCW;
- (b) Notify the department at least thirty days prior to the anticipated move date, of the ~~((boarding home's))~~ assisted living facility's plans for relocating residents, including:
 - (i) The location to which the residents will be relocated;
 - (ii) The ~~((boarding home's))~~ assisted living facility's plans for providing care and services during the relocation;
 - (iii) The ~~((boarding home's))~~ assisted living facility's plans for returning residents to the building; and
 - (iv) The projected time frame for completing the construction.
- (c) Obtain the department's approval for the relocation plans prior to relocating residents.

(2) If the ~~((boarding home))~~ assisted living facility moves out all of the residents from the ~~((boarding home))~~

assisted living facility without first obtaining the department's approval of the relocation plans, the ~~((boarding home))~~ assisted living facility is closed for business and the department may revoke the licensee's ~~((boarding home))~~ assisted living facility license.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2870 Vacant buildings. Whenever ~~((a boarding home))~~ an assisted living facility moves out all residents and ceases operation for reasons other than construction, as specified in WAC 388-78A-2860, the licensee must relinquish the ~~((boarding home))~~ assisted living facility license or the department may revoke the ~~((boarding home))~~ assisted living facility license.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2880 Changing use of rooms. Prior to using a room for a purpose other than what was approved by construction review services, the ~~((boarding home))~~ assisted living facility must:

- (1) Notify construction review services:
 - (a) In writing;
 - (b) Thirty days or more before the intended change in use;
 - (c) Describe the current and proposed use of the room; and
 - (d) Provide all additional documentation as requested by construction review services.
- (2) Obtain the written approval of construction review services for the new use of the room.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2890 Time frame for approval. (1) A person or the licensee must:

- (a) Obtain approval by construction review services, of final construction documents prior to starting any construction, except for fire alarm plans, fire sprinkler plans, and landscaping plans.
- (b) Obtain approval by construction review services, of landscaping, fire alarm and fire sprinkler plans prior to their installation.
- (2) The department will not issue ~~((a boarding home))~~ an assisted living facility license unless:
 - (a) Construction review services:
 - (i) Notifies the department that construction has been completed; and
 - (ii) Provides the department:
 - (A) A copy of the certificate of occupancy granted by the local building official;
 - (B) A copy of the functional program; and
 - (C) A reduced copy of the approved floor plan indicating room numbers or names and the approved use; and
 - (b) The state fire marshal has inspected and approved the ~~((boarding home))~~ assisted living facility for fire protection.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2900 Retention of approved construction documents. The ~~((boarding home))~~ assisted living facility must retain on the ~~((boarding home))~~ assisted living facility premises:

- (1) Specification data on materials used in construction, for the life of the product;
- (2) Stamped "approved" set of construction documents.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2910 Applicable building codes. (1) Newly licensed ~~((boarding homes))~~ assisted living facilities and new construction in existing ~~((boarding homes))~~ assisted living facilities must meet the requirements of all the current state and local building and zoning codes and applicable sections of this chapter.

(2) Existing licensed ~~((boarding homes))~~ assisted living facilities must continue to meet the building codes in force at the time of their plan approval by construction review services, except that the ~~((boarding home))~~ assisted living facility may be required to meet current building code requirements if the construction poses a risk to the health and safety of residents.

(3) The ~~((boarding home))~~ assisted living facility must ensure that construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the ~~((boarding home))~~ assisted living facility of the need to comply with applicable state and local building and zoning codes.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2920 Area for nursing supplies and equipment. (1) If the ~~((boarding home))~~ assisted living facility provides intermittent nursing services, the ~~((boarding home))~~ assisted living facility must provide on the ~~((boarding home))~~ assisted living facility premises for the safe and sanitary:

- (a) Storage and handling of clean and sterile nursing equipment and supplies; and
- (b) Cleaning and disinfecting of soiled nursing equipment.

(2) For all ~~((boarding homes))~~ assisted living facilities first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, in which intermittent nursing services are provided, or upon initiating intermittent nursing services within an existing ~~((boarding home))~~ assisted living facility, the ~~((boarding home))~~ assisted living facility must provide the following two separate rooms in each ~~((boarding home))~~ assisted living facility building, accessible only by staff persons:

- (a) A "clean" utility room for the purposes of storing and preparing clean and sterile nursing supplies, equipped with:
 - (i) A work counter or table;

(ii) A handwashing sink, with soap and paper towels or other approved hand-drying device; and

(iii) Locked medication storage, if medications are stored in this area, that is separate from all other stored items consistent with WAC 388-78A-2260.

(b) A "soiled" utility room for the purposes of storing soiled linen, cleaning and disinfecting soiled nursing care equipment, and disposing of refuse and infectious waste, equipped with:

(i) A work counter or table;

(ii) A two-compartment sink for handwashing and equipment cleaning and sanitizing;

(iii) A clinical service sink or equivalent for rinsing and disposing of waste material;

(iv) Soap and paper towels or other approved hand-drying device; and

(v) Locked storage for cleaning supplies, if stored in the area.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2930 Communication system. (1) The ((~~boarding home~~)) assisted living facility must:

(a) Provide residents and staff persons with the means to summon on-duty staff assistance:

(i) From resident units;

(ii) From common areas accessible to residents;

(iii) From corridors accessible to residents; and

(iv) For ((~~boarding homes~~)) assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, all bathrooms, all toilet rooms, resident living rooms and sleeping rooms.

(b) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

(2) The ((~~boarding home~~)) assisted living facility must provide one or more nonpay telephones:

(a) In each building located for ready access by staff persons; and

(b) On the premises with reasonable access and privacy by residents.

(3) In ((~~boarding homes~~)) assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the ((~~boarding home~~)) assisted living facility must equip each resident room with two telephone lines.

(4) If ((~~a boarding home~~)) an assisted living facility that is issued a project number by construction services on or after September 1, 2004 chooses to install an intercom system, the intercom system must be equipped with a mechanism that allows a resident to control:

(a) Whether or not announcements are broadcast into the resident's room; and

(b) Whether or not voices or conversations within the resident's room can be monitored or listened to by persons outside the resident's room.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2940 Two-way intercom systems. The ((~~boarding home~~)) assisted living facility may use a two-way intercom system between staff persons and residents in other rooms only when:

(1) A resident initiates the contact; or

(2) Staff persons announce to the resident that the intercom has been activated at the time it is activated, and:

(a) The resident and any others in the room agree to continue the contact;

(b) The ((~~boarding home~~)) assisted living facility deactivates the intercom when the conversation is complete; and

(c) The ((~~boarding home~~)) assisted living facility ensures each resident is aware the intercom is operating at all times the intercom is in use in the resident's room.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2950 Water supply. The ((~~boarding home~~)) assisted living facility must:

(1) Provide water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(2) Maintain the ((~~boarding home~~)) assisted living facility water systems free of cross-connections as specified in the edition of *Cross-Connection Control Manual*, published by the Pacific Northwest Section of the American Water Works Association, in effect on the date a construction review fee is paid to the department of health, construction review services;

(3) Provide hot and cold water under adequate pressure readily available throughout the ((~~boarding home~~)) assisted living facility;

(4) Provide all sinks in resident rooms, toilet rooms and bathrooms, and bathing fixtures used by residents with hot water between 105°F and 120°F at all times; and

(5) Label or color code nonpotable water supplies "unsafe for domestic use."

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2960 Sewage and liquid waste disposal. The ((~~boarding home~~)) assisted living facility must:

(1) Ensure that all sewage and waste water drain into a municipal sewage disposal system according to chapter 246-271 WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters 246-272 and 173-240 WAC, and local ordinances.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2970 Garbage and refuse disposal. The ((~~boarding home~~)) assisted living facility must:

(1) Provide an adequate number of garbage containers to store refuse generated by the ~~((boarding home))~~ assisted living facility:

(a) Located in a storage area convenient for resident and staff use;

(b) Constructed of nonabsorbent material;

(c) Cleaned and maintained to prevent:

(i) Entrance of insects, rodents, birds, or other pests;

(ii) Odors; and

(iii) Other nuisances.

(2) Assure garbage and waste containers are emptied frequently to prevent hazards and nuisances; and

(3) Provide for safe and sanitary collection and disposal of:

(a) Garbage and refuse;

(b) Infectious waste; and

(c) Waste grease from the kitchen.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2980 Lighting. (1) The ~~((boarding home))~~ assisted living facility must maintain electric light fixtures and lighting necessary for the comfort and safety of residents and for the activities of residents and staff.

(2) The ~~((boarding home))~~ assisted living facility must provide enough lighting in each resident's room to meet the resident's needs, preferences and choices.

(3) New ~~((boarding home))~~ assisted living facility construction must, at a minimum, meet the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee is paid to the department of health, construction review services, for new ~~((boarding home))~~ assisted living facility construction.

(4) Existing ~~((boarding home))~~ assisted living facility construction must maintain, at a minimum, the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee was paid to the department of health, construction review services, for the ~~((boarding home))~~ assisted living facility or that portion of the ~~((boarding home))~~ assisted living facility that underwent construction review.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2990 Heating-cooling—Temperature. The ~~((boarding home))~~ assisted living facility must:

(1) Equip each resident-occupied building with an approved heating system capable of maintaining a minimum temperature of 70°F per the building code. The ~~((boarding home))~~ assisted living facility must:

(a) Maintain the ~~((boarding home))~~ assisted living facility at a minimum temperature of 60°F during sleeping hours; and

(b) Maintain the ~~((boarding home))~~ assisted living facility at a minimum of 68°F during waking hours, except in rooms:

(i) Designated for activities requiring physical exertion; or

(ii) Where residents can individually control the temperature in their own living units, independent from other areas.

(2) Equip each resident-occupied building with a mechanical air cooling system or equivalent capable of maintaining a temperature of 75°F in communities where the design dry bulb temperature exceeds 85°F for one hundred seventy-five hours per year or two percent of the time, as specified in the latest edition of "*Recommended Outdoor Design Temperatures—Washington State*," published by the Puget Sound chapter of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers;

(3) Equip each ~~((boarding home))~~ assisted living facility issued a project number by construction review services on or after September 1, 2004 for construction related to this section, with a backup source of heat in enough common areas to keep all residents adequately warm during interruptions of normal heating operations;

(4) Prohibit the use of portable space heaters unless approved in writing by the Washington state director of fire protection; and

(5) Equip each resident sleeping room and resident living room in ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, with individual temperature controls located between thirty and forty-eight inches above the floor capable of maintaining room temperature plus or minus 3°F from setting, within a range of minimum 60°F to maximum 85°F.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3000 Ventilation. The ~~((boarding home))~~ assisted living facility must:

(1) Ventilate rooms to:

(a) Prevent excessive odors or moisture; and

(b) Remove smoke.

(2) Designate and ventilate smoking areas, if smoking is permitted in the ~~((boarding home))~~ assisted living facility, to prevent air contamination throughout the ~~((boarding home))~~ assisted living facility;

(3) Provide intact sixteen mesh screens on operable windows and openings used for ventilation; and

(4) Prohibit screens that may restrict or hinder escape or rescue through emergency exit openings.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3010 Resident room—Room furnishings-storage. (1) The ~~((boarding home))~~ assisted living facility must ensure each resident has a sleeping room that has:

(a) Eighty or more square feet of usable floor space in a one-person sleeping room;

(b) Seventy or more square feet of usable floor space per individual in a sleeping room occupied by two or more individuals, except:

(i) When a resident sleeping room is located within a private apartment; and

(ii) The private apartment includes a resident sleeping room, a resident living room, and a private bathroom; and

(iii) The total square footage in the private apartment equals or exceeds two hundred twenty square feet excluding the bathroom; and

(iv) There are no more than two residents living in the apartment; and

(v) Both residents mutually agree to share the resident sleeping room; and

(vi) All other requirements of this section are met, then the two residents may share a sleeping room with less than one hundred forty square feet.

(c) A maximum sleeping room occupancy of:

(i) Four individuals if the ~~((boarding home))~~ assisted living facility was licensed before July 1, 1989, and licensed continuously thereafter; and

(ii) Two individuals if the ~~((boarding home))~~ assisted living facility, after June 30, 1989:

(A) Applied for initial licensure; or

(B) Applied to increase the number of resident sleeping rooms; or

(C) Applied to change the use of rooms into sleeping rooms.

(d) Unrestricted direct access to a hallway, living room, outside, or other common-use area;

(e) One or more outside windows with:

(i) Window sills at or above grade, with grade extending horizontally ten or more feet from the building; and

(ii) Adjustable curtains, shades, blinds, or equivalent for visual privacy.

(f) One or more duplex electrical outlets per bed if the ~~((boarding home))~~ assisted living facility was initially licensed after July 1, 1983;

(g) A light control switch located by the entrance for a light fixture in the room;

(h) An individual towel and washcloth rack or equivalent, except when there is a private bathroom attached to the resident sleeping or living room, the individual towel and washcloth rack may be located in the attached private bathroom;

(i) In all ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, and when requested by a resident in ~~((a boarding home))~~ an assisted living facility licensed on or before September 1, 2004, provide a lockable drawer, cupboard or other secure space measuring at least one-half cubic foot with a minimum dimension of four inches;

(j) Separate storage facilities for each resident in or immediately adjacent to the resident's sleeping room to adequately store a reasonable quantity of clothing and personal possessions;

(k) A configuration to permit all beds in the resident sleeping room to be spaced at least three feet from other beds unless otherwise requested by all affected residents.

(2) The ~~((boarding home))~~ assisted living facility must ensure each resident sleeping room contains:

(a) A comfortable bed for each resident, except when two residents mutually agree to share a bed. The bed must be thirty-six or more inches wide for a single resident and fifty-four or more inches wide for two residents, appropriate for size, age and physical condition of the resident and room dimensions, including, but not limited to:

(i) Standard household bed;

(ii) Studio couch;

(iii) Hide-a-bed;

(iv) Day bed; or

(v) Water bed, if structurally and electrically safe.

(b) A mattress for each bed which:

(i) Fits the bed frame;

(ii) Is in good condition; and

(iii) Is at least four inches thick unless otherwise requested or necessary for resident health or safety.

(c) One or more comfortable pillows for each resident;

(d) Bedding for each bed, in good repair; and

(e) Lighting at the resident's bedside when requested by the resident.

(3) The ~~((boarding home))~~ assisted living facility must not allow a resident sleeping room to be used as a passage-way or corridor.

(4) The ~~((boarding home))~~ assisted living facility may use or allow use of carpets and other floor coverings only when the carpet is:

(a) Securely fastened to the floor or provided with non-skid backing; and

(b) Kept clean and free of hazards, such as curling edges or tattered sections.

(5) The ~~((boarding home))~~ assisted living facility must ensure each resident has either a sleeping room or resident living room that contains a sturdy, comfortable chair appropriate for the age and physical condition of the resident. This requirement does not mean ~~((a boarding home))~~ an assisted living facility is responsible for supplying specially designed orthotic or therapeutic chairs, including those with mechanical lifts or adjustments.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1)

The ~~((boarding home))~~ assisted living facility must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The ~~((boarding home))~~ assisted living facility must provide each toilet room and bathroom with:

(a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;

(b) Washable walls to the height of splash or spray;

(c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:

(i) Bathing fixture; and

(ii) Toilet.

(d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and

(e) Adequate ventilation to the outside of the (~~(boarding home)~~) assisted living facility. For (~~(boarding homes)~~) assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section, must provide mechanical ventilation to the outside.

(3) The (~~(boarding home)~~) assisted living facility must provide each toilet room with a:

(a) Toilet with a clean, nonabsorbent seat free of cracks;

(b) Handwashing sink in or adjacent to the toilet room. For (~~(boarding homes)~~) assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the (~~(boarding home)~~) assisted living facility; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For (~~(boarding homes)~~) assisted living facilities approved for construction or initially licensed after August 1, 1994, the (~~(boarding home)~~) assisted living facility must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the (~~(boarding home)~~) assisted living facility must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents. For example: One toilet and one handwashing sink for one to eight residents, two for nine to sixteen residents, three for seventeen to twenty-four residents, and so on, who do not have access to a private toilet room. When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the (~~(boarding home)~~) assisted living facility must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents. For example: One bathing fixture for one to twelve residents, two for twelve to twenty-four residents, three for twenty-five to thirty-six residents, and so on, who do not have access to a private toilet room.

(7) When providing common-use toilet rooms and bathrooms, the (~~(boarding home)~~) assisted living facility must:

(a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The (~~(boarding home)~~) assisted living facility is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In (~~(boarding homes)~~) assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section, the (~~(boarding home)~~) assisted living facility must ensure twenty-five percent of all the bathing fixtures in the (~~(boarding home)~~) assisted living facility are roll-in type showers that have:

(a) One-half inch or less threshold that may be a collapsible rubber water barrier;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3040 Laundry. (1) The (~~(boarding home)~~) assisted living facility must provide laundry and linen services on the premises, or by commercial laundry.

(2) The (~~(boarding home)~~) assisted living facility must handle, clean, and store linen according to acceptable methods of infection control. The (~~(boarding home)~~) assisted living facility must:

(a) Provide separate areas for handling clean laundry and soiled laundry;

(b) Ensure clean laundry is not processed in, and does not pass through, areas where soiled laundry is handled;

(c) Ensure areas where clean laundry is stored are not exposed to contamination from other sources; and

(d) Ensure all staff persons wear gloves and (~~(uses)~~) use other appropriate infection control practices when handling soiled laundry.

(3) The (~~(boarding home)~~) assisted living facility must use washing machines that have a continuous supply of hot water with a temperature of 140°F measured at the washing machine intake, or that automatically dispense a chemical sanitizer as specified by the manufacturer, whenever the (~~(boarding home)~~) assisted living facility washes:

(a) (~~(Boarding home)~~) Assisted living facility laundry;

(b) (~~(Boarding home)~~) Assisted living facility laundry combined with residents' laundry into a single load; or

(c) More than one resident's laundry combined into a single load.

(4) The (~~(boarding home)~~) assisted living facility or a resident washing an individual resident's personal laundry, separate from other laundry, may wash the laundry at tem-

peratures below 140°F and without the use of a chemical sanitizer.

(5) The ~~((boarding home))~~ assisted living facility must ventilate laundry rooms and areas to the outside of the ~~((boarding home))~~ assisted living facility, including areas or rooms where soiled laundry is held for processing by off site commercial laundry services.

(6) The ~~((boarding home))~~ assisted living facility must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

(7) For all ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the ~~((boarding home))~~ assisted living facility must provide a laundry area where residents' may do their personal laundry that is:

(a) Equipped with:

(i) A utility sink;

(ii) A table or counter for folding clean laundry;

(iii) At least one washing machine and one clothes dryer; and

(iv) Mechanical ventilation to the outside of the ~~((boarding home))~~ assisted living facility.

(b) Is arranged to reduce the chances of soiled laundry contaminating clean laundry.

(8) The ~~((boarding home))~~ assisted living facility may combine areas for soiled laundry with other areas when consistent with WAC 388-78A-3110.

(9) The ~~((boarding home))~~ assisted living facility may combine areas for handling and storing clean laundry with other areas when consistent with WAC 388-78A-3120.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3050 Day rooms. (1) The ~~((boarding home))~~ assisted living facility must provide one or more day room areas in which residents may participate in social and recreational activities. Day room areas include, but are not limited to:

(a) Solariums;

(b) Enclosed sun porches;

(c) Recreation rooms;

(d) Dining rooms; and

(e) Living rooms.

(2) The ~~((boarding home))~~ assisted living facility must provide a total minimum floor space for day room areas of:

(a) One hundred fifty square feet, or ten square feet per resident, whichever is larger, in ~~((boarding homes))~~ assisted living facilities licensed on or before December 31, 1988; or

(b) One hundred fifty square feet, or twenty square feet per resident, whichever is larger, in ~~((boarding homes))~~ assisted living facilities licensed after December 31, 1988.

(3) The ~~((boarding home))~~ assisted living facility must provide day room areas with comfortable furniture and furnishings that meet the residents' needs.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3060 Storage space. The ~~((boarding home))~~ assisted living facility must:

(1) Provide adequate storage space for supplies, equipment and linens;

(2) Provide separate, locked storage for disinfectants and poisonous compounds; and

(3) Maintain storage space to prevent fire or safety hazards.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3070 Stairs—Ramps. The ~~((boarding home))~~ assisted living facility must maintain nonskid surfaces on all stairways and ramps used by residents.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3080 Guardrails—Handrails. (1) The ~~((boarding home))~~ assisted living facility must install and maintain sturdy handrails according to building code requirements, located:

(a) In halls and corridors, if necessary for resident safety;

(b) On each side of interior and exterior stairways with more than one step riser, unless the department approves in writing having a handrail on one side only; and

(c) On each side of interior and exterior ramps with slopes greater than one to twenty.

(2) The ~~((boarding home))~~ assisted living facility must install guardrails if the department determines guardrails are necessary for resident safety.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3090 Maintenance and housekeeping. (1) The ~~((boarding home))~~ assisted living facility must:

(a) Provide a safe, sanitary and well-maintained environment for residents;

(b) Keep exterior grounds, ~~((boarding home))~~ assisted living facility structure, and component parts safe, sanitary and in good repair;

(c) Keep facilities, equipment and furnishings clean and in good repair;

(d) Ensure each resident or staff person maintains the resident's quarters in a safe and sanitary condition; and

(e) Equip a housekeeping supply area on the premises with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, separate from food preparation and service areas;

(ii) Storage for wet mops, ventilated to the outside of the ~~((boarding home))~~ assisted living facility; and

(iii) Locked storage for cleaning supplies.

(2) For ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this sec-

tion, the ((boarding home)) assisted living facility must provide housekeeping supply room(s):

(a) Located on each floor of the ((boarding home)) assisted living facility, except only one housekeeping supply room is required for ((boarding homes)) assisted living facilities licensed for sixteen or fewer beds when there is a means other than using a stairway, for transporting mop buckets between floors;

(b) In proximity to laundry and kitchen areas; and

(c) Equipped with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, away from food preparation and service areas;

(ii) Storage for wet mops;

(iii) Locked storage for cleaning supplies; and

(iv) Mechanical ventilation to the outside of the ((boarding home)) assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3100 Safe storage of supplies and equipment. The ((boarding home)) assisted living facility must secure potentially hazardous supplies and equipment commensurate with the assessed needs of residents and their functional and cognitive abilities. In determining what supplies and equipment may be accessible to residents, the ((boarding home)) assisted living facility must consider at a minimum:

(1) The residents' characteristics and needs;

(2) The degree of hazardousness or toxicity posed by the supplies or equipment;

(3) Whether or not the supplies and equipment are commonly found in a private home, such as hand soap or laundry detergent; and

(4) How residents with special needs are individually protected without unnecessary restrictions on the general population.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3110 Areas for cleaning and storing soiled equipment, supplies and laundry. (1) The ((boarding home)) assisted living facility may combine areas used for storing, handling and cleaning soiled laundry and linens, areas used for cleaning and disinfecting soiled nursing care equipment, areas for disposing of refuse and infectious waste, and/or areas for storing housekeeping and cleaning supplies, into a single area on the premises only when the ((boarding home)) assisted living facility equips the area with:

(a) A two-compartment sink for handwashing and sanitizing;

(b) A clinical service sink or equivalent for rinsing and disposing of waste material;

(c) A work counter or table;

(d) Mechanical ventilation to the outside of the ((boarding home)) assisted living facility; and

(e) Locked storage for cleaning supplies, if stored in the area.

(2) The ((boarding home)) assisted living facility must ensure that any work or function performed in or around a combined utility area as described in subsection (1) of this section is performed without significant risk of contamination to:

(a) Storing or handling clean or sterile nursing supplies or equipment;

(b) Storing or handling clean laundry;

(c) Providing resident care;

(d) Food storage, preparation, or service; or

(e) Other operations, services or functions in the ((boarding home)) assisted living facility sensitive to infection control practices.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3120 Areas for handling and storing clean supplies and equipment. The ((boarding home)) assisted living facility may combine areas used for handling and storing clean laundry, and areas used for storing, preparing and handling clean and sterile nursing supplies, equipment and medications, into a single area on the premises only when the ((boarding home)) assisted living facility:

(1) Equips the area with:

(a) A handwashing sink; and

(b) A work counter or table.

(2) Ensures that any work or function performed in the area is performed without significant risk of contamination from other sources; and

(3) Stores medications separate from all other stored items consistent with WAC 388-78A-2260.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3130 Plant restrictions. The ((boarding home)) assisted living facility must not use poisonous or toxic plants in areas of the ((boarding home)) assisted living facility premises accessible to residents who, based on their diagnosed condition or cognitive disabilities, may ingest or have harmful contact with such plants.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3140 Responsibilities during inspections. The ((boarding home)) assisted living facility must:

(1) Cooperate with the department during any on-site inspection or complaint investigation;

(2) Provide requested records to the representatives of the department; and

(3) Ensure the ((boarding home)) assisted living facility administrator or the administrator's designee is available during any inspection or complaint investigation to respond to questions or issues identified by department staff.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 5/1/09)

WAC 388-78A-3152 Plan of correction—Required.

(1) The ~~((boarding home))~~ assisted living facility must comply with all applicable licensing laws and regulations at all times.

(2) When the department finds the ~~((boarding home))~~ assisted living facility out of compliance with any licensing law or regulation the department will send the home an inspection report with an attestation of correction statement for each cited deficiency.

(3) The ~~((boarding home))~~ assisted living facility must complete an attestation of correction for any inspection report as the department requires.

(4) For purposes of this section an "attestation of correction statement" means a statement developed by the department and signed and dated by the home, that the home:

- (a) Has or will correct each cited deficiency; and
- (b) Will maintain correction of each cited deficiency.

(5) The home must be able to show to the department, upon request, that, for each deficiency cited, the home has:

- (a) A plan of correction and maintaining correction;
- (b) Corrected or is correcting each deficiency; and
- (c) Maintained or is maintaining compliance.

(6) On each attestation of correction statement, the home must:

(a) Give a date, approved by the department, showing when the cited deficiency has been or will be corrected; and

(b) By signature and date showing that the home has or will correct, and maintain correction, of each deficiency.

(7) The home must return the inspection report, with completed attestation of correction statements, to the department within ten calendar days of receiving the report.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3160 Authorized enforcement remedies. (1) Whenever the circumstances in WAC 388-78A-3170(1) are present, the department may impose any enforcement remedies authorized by RCW 18.20.050(4), 18.20.185(7) and 18.20.190 on ~~((a boarding home))~~ an assisted living facility, including:

(a) Denying ~~((a boarding home))~~ an assisted living facility license;

(b) Suspending ~~((a boarding home))~~ an assisted living facility license;

(c) Revoking ~~((a boarding home))~~ an assisted living facility license;

(d) Refusing to renew ~~((a boarding home))~~ an assisted living facility license;

(e) Suspending admissions to ~~((a boarding home))~~ an assisted living facility;

(f) Suspending admissions to ~~((a boarding home))~~ an assisted living facility of a specific category or categories of residents as related to cited problems;

(g) Imposing conditions on the ~~((boarding home))~~ assisted living facility license; and/or

(h) Imposing civil penalties of not more than one hundred dollars per day per violation.

(2) Notwithstanding subsection (1) of this section, the department may impose a civil penalty on ~~((a boarding home))~~ an assisted living facility of up to three thousand dollars per day per violation for interference, coercion, discrimination and/or reprisal by ~~((a boarding home))~~ an assisted living facility as set forth in RCW 18.20.185(7).

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3170 Circumstances resulting in enforcement remedies. (1) The department is authorized to impose enforcement remedies described in WAC 388-78A-3160 if any person described in subsection (2) of this section is found by the department to have:

(a) A history of significant noncompliance with federal or state laws or regulations in providing care or services to frail elders, vulnerable adults or children, whether as a licensee, contractor, managerial employee or otherwise. Evidence of significant noncompliance may include, without limitation:

(i) Citations for violation of laws or regulations imposed by regulating entities;

(ii) Sanctions for violation of laws or regulations imposed by regulating entities;

(iii) Involuntary termination, cancellation, suspension, or nonrenewal of a medicaid contract or medicare provider agreement, or any other agreement with a public agency for the care or treatment of children, frail elders or vulnerable adults;

(iv) Been denied a license relating to the care of frail elders, vulnerable adults or children; or

(v) Relinquished or failed to renew a license relating to care of frail elders, vulnerable adults or children following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of a license.

(b) Failed to provide appropriate care to frail elders, vulnerable adults or children under a contract, or having such contract terminated or not renewed by the contracting agency due to such failure;

(c) Been convicted of a felony, or a crime against a person, if the conviction reasonably relates to the competency of the person to operate ~~((a boarding home))~~ an assisted living facility;

(d) Failed or refused to comply with the requirements of chapter 18.20 RCW, applicable provisions of chapter 70.129 RCW or this chapter;

(e) Retaliated against a staff person, resident or other individual for:

(i) Reporting suspected abuse or other alleged improprieties;

(ii) Providing information to the department during the course of the department conducting an inspection of the ~~((boarding home))~~ assisted living facility; or

(iii) Providing information to the department during the course of the department conducting a complaint investigation in the ~~((boarding home))~~ assisted living facility.

(f) Operated a facility for the care of children or adults without a current, valid license or under a defunct or revoked license;

(g) Been convicted of a crime committed on ~~((a boarding home))~~ an assisted living facility premises; knowingly permitted, aided or abetted an illegal act on ~~((a boarding home))~~ an assisted living facility premises; or engaged in the illegal use of drugs or the excessive use of alcohol;

(h) Abused, neglected or exploited a vulnerable adult or knowingly failed to report alleged abuse, neglect or exploitation of a vulnerable adult as required by chapter 74.34 RCW;

(i) Failed to exercise fiscal accountability and responsibility involving a resident, the department, public agencies, or the business community; or to have insufficient financial resources or unencumbered income to sustain the operation of the ~~((boarding home))~~ assisted living facility;

(j) Knowingly or with reason to know, made false statements of material fact in the application for the license or the renewal of the license or any data attached thereto, or in any matter under investigation by the department;

(k) Willfully prevented or interfered with or attempted to impede in any way any inspection or investigation by the department, or the work of any authorized representative of the department or the lawful enforcement of any provision of this chapter;

(l) Refused to allow department representatives or agents to examine any part of the licensed premises including the books, records and files required under this chapter;

(m) Moved all residents out of the ~~((boarding home))~~ assisted living facility without the department's approval and to be no longer operating as ~~((a boarding home))~~ an assisted living facility; or

(n) Demonstrated any other factors that give evidence the applicant lacks the appropriate character, suitability and competence to provide care or services to vulnerable adults.

(2) This section applies to any ~~((boarding home))~~ assisted living facility:

- (a) Applicant;
- (b) Partner, officer or director;
- (c) Manager or managerial employee; or
- (d) Majority owner of the applicant or licensee;
- (i) Who is involved in the management or operation of the ~~((boarding home))~~ assisted living facility;

(ii) Who may have direct access to ~~((boarding home))~~ assisted living facility residents;

(iii) Who controls or supervises the provision of care or services to ~~((boarding home))~~ assisted living facility residents; or

(iv) Who exercises control over daily operations of the ~~((boarding home))~~ assisted living facility.

(3) For other circumstances resulting in discretionary enforcement remedies, see WAC 388-78A-3200.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3180 Required enforcement remedies. The department must impose an appropriate remedy consistent with RCW 18.20.125 and as otherwise authorized by RCW 18.20.185 or 18.20.190 whenever the department finds ~~((a boarding home))~~ an assisted living facility has:

(1) A serious problem, a recurring problem, or an uncorrected problem;

(2) Created a hazard that causes or is likely to cause death or serious harm to one or more residents;

(3) Discriminated or retaliated in any manner against a resident, employee, or any other person because that person or any other person made a complaint or provided information to the department, the attorney general, a law enforcement agency, or the long-term care ombudsman; or

(4) Willfully interfered with the performance of official duties by a long-term care ombudsman.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke, or refuse to renew ~~((a boarding home))~~ an assisted living facility license if any person described in subsection (2) of this section who may have unsupervised access to residents has a conviction or finding described in WAC 388-78A-2470.

(2) This section applies to any ~~((boarding home))~~ assisted living facility:

- (a) Applicant;
- (b) Partner, officer or director;
- (c) Manager or managerial employee; or
- (d) Owner of five percent or more of the applicant;
- (i) Who is involved in the operation of the ~~((boarding home))~~ assisted living facility; or
- (ii) Who controls or supervises the provision of care or services to the ~~((boarding home))~~ assisted living facility residents; or
- (iii) Who exercises control over daily operations.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3200 Progression of enforcement remedies. (1) When the department cites ~~((a boarding home))~~ an assisted living facility for an initial problem that does not represent a recurring problem, serious problem or uncorrected problem, and that results in minimal or moderate harm that is limited in scope, the department may:

- (a) Require a plan of correction from the ~~((boarding home))~~ assisted living facility;
- (b) Impose conditions on the ~~((boarding home))~~ assisted living facility license; and/or
- (c) Impose a civil penalty.

(2) The department may take any of the actions specified in subsection (1) of this section and/or impose a stop-placement or limited stop-placement on ~~((a boarding home))~~ an assisted living facility when:

(a) There is a reasonable probability, at the time the stop-placement or limited stop-placement is imposed, at least a moderate degree of harm will occur or recur as a result of a single problem or by a combination of problems; and

(b) The threatening problem is more than an isolated event or occurrence.

(3) The department may take any of the actions specified in subsections (1) and (2) of this section and/or summarily suspend ~~((a boarding home's))~~ an assisted living facility's license when:

(a) There is an imminent threat that a serious degree of harm may occur to residents as a result of a single problem or a combination of problems; and

(b) The threatening problem is more than an isolated event or occurrence.

(4) The department may take any of the actions specified in subsections (1), (2) and (3) of this section and/or revoke ~~((a boarding home's))~~ an assisted living facility's license when:

(a) The department has cause to summarily suspend the ~~((boarding home's))~~ assisted living facility's license;

(b) There is a current problem with the ~~((boarding home))~~ assisted living facility and the ~~((boarding home))~~ assisted living facility has a history of having enforcement remedies imposed by the department;

(c) There is a current problem with the ~~((boarding home))~~ assisted living facility and the ~~((boarding home))~~ assisted living facility has a history of noncompliance representing problems that were at least moderate in nature and moderate in scope;

(d) The ~~((boarding home))~~ assisted living facility has moved all residents out of the ~~((boarding home))~~ assisted living facility without the department's approval and is no longer operating as ~~((a boarding home))~~ an assisted living facility; or

(e) There is a serious current problem, which may not warrant a summary suspension, with the ~~((boarding home))~~ assisted living facility that does not have a history of non-compliance. Examples of the types of serious current problems that may warrant license revocation include, but are not limited to:

(i) The licensee has been found or convicted by a court of competent jurisdiction to have engaged in fraudulent activity; or

(ii) The licensee is experiencing significant financial problems resulting in poor care or jeopardizing the care and services that can be provided to residents, and possible business failure; or

(f) The ~~((boarding home))~~ assisted living facility fails to cooperate with the department during any inspection or complaint investigation.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3210 Informal dispute resolution. The ~~((boarding home))~~ assisted living facility has a right to an informal dispute resolution meeting according to department procedure and consistent with RCW 18.20.195. The ~~((boarding home))~~ assisted living facility must make a request for an informal dispute resolution meeting in writing within ten days of the receipt of the written notice of deficiency.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3220 Appeal rights. (1) An applicant or ~~((boarding home))~~ assisted living facility:

(a) May contest an enforcement remedy imposed by the department pursuant to RCW 18.20.190 according to the provisions of chapter 34.05 RCW and chapters 10-08 and 388-02 WAC;

(b) Must file any request for an adjudicative proceeding with the office of administrative hearings at the mailing address specified in the notice of imposition of an enforcement remedy within twenty-eight days of receiving the notice.

(2) Orders of the department imposing licensing suspension, stop-placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-3230 Fees. The ~~((boarding home))~~ assisted living facility must:

(1) Submit an annual per bed license fee based on the licensed bed capacity and as established in the state's biennial omnibus appropriation act and any amendment or addition made to that act;

(2) Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and

(3) Submit to construction review services a fee for the review of the construction documents per the review fee schedule that is based on the project cost.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-3390 Resident protection program—Individual defined. As used in WAC 388-78A-3400 through 388-78A-3480, the term "individual" means anyone used by the ~~((boarding home))~~ assisted living facility to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident. "Individual" includes, but is not limited to employees, contractors, and volunteers.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3400 Investigation of reports. (1) The department may investigate allegations of abandonment, abuse, neglect, exploitation, and financial exploitation of a resident.

(2) A department investigation may include an investigation of allegations about one or more of the following:

(a) A licensee;

(b) ~~((Boarding home))~~ Assisted living facility administrator;

(c) Employee of the ~~((boarding home))~~ assisted living facility;

(d) Entity representative;

(e) Anyone affiliated with the ~~((boarding home))~~ assisted living facility; and

(f) Caregiver.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-3470 Resident protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation and financial exploitation within ten working days to the following:

- (1) The individual against whom the final finding was made;
- (2) The ~~((boarding home))~~ assisted living facility licensee or entity representative that was associated with the individual during the time of the incident;
- (3) The employer or program that is currently associated with the individual against whom the final finding was made, if known;
- (4) The appropriate licensing, certification or registration authority;
- (5) Any federal or state registry or list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and
- (6) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

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

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-4010 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the ~~((boarding home))~~ assisted living facility or to the individual to whom notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.

**WSR 13-15-012
PERMANENT RULES
DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)
[Filed July 8, 2013, 9:06 a.m., effective July 8, 2013]

Effective Date of Rule: July 8, 2013.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESHB 2473 passed in 2012 and gives the secretary of health the authority to issue a medication assistant endorsement beginning July 1, 2013.

Purpose: WAC 246-841-586 through 246-841-595. ESHB 2473 created a medication assistant endorsement option for nursing assistants-certified working in nursing homes. These rules: Establish requirements for the endorsement, including minimum work experience, education, train-

ing, examination, and continuing competency; define tasks that can be performed with an endorsement; and set requirements for educational programs in order to implement issuing of endorsements.

Statutory Authority for Adoption: ESHB 2473 (chapter 208, Laws of 2012).

Other Authority: RCW 18.88A.060.

Adopted under notice filed as WSR 13-10-057 on April 29, 2013.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-841-588 (2)(b)(iii) was revised to delete the phrase "within the immediate year prior to the date of application" to correct a drafting error.

A final cost-benefit analysis is available by contacting Mary Dale, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4744, fax (360) 236-4738, e-mail mary.dale@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, 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 10, Amended 0, Repealed 0.

Date Adopted: June 11, 2013.

Paula R. Meyer, MSN, RN
Executive Director

MEDICATION ASSISTANT ENDORSEMENT

NEW SECTION

WAC 246-841-586 Applicability. WAC 246-841-587 through 246-841-595 apply to the endorsement of a nursing assistant-certified as a medication assistant. A nursing assistant-certified with a medication assistant endorsement administers medications and nursing commission-approved treatments to residents in nursing homes, under the direct supervision of a designated registered nurse.

Nothing in these rules requires a nursing home to employ a nursing assistant-certified with a medication assistant endorsement. A medication assistant's employer may limit or restrict the range of functions permitted in these rules but may not expand those functions.

WAC 246-841-587 through 246-841-595 also apply to the approval of education and training programs and competency evaluations for medication assistants.

A medication assistant is responsible and accountable for his or her specific functions.

NEW SECTION

WAC 246-841-587 Definitions. The definitions in this section apply to WAC 246-841-586 through 246-841-595 unless the context clearly requires otherwise.

(1) "Competency evaluation" means the measurement of an individual's knowledge and skills related to the safe, competent performance as a medication assistant.

(2) "Direct supervision" means that the licensed registered nurse who directs medication administration and nursing commission-approved treatments to a medication assistant is on the premises, is immediately accessible in person and has assessed the residents prior to performance of these duties.

(3) "Medication assistant" means a nursing assistant-certified with a medication assistant endorsement issued under chapter 18.88A RCW.

(4) "Nursing home" means a nursing home licensed under chapter 18.51 RCW.

NEW SECTION

WAC 246-841-588 Application requirements. (1) **Initial applicant requirements:** Applicants for an initial medication assistant endorsement must meet the following requirements:

(a) Be certified as a nursing assistant-certified, with a certification in good standing, under chapter 18.88A RCW;

(b) Successfully complete a nursing commission-approved medication assistant education and training program, as described in WAC 246-841-590 (6) and (7) within the immediate year prior to the date of application;

(c) Complete at least one thousand hours of work experience in a nursing home as a nursing assistant-certified within the immediate year prior to the date of application; and

(d) After completing the requirements in (a) through (c) of this subsection, pass the nursing commission-approved medication assistant competency evaluation. Each applicant must successfully complete a written competency evaluation. The competency evaluation must measure an individual's knowledge and skills related to the safe, competent performance as a medication assistant. The evaluation assesses the competency specification required in the core curriculum as listed in WAC 246-841-590(6).

(2) Application requirements:

(a) To obtain an initial medication assistant endorsement credential, the nursing assistant-certified must submit to the department:

(i) An application on forms approved by the secretary.

(ii) The applicable fees under WAC 246-841-990.

(iii) Proof of completion of a nursing commission approved medication assistant:

(A) Education and training program under WAC 246-841-590 (6) and (7); and

(B) Competency evaluation under subsection (1) of this section; and

(iv) Employer documentation of work experience as required in subsection (1)(c) of this section.

(b) An applicant who is currently credentialed as a medication assistant in another state or jurisdiction may qualify

for a medication assistant endorsement credential under this chapter. An applicant must submit to the department:

(i) An application on forms approved by the secretary;

(ii) Written verification directly from the state or jurisdiction in which the applicant is credentialed, attesting that the applicant holds a credential substantially equivalent to the medication assistant endorsement credential in Washington in good standing, and is not subject to charges or disciplinary action;

(iii) Verification of completion of the required education that is substantially equivalent to the education requirements as described in WAC 246-841-590 (6) and (7);

(iv) Employer documentation of work experience as required in subsection (1)(c) of this section; and

(v) The applicable fees under WAC 246-841-990.

(3) **Renewal requirements:** To renew a medication assistant endorsement credential, the medication assistant must have a current nursing assistant-certified credential in good standing, and meet the requirements of WAC 246-12-030.

(4) **Continuing competency requirements:** A medication assistant shall meet the following requirements on an annual basis to coincide with renewal of their nursing assistant-certified credentials:

(a) Employer documentation of successful completion of two hundred fifty hours of employment as a medication assistant in a nursing home setting under the direct supervision of a registered nurse;

(b) Documentation of eight hours of continuing education specific to medications, medication administration, and performance of selected patient treatments. Continuing education hours must be obtained through a nursing commission-approved medication education and training program as described in WAC 246-841-590 (6) and (7), continuing education programs approved by a professional association, or staff development programs offered in a nursing home. The education hours must directly relate to the medication assistant's role of medication administration and the performance of selected patient treatments.

NEW SECTION

WAC 246-841-589 Medication administration and performing prescriber ordered treatments. (1) A medication assistant working in a nursing home shall only accept direction to perform medication administration and prescriber ordered treatments from a designated registered nurse within the medication assistant's scope of practice, education, and demonstrated competency.

(2) It is the responsibility of the designated registered nurse to assess the individual needs of each resident and determine that the direction of medication administration or selected treatment tasks poses minimal risks to each resident. The designated registered nurse determines the frequency of resident assessments and decides the number and types of medications to be administered.

(3) The medication assistant under the direct supervision of a registered nurse in a nursing home, may:

(a) Administer over-the-counter medications;

(b) Administer legend drugs, with the exception of chemotherapeutic agents and experimental drugs;

(c) Administer schedule IV and V medications orally, topically, and through inhalation;

(d) Perform simple prescriber-ordered treatments which include blood glucose monitoring, noncomplex clean dressing changes, pulse oximetry readings, and oxygen administration. "Prescriber ordered treatment" means an order for drugs or treatments issued by a practitioner authorized by law or rule in the state of Washington to prescribe drugs or treatments in the course of his or her professional practice for a legitimate medical purpose.

(4) The medication assistant shall document accurately the administration of medication and performance of resident treatments that he or she undertakes into the resident's medical records on facility-approved forms.

(5) Performance of the tasks identified in subsection (1) of this section will be the sole work assignment to the medication assistant.

(6) A medication assistant may not perform the following tasks:

(a) Assessment of resident need for, or response to medication;

(b) Acceptance of telephone or verbal orders from prescribers;

(c) Conversion or calculation of drug dosages;

(d) Injection of any medications;

(e) Administration of chemotherapeutic agents and experimental drugs;

(f) Performance of any sterile task or treatment;

(g) Medication administration through a tube;

(h) Administration or participation in the handling, including counting or disposal, of any schedule I, II, or III controlled substances;

(i) Participation in any handling, including counting or disposal, of schedule IV and V controlled substances other than when administering these substances as authorized by subsection (3)(c) of this section;

(j) Performance of any task requiring nursing judgment, such as administration of **as necessary or as needed (prn)** medications.

NEW SECTION

WAC 246-841-590 Requirements for approval of education and training programs. (1) A medication assistant endorsement education and training program must:

(a)(i) Be a nursing commission-approved nursing assistant certified training program in good standing; or

(ii) Be a nursing commission-approved nursing educational program in good standing; and

(b) Have a program director and instructional staff who each hold current, active, Washington state licenses in good standing as a registered nurse. The commission may deny or withdraw approval of a program director or instructor if there is or has been any action taken against that person's health care license, or any license that restricts his or her permission to work with vulnerable adults.

(2) To apply, the program must submit a completed application packet and application forms provided by the

department of health to the nursing commission. The packet must include:

(a) Program objectives;

(b) Curriculum outline and content as detailed in subsection (6) of this section;

(c) Written contractual agreements related to the provision of the training. For any program that uses another facility for the clinical practicum, this includes an affiliation agreement between the training program and the facility. "Clinical practicum" means clinical experience under the supervision of a qualified registered nurse instructor. The affiliation agreement must describe how the program will provide clinical experience in the facility. The agreement must specify the rights and responsibilities of students, the residents, the clinical facility, and the school;

(d) Sample lesson plan for one unit;

(e) Skills checklists for student lab performance and clinical performance during the practicum with dates of skills testing and signature of the instructor;

(f) Description of classroom, lab, and clinical practicum facilities;

(g) Declaration of compliance with administrative guidelines signed by the program director;

(h) Verification that the program director has completed a course on adult instruction or has one year of experience in the past three years teaching adults. Acceptable experience does not include staff development or patient teaching. A program director working exclusively in post secondary educational setting is exempt from this requirement; and

(i) Verification that the medication assistant training program or school is approved to operate in the state of Washington by the state board for community and technical colleges; the superintendent of public instruction; or the workforce training and education coordinating board.

(3) Failure to submit a completed application packet within ninety days will result in closure of the application.

(4) If a program application is pending for more than ninety days, the proposed program must submit a revised program application.

(5) The program director, or designee shall:

(a) Agree to allow and cooperate with on-site surveys and investigations of the training programs, as requested by the nursing commission;

(b) Comply with any changes in training standards and guidelines in order to maintain approved status;

(c) Notify the nursing commission and any other approving agency of any changes in overall curriculum plan or major curriculum content changes prior to implementation such as changes in program hours, clinical practice facilities, program name or ownership, legal status, and credit status impacting the program's ability to sustain itself financially;

(d) Notify the nursing commission and any other approving agency of changes in program director or instructors; and

(e) Maintain an average annual student pass rate of eighty percent for first-time test takers of the medication assistant competency evaluation.

(6) Core curriculum competency requirements.

(a) The program curriculum must include training on the specific tasks that a medication assistant may perform as well

as training on identifying tasks that may not be performed by a medication assistant as listed in WAC 246-841-589.

(b) The program curriculum must include the complete medication assistant-certified model curriculum adopted by the National Council of State Boards of Nursing. The education and training program may add to the required curriculum as stated in these rules but may not delete any content from the required curriculum.

(c) The curriculum must include a minimum of sixty hours of didactic training which must include work in a skills lab or simulation facility.

(7) **Practicum.** The curriculum will include a minimum of forty hours of supervised and progressive clinical practicum in the administration of medications to residents in a nursing home. At no time will the ratio of students to instructor be allowed to exceed ten students to one instructor during clinical practicum.

(8) The program director must attest to the student's successful completion of the course on forms or electronic methods established by the commission.

NEW SECTION

WAC 246-841-591 Commission review and investigation. (1) The nursing commission may conduct a review or investigation of the training program, or site visit of the training facility to evaluate:

- (a) Complaints relating to violations of the rules;
- (b) Failure to notify the nursing commission of any changes in the overall curriculum plan or major content changes prior to implementation;
- (c) Failure to notify the nursing commission of changes in program director or instructors;
- (d) Providing false or misleading information to students or the public concerning the medication assistant education and training program;
- (e) Failure to secure or retain a qualified program director resulting in substandard supervision and teaching of students;
- (f) Failure to maintain an average annual passing rate of eighty percent of first time test takers for two consecutive years. The nursing commission will require the program to assess the problem and submit a plan of correction.

(2) If a medication assistant education and training program fails to maintain an annual average passing rate of eighty percent of first time test takers for three out of four consecutive years, the nursing commission may withdraw program approval.

NEW SECTION

WAC 246-841-592 Commission action for violations. (1) When the nursing commission determines that a medication assistant education and training program fails to meet the requirements in WAC 246-841-590 through 246-841-595, the nursing commission may issue a statement of deficiencies or notice of intent to withdraw approval from an existing program.

(2) **Statement of deficiencies.** The program must within ten calendar days of notification of the cited deficiencies prepare, sign, date, and provide to the commission a detailed

written plan of correction. Such plan of correction will provide notification to the commission of the date by which the program will complete the correction of cited deficiencies. The commission will review the program's plan of correction to determine if it is acceptable. A plan of correction must:

- (a) Address how corrective action will be accomplished;
- (b) Address what measures will be put into place or systematic changes made to assure that the deficient practice will not recur;
- (c) Indicate how the program plans to monitor its performance to assure that solutions are sustained;
- (d) Give the name and title of the person who is responsible for assuring the implementation of the plan of correction;
- (e) Give the day by which the correction will be made.

(3) **Notice of intent to withdraw approval.** The commission may issue a notice of intent to withdraw approval from ongoing programs if it determines that a medication assistant endorsement program fails to substantially meet the standards contained in the law and this chapter.

When the commission withdraws approval, and the program does not appeal the withdrawal under WAC 246-841-594, the program shall submit an action plan to the commission providing for enrolled students to complete the program.

NEW SECTION

WAC 246-841-593 Reinstatement of approval. The nursing commission may consider reinstatement of a medication assistant education and training program upon submission of satisfactory evidence that the program meets the requirements as contained in these rules.

A program that is automatically terminated for failure to renew may be immediately reinstated upon meeting all conditions for a new application approval.

NEW SECTION

WAC 246-841-594 Appeal rights. A medication assistant education and training program that has been denied approval or was issued a notice of intent to withdraw approval has the right to a hearing to appeal the nursing commission's decision according to the provisions of chapters 18.88A and 34.05 RCW, the Administrative Procedure Act, Parts IV and V.

NEW SECTION

WAC 246-841-595 Medication assistant endorsement program renewal. (1) Programs must submit a renewal application on the forms provided by the commission and be approved by the commission every two years. The renewal application is due ninety days before the two-year anniversary of the date approval was originally granted.

(2) Commission approval is automatically terminated if the program does not renew.

(3) The commission may deny renewal approval or grant renewal with provisional status if the program fails to substantially meet the standards contained in the law and this chapter or has pending a statement of deficiencies, plan of

correction, intent to withdraw approval, or withdrawal of approval.

(4) If a program application renewal is not completed within ninety days of its receipt, the commission may close the application renewal.

WSR 13-15-020
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed July 8, 2013, 3:02 p.m., effective August 8, 2013]

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

Purpose: State parks staff reviewed the commission rules in consideration of changes to current business practices. The proposed minor changes to chapters 352-32 and 352-74 WAC are in order to clarify and align the rules with internal policies. WAC 352-32-030 Camping, 352-32-045 Reservations for use of group facilities, 352-32-080 Swimming, 352-32-210 Consumption of alcohol in state parks, 352-32-237 Geocache, 352-32-240 Nondiscrimination, 352-32-310 Penalties and chapter 352-74 WAC, Film permits.

Citation of Existing Rules Affected by this Order: Amending WAC 352-32-030, 352-32-045, 352-32-080, 352-32-210, 352-32-237, 352-32-240, 352-32-310, and chapter 352-74 WAC.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035.

Adopted under notice filed as WSR 13-09-037 on April 11, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 0.

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

Date Adopted: June 27, 2013.

Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending WSR 12-22-031, filed 10/31/12, effective 12/1/12)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park

facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.

No person or camping party may use any state park facility for residence purposes, as defined (WAC 352-32-010).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom no later than 1:00 p.m., if the applicable camping fee has not been paid or if the time limit for occupancy of the campsite has expired or the site is reserved by another party. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign or when the campsite has an incoming reservation. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt to hold campsite(s), for another camping party for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping party must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee and providing the required information regarding the occupants of the other sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping parties. Multiple campsites in designated reservation parks may be reserved under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. April 1 through September 30: The maximum length of stay during this period shall be established annually for each park by the director or designee and shall be no less than ten and no more than fourteen nights. Campers may stay ~~((ten))~~ the established maximum consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights ~~((, April 1 through September 30, not to exceed thirty days in a forty-day time period; provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied))~~. October 1 through March 31: The maximum

length of stay is twenty nights. Campers may stay twenty consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, ~~((October 1 through March 31,))~~ not to exceed forty days in a sixty-day time period. ~~((This))~~ These limitations shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) A maximum of eight people shall be permitted at a campsite overnight, unless otherwise authorized by a ranger. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle: Provided, That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant. The number of tents allowed at each campsite shall be limited to the number that will fit on the developed tent pad or designated area as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles may occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are subject to the campsite capacity limitations as otherwise set forth in this section. Exceptions for emergencies may be approved by the ranger on an individual basis. Water trail site fees, as published by state parks, must be paid at the time the site is occupied.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site specific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas may be used only when all designated campsites are full and at the park ranger's discretion. Persons using emergency areas must pay the applicable campsite fee and must vacate the site when directed by the park ranger.

(13) Designated overflow camping areas may be used only when all designated campsites in a park are full and the demand for camping in the geographic area around the park appears to exceed available facilities. Persons using overflow camping areas must pay the applicable campsite fee.

(14) Overnight camping will be allowed in approved areas within designated sno-parks in Washington state parks, when posted, provided the appropriate required sno-park permit is displayed.

(15) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-045 Reservations for use of designated group facilities. (1) All designated group facilities shall be reservable by groups as defined in WAC 352-32-010.

(2) All designated group facilities shall have a predetermined use capacity. No group exceeding this capacity in number shall use these areas. Groups making reservations

shall be charged the applicable fee for a minimum of 20 people.

(3) Use of designated group facilities may be by reservation. Requests made at parks, not on central reservation system, for reservations for groups of 20 to 250 shall be made 15 days in advance and for groups in excess of 250 shall be made 30 days in advance of the proposed use date, using the group use permit. All conditions outlined on the group use permit shall be binding on the group.

(4) Submittal of the group use permit request and payment in full of appropriate fees are required for the use of these facilities. Fees must be paid by credit card, certified check or money order. Fees are published by state parks. Refunds will be made only to those groups which cancel their reservations thirty or more days before the effective date of the reservations.

(5) For overnight group use, parking will be in the provided, defined areas. If additional parking is required, it may be available in the park's extra vehicle parking facility following the payment of the appropriate extra vehicle parking fee.

(6) The organization or delegated group leader making the reservation is responsible for any damages or extra cleaning that occurs as a result of the use of the facility(ies) beyond normal care and wear.

(7) Facility reservations for parks not on the central reservation system are made at the park and will be accepted ~~((for the calendar year, on or after the first working day in January of that calendar year))~~ nine months in advance. Reservations shall be made by a person of the age of majority, who must be in attendance during the group's activities. Reservations at the parks will be accepted in writing, in person, or by phone at the discretion of the park manager. In person and phone reservation requests shall only be accepted at the park during normal park operation hours. All reservation requests will be processed in order of arrival. Group facility areas not reserved are available on a first-come, first-serve basis.

(8) Any group wishing to sell or dispense alcoholic beverages must request and obtain all appropriate licenses and permits. In order to sell alcoholic beverages, the group must obtain a temporary concession permit from the headquarters office of the commission.

(9) It shall be within the authority of the park manager, or his representative, to rescind the rights of a reservation, and remove from the park, any or all members of the group whose behavior, at any time, is in conflict with any state laws, becomes detrimental to the health and safety of the group or other park users, or becomes so unruly as to affect the reasonable enjoyment of the park by other park users.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-080 Swimming. (1) Swimming areas in state park areas are marked with buoys, log booms, or other markers, clearly designating the boundaries of such areas.

(2) Any person swimming outside the boundaries of a designated swimming area, or in any area not designated for swimming, or in any area, whether designated for swimming

or not, where no lifeguard is present, shall do so at his or her own risk.

(3) All persons using any designated swimming area shall obey all posted beach rules and/or the instructions of lifeguards, rangers, or other state parks employees.

Children twelve years of age or younger, must be accompanied by a responsible adult while using the swim area.

(4) No person shall swim in any designated watercraft launching area.

(5) No person shall give or transmit a false signal or false alarm of drowning in any manner.

(6) Use of ~~((inflated mattresses,))~~ rubber rafts, rubber boats, inner tubes, or other large floating objects, exceeding three feet in width are prohibited in designated swimming areas except U.S. Coast Guard approved life jackets, ~~((in state park areas))~~ small children's flotation devices or toys and one-person inflatable mattresses for the purpose of buoyancy while swimming or playing in any designated swimming area ~~((is prohibited))~~ are allowed. Concessionaires are not permitted to rent or sell ~~((such))~~ prohibited floating devices within state parks without written approval of the ~~((commission))~~ director or designee.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-32-210 Consumption of alcohol in state park areas. (1) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages in any state park or state park area is prohibited except in the following designated areas and under the following circumstances in those state parks or state park areas not posted by the director or designee as closed to alcohol pursuant to subsection (4) of this section:

(a) In designated campsites or in other overnight accommodations, by registered occupants or their guests; provided ELC users obtain written permission through state parks application process;

(b) In designated picnic areas, which shall include those sites within state park areas where picnic tables, benches, fireplaces, and/or outdoor kitchens are available, even though not signed as designated picnic areas and public meeting rooms;

(c) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager; and

(d) In any building, facility or park area operated and maintained under a concession agreement, wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(2) ~~((Opening,))~~ Possessing alcoholic beverage in an open container, or consuming any alcoholic beverages is prohibited at the following locations:

(a) Dash Point State Park;

(b) Saltwater State Park;

(c) Sacajawea State Park;

(d) Flaming Geyser State Park;

Except in the following designated areas and under the following circumstances:

(i) In designated campsites, or in other overnight accommodations by registered occupants or their guests.

(ii) In any building, facility or park area operated and maintained under a concession agreement wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(iii) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager.

(3) The director or designee may, for a specified period or periods of time, close any state park or state park area to alcohol if the director or designee concludes that an alcohol closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. The director or designee shall consider factors including but not limited to the effect or potential effect of alcohol on public and employee safety, park appearance, atmosphere, and noise levels, conflicts with other park uses or users, the demand for law enforcement, and the demand on agency staff. Prior to closing any park or park area to alcohol, the director or designee shall hold a public hearing in the general area of the park or park area to be closed to alcohol. Prior notice of the meeting shall be published in a newspaper of general circulation in the area. In the event the director or designee determines that an immediate alcohol closure is necessary to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resources, the director or designee may take emergency action to close a park or park area to alcohol without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as ~~((is necessary for the director or designee to comply with the publication and hearing requirements of this subsection))~~ the imminent and substantial threat exists.

(4) The director or designee shall ensure that any park or park area closed to alcohol pursuant to subsection (3) of this section is conspicuously posted as such at the entrance to said park or park area. Additionally, the director or designee shall maintain for public distribution a current list of all parks and park areas closed to alcohol pursuant to subsection (3) of this section.

(5) Dispensing alcoholic beverages from containers larger than two gallons is prohibited in state park areas except when authorized in writing and in advance by the park manager.

(6) The provisions of this rule shall not apply to any part of the Seashore Conservation Area, as designated and established by RCW 79A.05.605.

(7) Opening, consuming, or storing alcoholic beverages in Fort Simcoe State Park and Squaxin Island State Park is prohibited.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-237 Geocache. (1) In order to place a cache on state parks' property, an individual or organization must obtain a geocache placement permit from state parks. Any cache located on state parks' property that does not have a permit on file is subject to removal from its location, and after notification of the owner (if known) and Washington State Geocache Association (WSGA), may be disposed of within ten days.

(2) ~~((The geocache owner must check the geocache at least every ninety days unless an extension is approved by the park manager not to exceed one hundred eighty days. Proof of the check will be by e-mail, letter, or personal communication by the owner with the park manager or designee, and the owner's entry in the cache log book indicating the date of inspection.~~

~~((3))~~) The following items shall not be placed in the geocache: Food items; illegal substances; medications; personal hygiene products; pornographic materials; inappropriate, offensive, or hazardous materials or weapons of any type. Log books are required for each cache and are to be provided by the owner of the cache.

~~((4))~~ (3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending Order 27, filed 9/23/76)

WAC 352-32-240 Nondiscrimination certification.

(1) This is to certify that the Washington state parks and recreation commission is an equal opportunity employer, and that no person in the United States is denied the benefits of full and equal enjoyment of the right of employment or any goods, services, facilities, privileges, advantages, and accommodations of, or on any property administered by the Washington state parks and recreation commission ~~((because of race, creed, color, age, sex, national origin, or physical disability))~~.

(2) The provisions of this certification shall apply to all contractors, lessees, licensees, and concessionaires operating under any legal instrument issued by the Washington state parks and recreation commission, as well as areas operated by the Washington state parks and recreation commission itself.

AMENDATORY SECTION (Amending WSR 04-01-067, filed 12/12/03, effective 1/12/04)

WAC 352-32-310 Penalties. Any violation designated in this chapter as a civil infraction ~~((shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court))~~ pursuant to chapter 7.84 RCW, will be treated as infractions regardless of whether they appear in the IRLJ 6.2 penalty schedule, except that a violation of ~~((WAC 352-32-220, 352-32-260, and 352-32-265 shall at all times constitute~~

~~a civil infraction, and))~~ WAC 352-32-120 shall at all times be a gross misdemeanor.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-010 Purpose. This chapter is promulgated in order to establish procedures for the issuance of permits for filming/still photography within state parks.

The agency permits commercial filming and still photography when it is consistent with the park's mission and will not harm the resource or interfere with the visitor experience.

All commercial filming activities taking place within a park require a permit. Commercial filming includes capturing a moving image on film and video as well as sound recordings.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-030 Filming/still photography within state parks. The commission recognizes the desire of individuals and organizations to film/still photography within the state parks. Individuals and organizations may film/still photography within state parks in a manner which is not disruptive to park users or resources when the filming/still photography is for personal or news purposes. Individuals and organizations that desire to film/still photography within state parks for other than personal or news purposes may do so only in accordance with the film/still photography permit requirements of this chapter and subject to the discretion of the commission as otherwise set forth herein.

Filming/still photography for strictly educational purposes may have some or all of the applicable fees waived.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-040 Film/still photography permit application. Persons or organizations that desire to film/still photography within a state park for other than personal or news purposes shall submit a completed film/still photography permit application with the appropriate fees to the appropriate location:

Eastern Region
270 9th Street N.E.
Suite 200
East Wenatchee, WA 98802

Fort Worden State Park
200 Battery Way
Port Townsend, WA 98368

Northwest Region
220 N. Walnut Street
Burlington, WA 98233

~~((Puget Sound Region
2840 Riverwalk Drive S.E.
Auburn, WA 98002-8207))~~

Southwest Region
~~((11838 Tilley Road S.))
P.O. Box 42650
Olympia, WA ((98512-9167)) 98504~~

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-045 Filming/still photography fees. (1) Permit application fee - Each application shall be accompanied by the appropriate application fee, based on the amount of time between the date of application and the date of facility use, which shall be in the form of a check or money order payable to the Washington state parks and recreation commission.

(2) Site location fee - Prior to commencing filming/still photography activities or otherwise as specified by the director or designee, each applicant shall pay an additional site location fee, set by the director or designee based on the magnitude and duration of the impact on park resources and normal public use, the uniqueness of the site, and such other considerations as the director or designee deem appropriate.

(3) Previous filming/still photography which is later commercially merchandised will be subject to the same rules and provisions as new projects described herein.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-050 Approval or disapproval of film/still photography permit application. The director or designee shall approve or disapprove a film/still photography permit application and establish the filming locations, time periods, and conditions for an approved application.

The director or designee may require an approved applicant to submit the following to the commission prior to the issuance of a film/still photography permit:

(1) Fees payable to the Washington state parks and recreation commission in the form of a check or money order in an amount, as determined by the director or designee, which covers the charges for the facilities to be used by a film maker/still photographer and any staff costs to be incurred by the commission due to the filming that are beyond the regular responsibilities of the staff of the commission;

(2) A bond or damage deposit payable to the Washington state parks and recreation commission in an amount, as determined by the director or designee, which is sufficient to cover any damages to park resources or facilities which may occur during the filming/still photography; and

(3) Certification that an approved applicant has liability insurance in an amount, as determined by the director or designee, which is sufficient to cover any liability costs associated with the actions of a film maker/still photographer during filming.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-060 Issuance and revocation of film/still photography permit. The director or designee, shall issue a film/still photography permit to an approved applicant after the applicant has submitted any fees, bond, damage deposit, and insurance certification established pursuant to WAC 352-74-050 and has demonstrated in its application or otherwise to the satisfaction of the director that filming/still photography:

- (1) Is compatible with the activities of park visitors;
- (2) Will not damage facilities or resources, or interfere with park operations;
- (3) Will not disrupt wildlife;
- (4) Will not imply the endorsement of the commission for the content of the film;
- (5) Will acknowledge the cooperation of the commission;
- (6) Is not inconsistent in the judgment of the director with the purposes for, or conditions on which, the property where the filming is to take place was acquired; and
- (7) Will conform with all of the applicable statutes, rules, policies, and procedures of the commission, and the instructions of the commission staff who supervise the filming/still photography.

If a film maker/still photographer does not comply with all of the applicable statutes, rules, policies, and procedures of the commission, the conditions upon which the permit was granted, and the instructions of the commission staff who supervise the filming/still photography, then the director or designee shall revoke the film/still photography permit.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-74-070 Additional fees and release of bond or damage deposit. After completion of filming/still photography the director or designee shall determine if any additional fees are to be assessed a film maker/still photographer and whether or not any bond or damage deposit submitted by a film maker/still photographer may be released.

If the director or designee determines that no additional fees are to be assessed and that a bond or damage deposit is to be released, then a bond or damage deposit shall be returned to a film maker/still photographer.

If the director or designee determines that additional fees are to be assessed or that a bond or damage deposit is not to be released, then the film maker/still photographer shall be so informed.

If a film maker/still photographer pays additional fees in the form of a check or money order payable to the Washington state parks and recreation commission which is submitted to the director within thirty days of receipt of the notice to pay the fees, then the director or designee shall return a bond or damage deposit to a film maker/still photographer.

If a film maker/still photographer does not pay additional fees within the time period and in accordance with the procedures set forth above, then the director or designee shall exercise the rights of the commission under a bond or damage deposit to pay the additional fees and so inform a film maker/still photographer or exercise any such other legal rights as may be available.

WSR 13-15-025
PERMANENT RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-17—Filed July 9, 2013, 3:44 p.m., effective July 10, 2013]

Effective Date of Rule: July 10, 2013.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The emergency rule governing filing of 2014 health plans for approval expires on July 9, 2013. This rule replaces that emergency, and is necessary for continuity of regulation and review of filed plans for approval. The commissioner is required to establish the essential health benefits (EHB) in rule by statute (RCW 48.43.715).

Purpose: The rules establish the EHB-benchmark plan for the state, supplementing the base-benchmark plan, and explaining the requirements for providing meaningful benefits in each EHB category, limitation, scope and definition of the covered benefits, per RCW 48.43.715.

Statutory Authority for Adoption: RCW 48.02.060, 48.21.241, 48.21.320, 48.44.050, 48.44.341, 48.44.460, 48.46.200, 48.46.291, 48.46.530, and 48.43.715.

Other Authority: Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010) (PPACA), as amended by the Health Care and Education Reconciliation Act (HCERA), Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010), in particular § 1302 of PPACA, § 10104 (b)(1) (HCERA).

Adopted under notice filed as WSR 13-07-064 on March 19, 2013.

Changes Other than Editing from Proposed to Adopted Version: With the exception of WAC 284-43-885, changes were made in each section for readability, technical grammar or usage corrections, and clarity. In WAC 284-43-852, the definition of "meaningful health benefit" was amended to clarify that the definition is tied to coverage, since the coverage and not the category of the benefit makes it meaningful. In WAC 284-43-877 (1) (b) was amended to accurately state the PPACA benefit substitution standard. In WAC 284-43-879 (5)(p), the reference to the frequency of the benefit was clarified.

A final cost-benefit analysis is available by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98502, phone (360) 725-7101, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

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

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

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

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

Date Adopted: July 9, 2013.

Mike Kreidler
 Insurance Commissioner

NEW SECTION

WAC 284-43-849 Purpose and scope. For plan years beginning on or after January 1, 2014, each nongrandfathered health benefit plan offered, issued, or renewed to small employers or individuals, both inside and outside the Washington health benefit exchange, must provide coverage for a package of essential health benefits, pursuant to RCW 48.43.715. WAC 284-43-849 through 284-43-885 explains the regulatory standards defining this coverage, and establishes supplementation of the base-benchmark plan consistent with PPACA and RCW 48.43.715, and the parameters of the state EHB-benchmark plan.

(1) WAC 284-43-849 through 284-43-885 do not apply to a health benefit plan that provides excepted benefits as described in section 2722 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-21), nor to a health benefit plan that qualifies as a grandfathered health plan as defined in RCW 48.43.005.

(2) WAC 284-43-849 through 284-43-885 do not require provider reimbursement at the same levels negotiated by the base-benchmark plan's issuer for their plan.

(3) WAC 284-43-849 through 284-43-885 do not require a health benefit plan to exclude the services or treatments from coverage that are excluded in the base-benchmark plan.

NEW SECTION

WAC 284-43-852 Definitions. The following definitions apply to WAC 284-43-849 through 284-43-885 unless the context indicates otherwise.

"Base-benchmark plan" means the small group plan with the largest enrollment, as designated in WAC 284-43-865(1), prior to any supplementation or adjustments made pursuant to RCW 48.43.715.

"EHB-benchmark plan" means the set of benefits that an issuer must include in nongrandfathered plans offered in the individual or small group market in Washington state.

"Health benefit," unless defined differently pursuant to federal rules, regulations, or guidance issued pursuant to section 1302(b) of PPACA, means health care items or services for injury, disease, or a health condition, including a behavioral health condition.

"Individual plan" includes any nongrandfathered health benefit plan offered, issued, or renewed by an admitted issuer in the state of Washington for the individual health benefit plan market, unless the certificate of coverage is issued to an individual pursuant to or issued through an organization meeting the definition established pursuant to 29 U.S.C. 1002(5).

"Mandated benefit" or "required benefit" means a health plan benefit for a specific type of service, device or medical equipment, or treatment for a specified condition or conditions that a health plan is required to cover by either state or

federal law. Required benefits do not include provider, delivery method, or health status based requirements.

"Meaningful health benefit" means a benefit that must be included in an essential health benefit category, without which the coverage for the category does not reasonably provide medically necessary services for an individual patient's condition on a nondiscriminatory basis.

"Medical necessity determination process" means the process used by a health issuer to make a coverage determination about whether a health benefit is medically necessary for an individual patient.

"PPACA" means the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules, regulations, or guidance issued thereunder.

"Scope or limitation requirement" means a requirement applicable to a benefit that limits its duration, the number of times coverage is available for the benefit, or imposes a legally permitted eligibility or reference-based limitation on a specific benefit.

"Small group plan" includes any nongrandfathered health benefit plan offered, issued, or renewed by an admitted issuer in the state of Washington for the small group health benefit plan market to a small group, as defined in RCW 48.43.005, and 45 C.F.R. 144.102(c), unless the certificate of coverage is issued to a small group pursuant to a master contract held by or issued through an organization meeting the definition established pursuant to 29 U.S.C. 1002(5).

"Stand-alone dental plan" means coverage for a set of benefits limited to oral care including, but not necessarily limited to, pediatric oral care, as referenced in RCW 43.71-065.

NEW SECTION

WAC 284-43-860 Medical necessity determination.

(1) An issuer's certificate of coverage and the summary of coverage for the health benefit plan must specifically explain any uniformly applied limitation on the scope, visit number or duration of a benefit, and state whether the uniform limitation is subject to adjustment based on the specific treatment requirements of the patient.

(2) An issuer's medical necessity determination process must:

(a) Be clearly explained in the certificate of coverage, plan document, or contract for health benefit coverage;

(b) Be conducted fairly, and with transparency to enrollees and providers, at a minimum when an enrollee or their representative appeals or seeks review of an adverse benefit determination;

(c) Include consideration of services that are a logical next step in reasonable care if they are appropriate for the patient;

(d) Identify the information needed in the decision-making process and incorporate appropriate outcomes within a developmental framework;

(e) Ensure that when the interpretation of the medical purpose of interventions is part of the medical necessity decision making, the interpretation standard can be explained in

writing to an enrollee and providers, and is broad enough to address any of the services encompassed in the ten essential health benefits categories of care;

(f) Comply with inclusion of the ten essential health benefits categories;

(g) Not discriminate based on age, present or predicted disability, expected length of life, degree of medical dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation and gender identity;

(h) Include consideration of the treating provider's clinical judgment and recommendations regarding the medical purpose of the requested service, and the extent to which the service is likely to produce incremental health benefits for the enrollee;

(i) Identify by role who will participate in the issuer's medical necessity decision-making process; and

(j) Ensure that where medically appropriate, and consistent with the health benefit plan's contract terms, an enrollee is not unreasonably restricted as to the site of service delivery.

(3) An issuer's medical necessity determination process may include, but is not limited to, evaluation of the effectiveness and benefit of a service for the individual patient based on scientific evidence considerations, up-to-date and consistent professional standards of care, convincing expert opinion and a comparison to alternative interventions, including no interventions. Cost effectiveness may be one of but not the sole criteria for determining medical necessity.

(4) Within thirty days of receiving a request, an issuer must furnish its medical necessity criteria for medical/surgical benefits and mental health/substance use disorder benefits or for other essential health benefit categories to an enrollee or provider.

NEW SECTION

WAC 284-43-877 Plan design. (1) A nongrandfathered individual or small group health benefit plan offered, issued, or renewed, on or after January 1, 2014, must provide coverage that is substantially equal to the EHB-benchmark plan, as described in WAC 284-43-878, 284-43-879, and 284-43-880.

(a) For plans offered, issued, or renewed for a plan or policy year beginning on or after January 1, 2014, until December 31, 2015, an issuer must offer the EHB-benchmark plan without substituting benefits for the benefits specifically identified in the EHB-benchmark plan.

(b) For plan or policy years beginning on or after January 1, 2015, an issuer may substitute benefits to the extent that the actuarial value of the benefits in the category to which the substituted benefit is classified remains substantially equal to the EHB-benchmark plan.

(c) "Substantially equal" means that:

(i) The scope and level of benefits offered within each essential health benefit category supports a determination by the commissioner that the benefit is a meaningful health benefit;

(ii) The aggregate actuarial value of the benefits across all essential health benefit categories does not vary more than a de minimis amount from the aggregate actuarial value of the EHB-benchmark base plan; and

(iii) Within each essential health benefit category, the actuarial value of the category must not vary more than a de minimis amount from the actuarial value of the category for the EHB-benchmark plan.

(2) An issuer must classify covered services to an essential health benefits category consistent with WAC 284-43-878, 284-43-879, and 284-43-880 for purposes of determining actuarial value. An issuer may not use classification of services to an essential health benefits category for purposes of determining actuarial value as the basis for denying coverage under a health benefit plan.

(3) The base-benchmark plan does not specifically list all types of services, settings and supplies that can be classified to each essential health benefits category. The base-benchmark plan design does not specifically list each covered service, supply or treatment. Coverage for benefits not specifically identified as covered or excluded is determined based on medical necessity. An issuer may use this plan design, provided that each of the essential health benefit categories is specifically covered in a manner substantially equal to the EHB-benchmark plan.

(4) An issuer is not required to exclude services that are specifically excluded by the base-benchmark plan. If an issuer elects to cover a benefit excluded in the base-benchmark plan, the issuer must not include the benefit in its essential health benefits package for purposes of determining actuarial value. A health benefit plan must not exclude a benefit that is specifically included in the base-benchmark plan.

(5) An issuer must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of license for purposes of coverage. This obligation does not require an issuer to contract with any willing provider, nor is an issuer restricted from establishing reasonable requirements for credentialing of and access to providers within its network.

(6) Telemedicine or telehealth services are considered provider-type services, and not a benefit for purposes of the essential health benefits package.

(7) Consistent with state and federal law, a health benefit plan must not contain an exclusion that unreasonably restricts access to medically necessary services for populations with special needs including, but not limited to, a chronic condition caused by illness or injury, either acquired or congenital.

(8) Unless an age based reference limitation is specifically included in the base-benchmark plan or a supplemental base-benchmark plan for a category set forth in WAC 284-43-878, 284-43-879, or 284-443-880, an issuer's scope of coverage for those categories of benefits must cover both pediatric and adult populations.

(9) A health benefit plan must not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are limited so that the coverage for the category is not a meaningful health benefit; or

(c) The benefit has a discriminatory effect in practice, outcome or purpose in relation to age, present or predicted disability, and expected length of life, degree of medical

dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation and gender identity or in the application of Section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008).

(10) An issuer must not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted as reference based limitations pursuant to WAC 284-43-878, 284-43-879, and 284-43-880.

NEW SECTION

WAC 284-43-878 Essential health benefit categories.

(1) A health benefit plan must cover "ambulatory patient services." For purposes of determining a plan's actuarial value, an issuer must classify as ambulatory patient services medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and out-patient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, and surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value for this category.

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth, but not excluding services or appliances necessary for or resulting from medical treatment if the service is:

(A) Emergency in nature; or

(B) Requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease. Oral surgery related to trauma and injury must be covered.

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them, other than for cochlear implants, which are covered, and for hearing screening tests required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category;

(viii) Obesity or weight reduction or control other than covered nutritional counseling.

(c) The base-benchmark plan establishes specific limitations on services classified to the ambulatory patient services category that conflict with state or federal law as of January 1, 2014. The base-benchmark plan limits nutritional counseling to three visits per lifetime, if the benefit is not associated with diabetes management. This lifetime limitation for nutritional counseling is not part of the state EHB-benchmark plan. An issuer may limit this service based on medical necessity, and may establish an additional reasonable visit limitation requirement for nutritional counseling for medical conditions when supported by evidence based medical criteria.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime;

(iv) One hundred thirty visits per calendar year for home health care.

(e) State benefit requirements classified to this category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530);

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services." For purposes of determining a plan's actuarial value, an issuer must classify care and services related to an emergency medical condition to the emergency medical services category, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, fac-

ility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(ii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical care category.

(c) The base-benchmark base plan does not establish specific limitations on services classified to the emergency medical services category that conflict with state or federal law as of January 1, 2014.

(d) The base-benchmark plan does not establish visit limitations on services in this category.

(e) State benefit requirements classified to this category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization." For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value:

(i) Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;

(ii) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(iii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly; and

(C) Sexual reassignment treatment and surgery;

(iv) Reversal of sterilizations;

(v) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan limitations for these services are:

(i) The transplant waiting period must not be longer than ninety days, inclusive of prior creditable coverage, if an issuer elects to apply a limitation to the benefit.

(ii) Where transplant benefit services are delivered in a nonhospital setting, the same waiting period limitation may be applied.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. This benefit may be classified to this category for determining actuarial value or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to this category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530);

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn" services. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery, and to newborn children, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, but nothing in this section requires an issuer to offer the benefit, consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115.

(b) A health benefit plan may, but is not required to, include the following service as part of the EHB-benchmark package. Genetic testing of the child's father is specifically excluded by the base-benchmark plan, and should not be included in determining actuarial value.

(c) The base-benchmark plan establishes specific limitations on services classified to the maternity and newborn category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Maternity coverage for dependent daughters must be included in the EHB-benchmark plan on the same basis that the coverage is included for other enrollees;

(ii) Newborns delivered of dependent daughters must be covered to the same extent, and on the same basis, as newborns delivered to the other enrollees under the plan.

(d) The base-benchmark plan's limitations on services in this category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(e) State benefit requirements classified to this category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the post-natal coverage for the mother, for no less than three weeks (RCW 48.43.115);

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment." For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential and outpatient mental health and substance use disorder treatment, including partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to include, the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value.

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the DSM-IV, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, and bereavement for children five years of age or younger, unless this exclusion is preempted by federal law;

(iii) Not medically necessary court-ordered mental health treatment.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Coverage for eating disorder treatment must be covered when associated with a diagnosis of a DSM categorized mental health condition;

(ii) Chemical detoxification coverage must not be uniformly limited to thirty days. Medical necessity, utilization review and criteria consistent with federal law may be applied by an issuer in designing coverage for this benefit;

(iii) Mental health services and substance use disorder treatment must be delivered in a home health setting on parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include: Court ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355);

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services." For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services the medically necessary prescribed drugs, medication and drug therapies, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (f) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA approved contraceptive methods, and prescription based sterilization procedures for women with reproductive capacity;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order;

(v) Medical foods to treat inborn errors of metabolism.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value for this category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan establishes specific limitations on services classified to the prescription drug services category that conflict with state or federal law as of January 1, 2014. The EHB-benchmark plan requirements for these services are:

(i) Preauthorized tobacco cessation products must be covered consistent with state and federal law;

(ii) Medication prescribed as part of a clinical trial, which is not the subject of the trial, must be covered in a manner consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(e) State benefit requirements classified to this category include:

(i) Medical foods to treat phenylketonuria (RCW 48.44.-440, 48.46.510, 48.20.520, and 48.21.300);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241).

(f) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(7) A health benefit plan must cover "rehabilitative and habilitative services."

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled, in a manner substantially equal to the base-benchmark plan.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) In-patient rehabilitation facility and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatuses used to support, align or correct deformities or to improve the function of moving parts;

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value:

(i) Off the shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) **Supplementation:** The base-benchmark plan does not cover certain federally required services under this category. A health benefit plan must cover habilitative services, but these services are not specifically covered in the base-

benchmark plan. Therefore, this category is supplemented. The state EHB-benchmark plan requirements for habilitative services are:

(i) For purposes of determining actuarial value and complying with the requirements of this section, the issuer must classify as habilitative services and provide coverage for the range of medically necessary health care services and health care devices designed to assist an individual in partially or fully developing, keeping or learning age appropriate skills and functioning within the individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness.

(ii) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include reference based limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age, and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(iii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all of the services in a plan of treatment are provided by a public or government program.

(iv) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(v) Habilitative health care devices may be limited to those that require FDA approval and a prescription to disperse the device.

(vi) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vii) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in this category include:

(i) In-patient rehabilitation facility and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services." For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X ray, MRI, CAT scan and PET scans, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

- (i) Laboratory services, supplies and tests, including genetic testing;
- (ii) Radiology services, including X ray, MRI, CAT scan, PET scan, and ultrasound imaging;
- (iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. An enrollee's not medically indicated procurement and storage of personal blood supplies provided by a member of the enrollee's family is specifically excluded by the base-benchmark plan, and should not be included by an issuer in establishing a health benefit plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management." For purposes of determining a plan's actuarial value, an issuer must classify as preventative and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic, services that assist in the multidisciplinary management and treatment of chronic diseases, services of particular preventive or early identification of disease or illness of value to specific populations, such as women, children and seniors, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services as preventive and wellness services:

- (i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;
- (ii) Screening and tests with A and B recommendations by the U.S. Preventive Services Task Force for prevention

and chronic care, for recommendations issued on or before the applicable plan year;

(ii) Services, tests and screening contained in the U.S. Health Resources and Services Administration Bright Futures guidelines as set forth by the American Academy of Pediatricians;

(iv) Services, tests, screening and supplies recommended in the U.S. Health Resources and Services Administration women's preventive and wellness services guidelines;

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(b) The base-benchmark plan does not exclude any services that could reasonably be classified to this category.

(c) The base-benchmark plan does not apply any limitations or scope restrictions that conflict with state or federal law as of January 1, 2014.

(d) The base-benchmark plan does not establish visit limitations on services in this category.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275);

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.-227, 48.44.327, and 48.46.277).

(10) State benefit requirements that are limited to those receiving pediatric services, but that are classified to other categories for purposes of determining actuarial value, are:

(a) Neurodevelopmental therapy to age six, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories;

(b) Congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.-250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

NEW SECTION

WAC 284-43-879 Essential health benefit category—Pediatric oral services. A health benefit plan must include "pediatric oral services" in its essential health benefits package. Pediatric oral services are oral services delivered to those under nineteen.

(1) A health benefit plan must cover pediatric oral services as an embedded set of services. If a health benefit plan is certified by the health benefit exchange as a qualified health plan, this requirement is met for that benefit year for the certified plan if a stand-alone dental plan that covers pedi-

atric oral services as set forth in the EHB-benchmark plan is offered in the health benefit exchange for that benefit year.

(2) The requirements of WAC 284-43-878 and 284-43-880 are not applicable to the stand-alone dental plan. A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The supplemental base-benchmark plan specifically excludes oral implants, and an issuer should not include benefits for oral implants in establishing a plan's actuarial value.

(3) **Supplementation:** The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-878, but does not include pediatric oral services. Because the base-benchmark plan does not include pediatric oral benefits, the state EHB-benchmark plan requirements is supplemented for pediatric oral benefits. The Washington state CHIP plan is designated as the supplemental base-benchmark plan for pediatric oral services. An issuer must offer and classify the following services as pediatric oral benefits in a manner substantially equal to the supplemental base-benchmark plan:

- (a) Diagnostic services;
 - (b) Preventive care;
 - (c) Restorative care;
 - (d) Oral surgery and reconstruction to the extent not covered under the hospitalization benefit;
 - (e) Endodontic treatment;
 - (f) Periodontics;
 - (g) Crown and fixed bridge;
 - (h) Removable prosthetics; and
 - (i) Medically necessary orthodontia.
- (4) The supplemental base-benchmark plan's visit limitations on services in this category are:
- (a) Diagnostic exams once every six months, beginning before one year of age;
 - (b) Bitewing X ray once a year;
 - (c) Panoramic X rays once every three years;
 - (d) Prophylaxis every six months beginning at age six months;
 - (e) Fluoride three times in a twelve-month period for ages six and under; two times in a twelve-month period for ages seven and older; three times in a twelve-month period during orthodontic treatment; sealant once every three years for occlusal surfaces only; oral hygiene instruction two times in twelve months for ages eight and under if not billed on the same day as a prophylaxis treatment;
 - (f) Every two years for the same restoration (fillings);
 - (g) Frenulectomy or frenuloplasty covered for ages six and under without prior authorization;
 - (h) Root canals on baby primary posterior teeth only;
 - (i) Root canals on permanent anterior, bicuspid and molar teeth, excluding teeth 1, 16, 17 and 32;
 - (j) Periodontal scaling and root planing once per quadrant in a two-year period for ages thirteen and older, with prior authorization;
 - (k) Periodontal maintenance once per quadrant in a twelve-month period for ages thirteen and older, with prior authorization;
 - (l) Stainless steel crowns for primary anterior teeth once every three years; if age thirteen and older with prior authorization;

(m) Stainless steel crowns for permanent posterior teeth once every three years;

(n) Metal/porcelain crowns and porcelain crowns on anterior teeth only, with prior authorization;

(o) Space maintainers for missing primary molars A, B, I, J, K, L, S, and T;

(p) One resin based partial denture, if provided at least three years after the seat date;

(q) One complete denture upper and lower, and one replacement denture per lifetime after at least five years from the seat date;

(r) Rebasement and relining of complete or partial dentures once in a three-year period, if performed at least six months from the seat date.

NEW SECTION

WAC 284-43-880 Pediatric vision services. A health benefit plan must include "pediatric vision services" in its essential health benefits package. The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-878 (1) through (9), but does not include pediatric vision services. Pediatric vision services are vision services delivered to enrollees under age nineteen.

(1) A health benefit plan must cover pediatric vision services as an embedded set of services.

(2) **Supplementation:** The state EHB-benchmark plan requirements for pediatric vision benefits must be offered at a substantially equal level and classified consistent with the designated supplemental base-benchmark plan for pediatric vision services, the Federal Employees Vision Plan with the largest enrollment and published by the U.S. Department of Health and Human Services at www.cciioo.cms.gov on July 2, 2012.

(a) The vision services included in the pediatric vision services category are:

(i) Routine vision screening and eye exam for children, including dilation as professionally indicated, and with refraction every calendar year;

(ii) One pair of prescription lenses or contacts every calendar year, including polycarbonate lenses and scratch resistant coating. Lenses may include single vision, conventional lined bifocal or conventional lined trifocal, or lenticular lenses;

(iii) One pair of frames every calendar year. An issuer may establish networks or tiers of frames within their plan design as long as there is a base set of frames to choose from available without cost sharing;

(iv) Contact lenses covered once every calendar year in lieu of the lenses and frame benefits. Issuers must apply this limitation based on the manner in which the lenses must be dispensed. If disposable lenses are prescribed, a sufficient number and amount for one calendar year's equivalent must be covered. The benefit includes the evaluation, fitting and follow-up care relating to contact lenses. If determined to be medically necessary, contact lenses must be covered in lieu of eyeglasses at a minimum for the treatment of the following conditions: Keratoconus, pathological myopia, aphakia, anisometropia, aniseikonia, aniridia, corneal disorders, post-traumatic disorders, and irregular astigmatism;

(v) Low vision optical devices including low vision services, training and instruction to maximize remaining usable vision as follows:

(A) One comprehensive low vision evaluation every five years;

(B) High power spectacles, magnifiers and telescopes as medically necessary, with reasonable limitations permitted; and

(C) Follow-up care of four visits in any five year period, with prior approval.

(b) The pediatric vision supplemental base-benchmark specifically excludes, and issuer must not include in its actuarial value for the category:

(i) Visual therapy, which is otherwise covered under the medical/surgical benefits of the plan;

(ii) Two pairs of glasses may not be ordered in lieu of bifocals;

(iii) Medical treatment of eye disease or injury, which is otherwise covered under the medical/surgical benefits of the plan;

(iv) Nonprescription (Plano) lenses; and

(v) Prosthetic devices and services, which are otherwise covered under the rehabilitative and habilitative benefit category.

NEW SECTION

WAC 284-43-882 Plan cost-sharing and benefit substitutions and limitations. (1) A health benefit plan must not apply cost-sharing requirements to Native Americans purchasing a health benefit plan through the exchange, whose incomes are at or below three hundred percent of federal poverty level.

(2) A small group health benefit plan that includes the essential health benefits package may not impose annual cost-sharing or deductibles that exceed the maximum annual amounts that apply to high deductible plans linked to health savings accounts, as set forth in the most recent version of IRS Publication 969, pursuant to Section 106(c)(2) of the Internal Revenue Code of 1986, and Section 1302(c)(2) of PPACA.

(3) An issuer may use reasonable medical management techniques to control costs, including promoting the use of appropriate, high value preventive services, providers and settings. An issuer's policies must permit waiver of an otherwise applicable copayment for a service that is tied to one setting but not the preferred high-value setting, if the enrollee's provider determines that it would be medically inappropriate to have the service provided in the lower-value setting. An issuer may still apply applicable in-network requirements.

(4) An issuer may not require cost-sharing for preventive services delivered by network providers, specifically related to those with an A or B rating in the most recent recommendations of the United States Preventive Services Task Force, women's preventive health care services recommended by the U.S. Health Resources and Services Administration (HRSA) and HRSA Bright Futures guideline designated pediatric services. An issuer must post on its web site a list of the specific preventive and wellness services mandated by PPACA that it covers.

(5) If an issuer establishes cost-sharing levels, structures or tiers for specific essential health benefit categories, the cost-sharing levels, structures or tiers must not be discriminatory. "Cost-sharing" has the same meaning as set forth in RCW 48.43.005 and WAC 284-43-130(8).

(a) An issuer must not apply cost-sharing or coverage limitations differently to enrollees with chronic disease or complex underlying medical conditions than to other enrollees, unless the difference provides the enrollee with access to care and treatment commensurate with the enrollee's specific medical needs, without imposing a surcharge or other additional cost to the enrollee beyond normal cost-sharing requirements under the plan.

(b) An issuer must not establish a different cost-sharing structure for a specific benefit or tier for a benefit than is applied to the plan in general if the sole type of enrollee who would access that benefit or benefit tier is one with a chronic illness or medical condition.

NEW SECTION

WAC 284-43-885 Representations regarding coverage. A health benefit plan issuer must not indicate or imply that a health benefit plan covers essential health benefits unless the plan, policy, or contract covers the essential health benefits in compliance with WAC 284-43-849 through 284-43-882. This requirement applies to any health benefit plan offered on or off the Washington health benefit exchange.

WSR 13-15-040

PERMANENT RULES

GAMBLING COMMISSION

[Order 689—Filed July 11, 2013, 1:29 p.m., effective August 11, 2013]

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

Purpose: This new rule establishes procedures and outlines the process when staff withdraws approval of gambling equipment. This new rule helps ensure all approved gambling equipment complies with RCW, WAC, and tribal-state compact.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 13-09-050 filed on April 15, 2013.

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 0.

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

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

Date Adopted: July 11, 2013.

Kevin M. Sullivan
Rules CoordinatorSusan Newer
Rules CoordinatorNEW SECTION

WAC 230-06-052 Withdrawing gambling equipment authorization. If the director or the director's designee withdraws authorization of gambling equipment:

(1) The director or the director's designee will give the applicant written notice and an opportunity to object to the decision. If the applicant does not agree with the decision, they may file a petition for declaratory order with the commission to be heard as a full review (de novo) by an administrative law judge, according to RCW 34.05.240 and chapter 230-17 WAC.

(2) The director or the director's designee will provide written notice to other impacted licensees who have the gambling equipment after a final decision is made.

WSR 13-15-044
PERMANENT RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed July 11, 2013, 3:13 p.m., effective August 11, 2013]

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

Purpose: Upon order of the governor, the health care authority reduced its budget expenditures for fiscal year 2011 and 2012 by reducing or eliminating a number of optional medical services from program benefits packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental care. Sections in chapter 182-501 WAC and WAC 182-502-0160 are amended to reflect and support these program cuts.

Citation of Existing Rules Affected by this Order: Amending WAC 182-501-0050, 182-501-0060, 182-501-0065, 182-501-0070, and 182-502-0160.

Statutory Authority for Adoption: RCW 41.05.021.

Adopted under notice filed as WSR 13-12-057 on June 3, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, 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 5, Repealed 0.

Date Adopted: July 11, 2013.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0050 Health care general coverage. WAC ~~((388-501-0050))~~ 182-501-0050 through ~~((388-501-0065))~~ 182-501-0065 describe the health care services available to a client on a fee-for-service basis or to a client enrolled in a managed care organization (MCO) (defined in WAC ~~((388-538-050))~~ 182-538-050). For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. WAC ~~((388-501-0070))~~ 182-501-0070 describes noncovered services.

(1) Health care service categories listed in WAC ~~((388-501-0060))~~ 182-501-0060 do not represent a contract for health care services.

(2) For the provider to receive payment, the client must be eligible for the covered health care service on the date the health care service is performed or provided.

(3) Under the ~~((department's))~~ agency's fee-for-service programs, providers must be enrolled with the ~~((department))~~ agency or its designee and meet the requirements of chapter ~~((388-502))~~ 182-502 WAC to be paid for furnishing health care services to clients.

(4) The ~~((department))~~ agency or its designee pays only for the health care services that are:

(a) ~~((Within the scope of))~~ Included in the client's ((medical program)) health care benefits package as described in WAC 182-501-0060;

(b) Covered - See subsection (9) of this section;

(c) Ordered or prescribed by a health care provider who meets the requirements of chapter ~~((388-502))~~ 182-502 WAC;

(d) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(e) Submitted for authorization, when required, in accordance with WAC ~~((388-501-0163))~~ 182-501-0163;

(f) Approved, when required, in accordance with WAC ~~((388-501-0165))~~ 182-501-0165;

(g) Furnished by a provider according to chapter ~~((388-502))~~ 182-502 WAC; and

(h) Billed in accordance with ~~((department))~~ agency or its designee program rules and the ~~((department's))~~ agency's current published billing instructions ~~((and numbered memoranda))~~.

(5) The ~~((department))~~ agency does not pay for any health care service requiring prior authorization from the ~~((department))~~ agency or its designee, if prior authorization was not obtained before the health care service was provided; unless:

(a) The client is determined to be retroactively eligible for medical assistance; and

(b) The request meets the requirements of subsection (4) of this section.

(6) The ~~((department))~~ agency does not reimburse clients for health care services purchased out-of-pocket.

(7) The ~~((department))~~ agency does not pay for the replacement of ~~((department-purchased))~~ agency-purchased

equipment, devices, or supplies which have been sold, gifted, lost, broken, destroyed, or stolen as a result of the client's carelessness, negligence, recklessness, deliberate intent, or misuse unless:

(a) Extenuating circumstances exist that result in a loss or destruction of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies, through no fault of the client that occurred while the client was exercising reasonable care under the circumstances; or

(b) Otherwise allowed under ~~((chapter 388-500 WAC))~~ specific agency program rules.

(8) The ~~((department's))~~ agency's refusal to pay for replacement of equipment, device, or supplies will not extend beyond the limitations stated in specific ~~((department))~~ agency program rules.

(9) Covered health care services.

(a) Covered health care services are either:

(i) "Federally mandated" - Means the state of Washington is required by federal regulation (42 C.F.R. 440.210 and 220) to cover the health care service for medicaid clients; or

(ii) "State-option" - Means the state of Washington is not federally mandated to cover the health care service but has chosen to do so at its own discretion.

(b) The ~~((department))~~ agency may limit the scope, amount, duration, and/or frequency of covered health care services. Limitation extensions are authorized according to WAC ~~((388-501-0169))~~ 182-501-0169.

(10) Noncovered health care services.

(a) The ~~((department))~~ agency does not pay for any health care service(~~(:~~

~~(i) That federal or state laws or regulations prohibit the department from covering; or~~

~~(ii))~~ listed as noncovered in WAC ((388-501-0070)) 182-501-0070 or in any other agency program rule, unless the agency grants a request for an exception to rule allowing payment for the noncovered service. The ((department)) agency evaluates a request for a noncovered health care service only if an exception to rule is requested according to the provisions in WAC ((388-501-0160)) 182-501-0160.

(b) When a noncovered health care service is recommended during the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) exam and then ordered by a provider, the ~~((department))~~ agency evaluates the health care service according to the process in WAC ~~((388-501-0165))~~ 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC ~~((388-534-0100))~~ 182-534-0100 for EPSDT rules).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0060 Health care coverage—((Scope of covered categories of service)) Program benefits packages—Scope of service categories. ~~((1))~~ This rule provides a list (see subsection (5)) of medical, dental, mental health, and substance abuse categories of service covered by the department under categorically needy (CN) medicaid, medically needy (MN) medicaid, Alien Emergency Medical (AEM), and medical care services (MCS) programs. MCS means the limited scope of care financed by state funds and provided to

~~general assistance and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program clients.~~

~~(2) Not all categories of service listed in this section are covered under every medical program, nor do they represent a contract for services. Services are subject to the exclusions, limitations, and eligibility requirements contained in department rules.~~

~~(3) Services covered under each listed category:~~

~~(a) Are determined by the department after considering available evidence relevant to the service or equipment to:~~

~~(i) Determine efficacy, effectiveness, and safety;~~

~~(ii) Determine impact on health outcomes;~~

~~(iii) Identify indications for use;~~

~~(iv) Compare alternative technologies; and~~

~~(v) Identify sources of credible evidence that use and report evidence-based information.~~

~~(b) May require prior authorization (see WAC 388-501-0165), or expedited authorization when allowed by the department.~~

~~(c) Are paid for by the department and subject to review both before and after payment is made. The department or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.~~

~~(4) The department does not pay for covered services, equipment, or supplies that:~~

~~(a) Require prior authorization from the department, if prior authorization was not obtained before the service was provided;~~

~~(b) Are provided by providers who are not contracted with the department as required under chapter 388-502 WAC;~~

~~(c) Are included in a department waiver program identified in chapter 388-515 WAC; or~~

~~(d) Are covered by a third-party payer (see WAC 388-501-0200), including medicare, if the third-party payer has not made a determination on the claim or has not been billed by the provider.~~

~~(5) Scope of covered service categories.~~ The following table lists the department's covered categories of health care services:

~~• Under the four program columns (CN, MN, MCS, and AEM), the letter "C" means a service category is covered for that program, subject to any limitations listed in the specific medical assistance program WAC and department issuances.~~

~~• The letter "N" means a service category is not covered under that program.~~

~~• The letter "E" means the service category is available only if it is necessary to treat the client's emergency medical condition and may require prior authorization from the department.~~

~~• Refer to WAC 388-501-0065 for a description of each service category and for the specific program WAC containing the limitations and exclusions to services.~~

Service Categories	CN*	MN	MCS	AEM
(a) Adult day health	€	€	N	E
(b) Ambulance (ground and air)	€	€	€	E

Service Categories	CN*	MN	MCS	AEM
(e) Blood processing/administration	€	€	€	€
(d) Dental services	€	€	€	€
(e) Detoxification	€	€	€	€
(f) Diagnostic services (lab & x-ray)	€	€	€	€
(g) Family planning services	€	€	€	€
(h) Health care professional services	€	€	€	€
(i) Hearing care (audiology/hearing exams/aids)	€	€	€	€
(j) Home health services	€	€	€	€
(k) Hospice services	€	€	N	€
(l) Hospital services— inpatient/outpatient	€	€	€	€
(m) Intermediate care facility/services for mentally retarded	€	€	€	€
(n) Maternity care and delivery services	€	€	N	€
(o) Medical equipment, durable (DME)	€	€	€	€
(p) Medical equipment, nondurable (MSE)	€	€	€	€
(q) Medical nutrition services	€	€	€	€
(r) Mental health services	€	€	€	€
(s) Nursing facility services	€	€	€	€
(t) Organ transplants	€	€	€	N
(u) Out-of-state services	€	€	N	€
(v) Oxygen/respiratory services	€	€	€	€
(w) Personal care services	€	€	N	N
(x) Prescription drugs	€	€	€	€
(y) Private duty nursing	€	€	N	€
(z) Prosthetic/orthotic devices	€	€	€	€
(aa) School medical services	€	€	N	N
(bb) Substance abuse services	€	€	€	€
(cc) Therapy—occupational/physical/speech	€	€	€	€

Service Categories	CN*	MN	MCS	AEM
(dd) Vision care (exams/lenses)	€	€	€	€

*Clients enrolled in the State Children's Health Insurance Program and the Children's Health Program receive CN scope of medical care.) (1) This rule provides a table that lists:

(a) The categorically needy (CN) medicaid, medically needy (MN) medicaid, and medical care services (MCS) programs (includes incapacity-based medical care services and the medical component of the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program); and

(b) The benefits packages showing what service categories are included for each program.

(2) Within a service category included in a benefits package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefits package:

(a) Are determined, in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited authorization when allowed by the agency.

(d) Are paid for by the agency or its designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or its designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or its designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Other programs:

(a) Early and periodic screening, diagnosis, and treatment (EPSDT) services are not addressed in the table. For EPSDT services, see chapter 182-534 WAC and WAC 182-501-0050(10).

(b) The following programs are not addressed in the table:

(i) Alien emergency medical (AEM) services (see chapter 182-507 WAC); and

(ii) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790).

(6) **Scope of service categories.** The following table lists the agency's categories of health care services.

(a) Under the CN and MN headings there are two columns. One addresses clients twenty years of age and younger

and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y	Y	Y	Y	Y
Behavioral health services					
• Mental health (MH) inpatient care	Y	Y	Y	Y	Y
• MH outpatient community care	Y	Y	Y	Y	Y ²
• MH psychiatric visits	Y	Y	Y	Y	Y ³
• MH medication management	Y	Y	Y	Y	Y
• Substance use disorder (SUD) detoxification	Y	Y	Y	Y	Y
• SUD diagnostic assessment	Y	Y	Y	Y	Y
• SUD residential treatment	Y	Y	Y	Y	Y
• SUD outpatient treatment	Y	Y	Y	Y	Y
Blood/blood products/related services	Y	Y	Y	Y	Y
Dental services	Y	Y ⁴	Y	Y ⁴	Y ⁴
Diagnostic services (lab and X ray)	Y	Y	Y	Y	Y
Health care professional services	Y	Y	Y	Y	Y
Hearing evaluations	Y	Y	Y	Y	Y
Hearing aids	Y	N	Y	N	N
Home health services	Y	Y	Y	Y	Y
Hospice services	Y	Y	Y	Y	N
Hospital services - Inpatient/outpatient	Y	Y	Y	Y	Y
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y
Maternity care and delivery services	Y	Y	Y	Y	Y
Medical equipment, durable (DME)	Y	Y	Y	Y	Y
Medical equipment, nondurable (MSE)	Y	Y	Y	Y	Y
Medical nutrition services	Y	Y	Y	Y	Y
Nursing facility services	Y	Y	Y	Y	Y
Organ transplants	Y	Y	Y	Y	Y
Out-of-state services	Y	Y	Y	Y	N
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	N	Y
Personal care services	Y	Y	N	N	N
Prescription drugs	Y	Y	Y	Y	Y
Private duty nursing	Y	Y	Y	Y	N
Prosthetic/orthotic devices	Y	Y	Y	Y	Y
Psychological evaluation ⁵	Y	Y	Y	Y	N
Reproductive health services	Y	Y	Y	Y	Y
Respiratory care (oxygen)	Y	Y	Y	Y	Y
School-based medical services	Y	N	Y	N	N
Vision care - Exams, refractions, and fittings	Y	Y	Y	Y	Y
Vision hardware - Frames and lenses	Y	N	Y	N	N

¹ Clients enrolled in the children's health insurance program and the apple health for kids program receive CN-scope of medical care.

² Restricted to incapacity-based MCS clients enrolled in managed care.

³ Incapacity-based MCS clients can receive one psychiatric diagnostic evaluation per year and eleven monthly visits per year for medication management.

⁴ Restricted to those clients who meet the categorical requirements described in WAC 182-535-1060.

⁵ Only two allowed per lifetime.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0065 Health care coverage—Description of ~~((covered))~~ categories of service. This rule provides a brief description of the medical, dental, mental health, and substance ~~((abuse))~~ use disorder (SUD) service categories listed in the table in WAC ~~((388-501-0060))~~ 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC citations listed in the following descriptions for specific details regarding each service category. ~~((For Alien Emergency Medical (AEM) services, refer to WAC 388-438-0110.))~~

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in ~~((department))~~ agency rules:

~~((a))~~ ~~((**Adult day health**—Skilled nursing services, counseling, therapy (physical, occupational, speech, or audiology), personal care services, social services, general therapeutic activities, health education, nutritional meals and snacks, supervision, and protection. [WAC 388-71-0702 through 388-71-0776]~~

~~((b))~~ ~~((**Ambulance**~~((—))~~—Emergency medical transportation and ambulance transportation for nonemergency medical needs. ([WAC 388-546-0001 through 388-546-4000]~~

~~((c))~~ ~~((WAC 182-546-0001 through 182-546-4000.))~~

~~((b))~~ ~~((**Behavioral health services**—~~

~~((i))~~ ~~((**Mental health inpatient care - Voluntary and involuntary admissions for psychiatric services.** (WAC 182-550-2600.))~~

~~((ii))~~ ~~((**Mental health outpatient (community mental health) services - Nonemergency, nonurgent counseling.** (WAC 182-531-1400, 388-865-0215, and 388-865-0230.))~~

~~((iii))~~ ~~((**Psychiatric visits.** (WAC 182-531-1400 and 388-865-0230.))~~

~~((iv))~~ ~~((**Mental health medication management.** (WAC 182-531-1400.))~~

~~((v))~~ ~~((**Substance use disorder detoxification.** (WAC 182-508-0305 and 182-550-1100; WAC 182-556-0400(3).))~~

~~((vi))~~ ~~((**Substance use disorder diagnostic assessment.** (WAC 182-508-0330.))~~

~~((vii))~~ ~~((**Substance use disorder residential treatment.** (WAC 182-508-0310 through 182-508-0375; and WAC 182-556-0100.))~~

~~((viii))~~ ~~((**Substance use disorder outpatient treatment.** (WAC 182-508-0310 through 182-508-0375; WAC 182-533-0701 through 182-533-0730; WAC 182-556-0100 and 182-556-0400.))~~

~~((c))~~ ~~((**Blood ~~((processing/administration—)), blood products, and related services~~** - Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. ([WAC 388-550-1400 and 388-550-1500]) (WAC 182-550-1400 and 182-550-1500.))~~

~~((d))~~ ~~((**Dental services**~~((—))~~—Diagnosis and treatment of dental problems including emergency treatment and preventive care. ([Chapters 388-535 and 388-535A WAC]) (Chapters 182-535 and 182-535A WAC.))~~

~~((e))~~ ~~((**Detoxification**—Inpatient treatment performed by a certified detoxification center or in an inpatient hospital setting. [WAC 388-800-0020 through 388-800-0035; and 388-550-1100]~~

~~((f))~~ ~~((**Diagnostic services**~~((—))~~—Clinical testing and imaging services. ([WAC 388-531-0100; 388-550-1400 and 388-550-1500]~~

~~((g))~~ ~~((**Family planning services**—Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. [WAC 388-532-530]~~

~~((h))~~ ~~((WAC 182-531-0100; WAC 182-550-1400 and 182-550-1500.))~~

~~((f))~~ ~~((**Health care professional services**~~((—))~~—Office visits, emergency oral health, emergency room, nursing facility, home-based, and hospital-based care; surgery, anesthesia, pathology, radiology, and laboratory services; obstetric services; kidney dialysis and renal disease services; osteopathic care, podiatry services, psychiatry, and pulmonary/respiratory services; and allergen immunotherapy. ([Chapter 388-531 WAC]~~

~~((i))~~ ~~((Chapter 182-531 WAC.))~~

~~((g))~~ ~~((**Hearing ~~((care—))~~ evaluations** - Audiology; diagnostic evaluations; hearing exams and testing~~((; and hearing aids. [WAC 388-544-1200 and 388-544-1300; 388-545-700; and 388-531-0100]~~~~

~~((j))~~ ~~((WAC 182-531-0100 and 182-531-0375.))~~

~~((h))~~ ~~((**Hearing aids** - (Chapter 182-547 WAC.))~~

~~((i))~~ ~~((**Home health services**~~((—))~~—Intermittent, short-term skilled nursing care, occupational therapy, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. ([WAC 388-551-2000 through 388-551-2220]~~

~~((k))~~ ~~((WAC 182-551-2000 through 182-551-2220.))~~

~~((j))~~ ~~((**Hospice services**~~((—))~~—Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. ([WAC 388-551-1210 through 388-551-1850]~~

~~((l))~~ ~~((WAC 182-551-1210 through 182-551-1850.))~~

~~((k))~~ ~~((**Hospital services**—**Inpatient/outpatient**~~((—))~~—Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. ([Chapter 388-550 WAC]~~

~~((m))~~ ~~((Chapter 182-550 WAC.))~~

~~((l))~~ ~~((**Intermediate care facility/services for ~~((mentally retarded—))~~ persons with intellectual disabilities** - Habilitative training, health-related care, supervision, and residential care. ([Chapter 388-835 WAC]~~

~~((n))~~ ~~((Chapter 388-835 WAC.))~~

~~((m))~~ ~~((**Maternity care and delivery services**~~((—))~~—Community health nurse visits, nutrition visits, behavioral health visits, midwife services, maternity and infant case manage-~~

ment services, family planning services and community health worker visits. (~~WAC 388-533-0330~~)

~~(o)~~ WAC 182-533-0330.

~~(n)~~ **Medical equipment, durable (DME)(—)**— Wheelchairs, hospital beds, respiratory equipment; (~~prosthetic and orthotic devices;~~) casts, splints, crutches, trusses, and braces. (~~WAC 388-543-1100~~)

~~(p)~~ Chapter 182-543 WAC.

~~(o)~~ **Medical equipment, nondurable (MSE)(—)**— Antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, pregnancy test kits, syringes, needles, (~~transcutaneous electrical nerve stimulators (TENS) supplies;~~) and urological supplies. (~~WAC 388-543-2800~~)

~~(q)~~ Chapter 182-543 WAC.

~~(p)~~ **Medical nutrition services(—)**— Enteral and parenteral nutrition, including supplies. (~~Chapters 388-553 and 388-554 WAC~~)

~~(r)~~ **Mental health services**— Inpatient and outpatient psychiatric services and community mental health services. ~~Chapter 388-865 WAC~~

~~(s)~~ Chapters 182-553 and 182-554 WAC.

~~(q)~~ **Nursing facility services(—)**— Nursing, therapies, dietary, and daily care services. (~~Chapter 388-97 WAC~~)

~~(t)~~ Chapter 388-97 WAC.

~~(r)~~ **Organ transplants(—)**— Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (~~WAC 388-550-1900 and 388-550-2000, and 388-556-0400~~)

~~(u)~~ WAC 182-550-1900 and 182-556-0400.

~~(s)~~ **Out-of-state services(—)**— Emergency services; prior authorized care. Services provided in bordering cities are treated as if they were provided in state. ~~WAC 388-501-0175 and 388-501-0180; 388-531-1100; and 388-556-0500~~)

~~(v)~~ **Oxygen/respiratory services**— Oxygen, oxygen equipment and supplies; oxygen and respiratory therapy, equipment, and supplies. ~~Chapter 388-552 WAC~~

~~(w)~~— See WAC 182-502-0120 for services out-of-state.

~~(t)~~ **Outpatient rehabilitation services (OT, PT, ST) -** Evaluations, assessments, and treatment. WAC 182-545-200.

~~(u)~~ **Personal care services(—)**— Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (~~(f)~~) ~~WAC 388-106-0010, (388-106-0300, 388-106-0400, 388-106-0500, 388-106-0600, 388-106-0700, 388-106-0720 and 388-106-0900)~~

~~(x)~~ 388-106-0200, 388-106-0300, 388-106-0600, 388-106-0700, 388-106-0745, and 388-106-0900.

~~(v)~~ **Prescription drugs(—)**— Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (~~WAC 388-530-1100~~) WAC 182-530-2000. Additional

coverage for medications and prescriptions is addressed in specific program WAC sections.

~~(y)~~ ~~(w)~~ **Private duty nursing(—)**— Continuous skilled nursing services provided in the home, including client assessment, administration of treatment, and monitoring of medical equipment and client care for clients seventeen years of age and under. (~~WAC 388-551-3000~~) WAC 182-551-3000. For benefits for clients eighteen years of age and older, see WAC 388-106-1000 through 388-106-1055.

~~(z)~~ ~~(x)~~ **Prosthetic/orthotic devices(—)**— Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (~~WAC 388-543-1100~~)

~~(aa)~~ ~~School medical services~~— Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). ~~Chapter 388-537 WAC~~

~~(bb)~~ ~~Substance abuse services~~— Chemical dependency assessment, case management services, and treatment services. ~~WAC 388-533-0701 through 388-533-0730; 388-556-0100 and 388-556-0400; and 388-800-0020~~

~~(cc)~~ ~~Therapy—Occupational/physical/speech~~— Evaluations, assessments, and treatment. ~~WAC 388-545-300, 388-545-500, and 388-545-700~~

~~(dd)~~ WAC 182-543-5000.

~~(y)~~ **Psychological evaluation**— Complete diagnostic history, examination, and assessment, including the testing of cognitive processes, visual motor responses, and abstract abilities. WAC 388-865-0610.

~~(z)~~ **Reproductive health services**— Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. WAC 182-532-001 through 182-532-140.

~~(aa)~~ **Respiratory care (oxygen)**— All services, oxygen equipment, and supplies related to respiratory care. Chapter 182-552 WAC.

~~(bb)~~ **School-based medical services**— Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). Chapter 182-537 WAC.

~~(cc)~~ **Vision care(—)**— Eye exams, refractions, (~~frames, lenses;~~) fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (~~WAC 388-544-0250 through 388-544-0550~~) WAC 182-531-1000.

~~(dd)~~ **Vision hardware**— Frames and lenses. Chapter 182-544 WAC.

AMENDATORY SECTION (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

WAC 182-501-0070 Health care coverage—Noncovered services. (1) The medicaid agency or its designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for

payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The ~~((department))~~ agency or its designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanipractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4)(-);

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related health care services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

(l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(m) Nonmedical equipment;

(n) Penile implants;

(o) Prosthetic testicles;

(p) Psychiatric sleep therapy;

(q) Subcutaneous injection filling;

(r) Tattoo removal;

(s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

(t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;

(b) Dental services ~~((for clients twenty years of age and younger))~~ as described in chapter 182-535 WAC;

(c) Durable medical equipment as described in chapter 182-543 WAC;

(d) Hearing care services as described in chapter 182-547 WAC;

(e) Home health services as described in WAC 182-551-2130;

(f) Hospital services as described in WAC 182-550-1600;

(g) Health care professional services as described in WAC 182-531-0150;

(h) Prescription drugs as described in chapter 182-530 WAC;

(i) Vision care ~~((services))~~ hardware for clients twenty years of age and younger as described in chapter 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the agency or its designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the agency's or its designee's action was taken; and

(ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR) ~~((or nonformulary justification (NFJ)))~~;

(v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

AMENDATORY SECTION (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

WAC 182-502-0160 Billing a client. (1) The purpose of this section is to specify the limited circumstances in which:

(a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and

(b) Providers (as defined in WAC 182-500-0085) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.

(2) The provider is responsible for:

(a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;

(b) Verifying whether the client is enrolled with a medicaid agency-contracted managed care organization (MCO);

(c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC 182-501-0050 (4)(a) and 182-501-0065);

(d) Informing the client of those limitations;

(e) Exhausting all applicable medicaid agency or agency-contracted MCO processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the agency or agency-contracted MCO for medical assistance services furnished to clients. See 42 C.F.R. § 447.15.

(4) A provider must not bill a client, or anyone on the client's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the agency-contracted MCO in which the client is enrolled, and until the provider has then fully informed the client of his or her covered options. A provider must not bill a client for:

(a) Any services for which the provider failed to satisfy the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the agency-contracted MCO in which the client is enrolled.

(b) A covered service even if the provider has not received payment from the agency or the client's MCO.

(c) A covered service when the agency or its designee denies an authorization request for the service because the required information was not received from the provider or the prescriber under WAC 182-501-0165 (7)(c)(i).

(5) If the requirements of this section are satisfied, then a provider may bill a fee-for-service or a managed care client for a covered service, defined in WAC 182-501-0050(9), or a noncovered service, defined in WAC 182-501-0050(10) and 182-501-0070. The client and provider must sign and date the HCA form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. Form 13-879, including translated versions, is available to download at <http://hrsa.dshs.wa.gov/mpforms.shtml>. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than ninety calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the agency or agency-contracted MCO;

(iv) Specify the total amount the client must pay for the service;

(v) Specify what items or services are included in this amount (such as pre-operative care and postoperative care). See WAC 182-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the client has been fully informed of all available medically appropriate treatment, including services that may be paid for by the agency or agency-contracted MCO, and that he or she chooses to get the specified service(s);

(vii) Specify that the client may request an exception to rule (ETR) in accordance with WAC 182-501-0160 when the agency or its designee denies a request for a noncovered service (~~(other than a nonformulary drug)~~) and that the client may choose not to do so;

(viii) ~~((Specify that the client and their prescriber may request a nonformulary justification (NFJ) in accordance with WAC 182-530-2300 for a nonformulary drug and that the client may choose not to do so;~~

~~(ix))~~ Specify that the client may request an administrative hearing in accordance with chapter 182-526 WAC to appeal the agency's or its designee denial of a request for prior authorization of a covered service and that the client may choose not to do so;

~~((x))~~ (ix) Be completed only after the provider and the client have exhausted all applicable agency or agency-contracted MCO processes necessary to obtain authorization of the requested service, except that the client may choose not to request an ETR or an administrative hearing regarding agency or agency designee denials of authorization for requested service(s); and

~~((xi))~~ (x) Specify which reason in subsection (b) below applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the client is agreeing to be billed for the service(s). The service(s) is:

(i) Not covered by the agency or the client's agency-contracted MCO and the ETR process as described in WAC 182-501-0160 ~~((or the NFJ process as described in WAC 182-530-2300))~~ has been exhausted and the service(s) is denied;

(ii) Not covered by the agency or the client's agency-contracted MCO and the client has been informed of his or her right to an ETR ~~((or NFJ))~~ and has chosen not to pursue an ETR as described in WAC 182-501-0160 ~~((or the NFJ process as described in WAC 182-530-2300))~~;

(iii) Covered by the agency or the client's agency-contracted MCO, requires authorization, and the provider completes all the necessary requirements; however the agency or its designee denied the service as not medically necessary (this includes services denied as a limitation extension under WAC 182-501-0169); or

(iv) Covered by the agency or the client's agency-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the agency or MCO does not pay for and the specific type is not medically necessary for the client.

(c) For clients with limited English proficiency, the agreement must be the version translated in the client's primary language and interpreted if necessary. If the agreement is translated, the interpreter must also sign it;

(d) The provider must give the client a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the client's file for six years from the date of service. The agreement must be made available to the agency or its designee for review upon request; and

(e) If the service is not provided within ninety calendar days of the signed agreement, a new agreement must be completed by the provider and signed by both the provider and the client.

(6) There are limited circumstances in which a provider may bill a client without executing form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section. The following are those circumstances:

(a) The client, the client's legal guardian, or the client's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC 182-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third party insurance carrier for the service.

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a medical assistance program. In this circumstance, the provider must:

(i) Keep documentation of the client's declaration of medical coverage. The client's declaration must be signed and dated by the client, the client's legal guardian, or the client's legal representative; and

(ii) Give a copy of the document to the client and maintain the original for six years from the date of service, for agency or the agency's designee review upon request.

(c) The bill counts toward the financial obligation of the client or applicant (such as spenddown liability, client participation as described in WAC 388-513-1380, emergency medical expense requirement, deductible, or copayment required by the agency or its designee). See subsection (7) of this section for billing a medically needy client for spenddown liability;

(d) The client is under the agency's or an agency-contracted MCO's patient review and coordination (PRC) program (WAC 182-501-0135) and receives nonemergency services from providers or health care facilities other than those to whom the client is assigned or referred under the PRC program;

(e) The client is a dual-eligible client with medicare Part D coverage or similar creditable prescription drug coverage and the conditions of WAC 182-530-7700 (2)(a)(iii) are met;

(f) The service ~~(s provided to a TAKE CHARGE or family planning only client are not within the scope of)~~ is within a service category excluded from the client's benefits package. See WAC 182-501-0060;

(g) The services were noncovered ambulance services (see WAC 182-546-0250(2));

(h) A fee-for-service client chooses to receive nonemergency services from a provider who is not contracted with the agency or its designee after being informed by the provider that he or she is not contracted with the agency or its designee and that the services offered will not be paid by the client's health care program; and

(i) An agency-contracted MCO enrollee chooses to receive nonemergency services from providers outside of the MCO's network without authorization from the MCO, i.e., a nonparticipating provider.

(7) Under chapter 182-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on health care expenses to become eligible for coverage under the medically needy program. An individual must incur health care expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the agency for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then accept as payment in full the amount paid by the agency or its designee or managed care organization for medical assistance services furnished to clients. These situations are as follows:

(a) The individual was not receiving medical assistance on the day the service was furnished. The individual applies for medical assistance later in the same month in which the service was provided and the agency or its designee makes the individual eligible for medical assistance from the first day of that month;

(b) The client receives a delayed certification for medical assistance as defined in WAC 182-500-0025; or

(c) The client receives a certification for medical assistance for a retroactive period according to 42 C.F.R. § 435.914(a) and defined in WAC 182-500-0095.

(9) Regardless of any written, signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from a client, anyone on the client's behalf, or the agency or its designee for:

(a) Copying, printing, or otherwise transferring health care information, as the term health care information is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

(i) Medical/dental charts;

(ii) Radiological or imaging films; and

(iii) Laboratory or other diagnostic test results.

(b) Missed, canceled, or late appointments;

(c) Shipping and/or postage charges;

(d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

WSR 13-15-062
PERMANENT RULES
UNIVERSITY OF WASHINGTON

[Filed July 15, 2013, 10:51 a.m., effective August 15, 2013]

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

Purpose: Amends WAC 478-136-041 Alcoholic beverage policy, to include provisions for a Washington state sports entertainment facility license to be operated in the renovated Husky Stadium.

Citation of Existing Rules Affected by this Order: Amending WAC 478-136-041.

Statutory Authority for Adoption: RCW 28B.20.130.

Adopted under notice filed as WSR 13-10-067 on April 30, 2013.

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

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

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

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

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

Date Adopted: July 11, 2013.

Rebecca Goodwin Deardorff
 Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 10-13-098, filed 6/17/10, effective 7/18/10)

WAC 478-136-041 Alcoholic beverage policy. Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(1) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(2) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(3) Alcoholic beverages may be possessed, sold, served, and consumed at the University of Washington club, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(4) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(5) Except as provided in subsections (3) and (4) of this section, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(a) Events at which alcohol is to be sold must be approved by the appropriate committee chair for the committee on the use of university facilities and an application to the chair must be accompanied by a request for written authorization under subsection (6) of this section or proof that the seller holds an appropriate license; and

(b) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must:

(i) Not be within the spectator viewing areas and must have restricted attendance; or

(ii) Operate under a sport entertainment facility license issued by the Washington state liquor control board; and

(c) A university unit, or an individual or organization applying for a permit/license must have obtained approval under subsection (6) of this section; and

(d) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) identified on the license or permit. Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(6) Written authorization to apply for a special occasion license to sell alcoholic beverages or a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the appropriate committee chair for the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor control board.

(7) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

WSR 13-15-063
PERMANENT RULES
DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed July 15, 2013, 1:57 p.m., effective August 15, 2013]

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

Purpose: WAC 246-840-910 through 246-840-970, to comply with ESHB 2314, which passed in 2012, the rule expands the list of providers to include home care aids that registered nurses may delegate to in certain settings. The rule was also amended to change the term "licensed boarding home" to "assisted living facility" to be consistent with SHB 2056, which passed in 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 246-840-910, 246-840-920, 246-840-930, 246-840-940, 246-840-950, 246-840-960, and 246-840-970.

Statutory Authority for Adoption: RCW 18.79.110, 18.79.260.

Other Authority: ESHB 2314 (2012) and SHB 2056 (2012).

Adopted under notice filed as WSR 13-10-058 on April 29, 2013.

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 7, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: June 11, 2013.

Paula R. Meyer, MSN, RN
Executive Director

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-910 Purpose. This rule defines a consistent standard of nursing care with the delegation of nursing tasks to nursing assistants or home care aides. The registered nurse delegator makes independent professional decisions of the delegation of a nursing task. A licensed registered nurse may delegate specific nursing care tasks to nursing assistants or home care aides meeting certain requirements and providing care to individuals in a community-based care setting defined by RCW 18.79.260 (3)(e)(i) and to individuals in an in-home care setting defined by RCW 18.79.260 (3)(e)(ii). Before delegating a task, the registered nurse delegator determines that specific criteria are met and the patient is in a stable and predictable condition. Registered nurses delegating tasks are accountable to the Washington state nursing care quality assurance commission. The registered nurse delegator, home care aide and nursing assistant are each accountable for their own individual actions in the delegation process. No person may coerce a registered nurse into compromising patient safety by requiring the registered nurse to delegate. Registered nurse delegators shall not delegate the following care tasks:

- (1) Administration of medications by injection (by intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) with the exception of insulin injections.
- (2) Sterile procedures.
- (3) Central line maintenance.
- (4) Acts that require nursing judgment.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-920 Definitions. ~~((For the purposes of this chapter:))~~ ~~The following definitions ((in this section))~~ apply to WAC 246-840-910 through 246-840-970.

(1) "Authorized representative" means a person allowed to provide written consent for health care on behalf of a patient who is not competent to consent. Such person shall be a member of one of the classes of persons as directed in RCW 7.70.065.

(2) "Coercion" means to force or compel another, by authority, to do something that he/she would not otherwise choose to do.

(3) "Complex task" means that a nursing task may become more complicated because of:

- (a) The patient's condition;
- (b) The setting;
- (c) The nursing care task(s) and involved risks; and
- (d) The skill level required to perform the task.

The registered nurse delegator identifies and facilitates additional training of the nursing assistant or home care aide prior to delegation in these situations. The registered nurse delegator decides if the task is not delegable. In no case, may administration of medications by injection with the exception of insulin injections, sterile procedures and central line maintenance be delegated.

(4) ~~(("Medication assistance" as defined in chapter 246-888 WAC does not require delegation by a licensed nurse.~~

(5) ~~"Nursing assistant" means a nursing assistant registered under chapter 18.88A RCW or a nursing assistant certified under chapter 18.88A RCW, providing support and care to individuals served by certified community residential programs for the developmentally disabled, to individuals residing in licensed adult family homes, to in-home care and to individuals residing in licensed boarding homes.~~

(6) ~~"Outcome" means the end result or consequence of an action after following a plan of care.~~

(7) ~~"Patient" means the individual receiving nursing care tasks. In the community residential settings, the patient may be a client, consumer, or resident.~~

(8) ~~"Personal care services" as defined in WAC 388-106-0010 do not require delegation by a licensed nurse.~~

(9) ~~"Procedure" means a series of steps with a desired result; a particular course of action or way of doing something.~~

(10) ~~"Registered nurse delegation" means the registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the patient.~~

(11) ~~"Supervision" means the guidance and evaluation by a registered nurse delegator for the accomplishment of a nursing task or activity, including the initial direction of the task or activity; periodic inspection at least every ninety days of the actual act of accomplishing the task or activity; and the authority to require corrective action.~~

(12) ~~"Immediate supervision" means the registered nurse delegator is on the premises, within audible and visual range of the patient and the patient assessment by the registered~~

nurse delegator occurs prior to the delegation of duties to any care giver.

(13) "Direct supervision" means the registered nurse delegator on the premises, quickly and easily available and the patient assessment by the registered nurse delegator occurs prior to the delegation of the duties to any care giver.

(14) "Indirect supervision" means the registered nurse delegator is not on the premises. The registered nurse delegator previously provided written instructions for the care and treatment of the patient. The registered nurse delegator documents in the patient record the instruction to the nursing assistant, observation of the delegated task, and confirmation of the nursing assistant understanding the directions.

(15) "Stable and predictable condition" means the registered nurse delegator determines the patient's clinical and behavioral status is nonfluctuating and consistent. Stable and predictable may include a terminally ill patient whose deteriorating condition is expected. Stable and predictable may include a patient with sliding scale insulin orders. The registered nurse delegator determines the patient does not require frequent nursing presence and evaluation.) "Direct supervision" means the registered nurse delegator on the premises, quickly and easily available and the patient assessment by the registered nurse delegator occurs prior to the delegation of the duties to any care giver.

(5) "Home care aide" means a person certified under chapter 18.88B RCW.

(6) "Immediate supervision" means the registered nurse delegator is on the premises, within audible and visual range of the patient and the patient assessment by the registered nurse delegator occurs prior to the delegation of duties to any care giver.

(7) "Indirect supervision" means the registered nurse delegator is not on the premises. The registered nurse delegator previously provided written instructions for the care and treatment of the patient. The registered nurse delegator documents in the patient record the instruction to the nursing assistant or home care aide, observation of the delegated task, and confirmation of the nursing assistant's or home care aide's understanding the directions.

(8) "Medication assistance" as defined in chapter 246-888 WAC does not require delegation by a licensed nurse.

(9) "Nursing assistant" means a nursing assistant-registered under chapter 18.88A RCW or a nursing assistant-certified under chapter 18.88A RCW, providing support and care to individuals served by certified community residential programs for the developmentally disabled, to individuals residing in licensed adult family homes, to in-home care and to individuals residing in assisted living facilities.

(10) "Outcome" means the end result or consequence of an action after following a plan of care.

(11) "Patient" means the individual receiving nursing care tasks. In the community residential settings, the patient may be a client, consumer, or resident.

(12) "Personal care services" as defined in WAC 388-106-0010 do not require delegation by a licensed nurse.

(13) "Procedure" means a series of steps with a desired result; a particular course of action or way of doing something.

(14) "Registered nurse delegation" means the registered nurse transfers the performance of selected nursing tasks to competent nursing assistants or home care aides in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the patient.

(15) "Stable and predictable condition" means the registered nurse delegator determines the patient's clinical and behavioral status is nonfluctuating and consistent. Stable and predictable may include a terminally ill patient whose deteriorating condition is expected. Stable and predictable may include a patient with sliding scale insulin orders. The registered nurse delegator determines the patient does not require frequent nursing presence and evaluation.

(16) "Supervision" means the guidance and evaluation by a registered nurse delegator for the accomplishment of a nursing task or activity, including the initial direction of the task or activity; periodic inspection at least every ninety days of the actual act of accomplishing the task or activity; and the authority to require corrective action.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-930 Criteria for delegation. (1) Before delegating a nursing task, the registered nurse delegator decides the task is appropriate to delegate based on the elements of the nursing process: ASSESS, PLAN, IMPLEMENT, EVALUATE.

ASSESS

(2) The setting allows delegation because it is a community-based care setting as defined by RCW 18.79.260 (3)(e)(i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).

(3) Assess the patient's nursing care needs and determine the patient's condition is stable and predictable. A patient may be stable and predictable with an order for sliding scale insulin or terminal condition.

(4) Determine the task to be delegated is within the delegating nurse's area of responsibility.

(5) Determine the task to be delegated can be properly and safely performed by the nursing assistant or home care aide. The registered nurse delegator assesses the potential risk of harm for the individual patient.

(6) Analyze the complexity of the nursing task and determine the required training or additional training needed by the nursing assistant or home care aide to competently accomplish the task. The registered nurse delegator identifies and facilitates any additional training of the nursing assistant or home care aide needed prior to delegation. The registered nurse delegator ensures the task to be delegated can be properly and safely performed by the nursing assistant or home care aide.

(7) Assess the level of interaction required. Consider language or cultural diversity affecting communication or the ability to accomplish the task and to facilitate the interaction.

(8) Verify that the nursing assistant or home care aide:

(a) Is currently registered or certified as a nursing assistant or home care aide in Washington state without restriction;

(b) ~~((As required in WAC 246-841-405 (2)(a), nursing assistants registered have))~~ Has completed both the basic caregiver training and core delegation training before performing any delegated task;

(c) Has a certificate of completion issued by the department of social and health services indicating completion of the required core nurse delegation training;

(d) Has a certificate of completion issued by the department of social and health services indicating completion of diabetes training when providing insulin injections to a diabetic client; and

(e) Is willing and able to perform the task in the absence of direct or immediate nurse supervision and accept responsibility for their actions.

(9) Assess the ability of the nursing assistant or home care aide to competently perform the delegated nursing task in the absence of direct or immediate nurse supervision.

(10) If the registered nurse delegator determines delegation is appropriate, the nurse:

(a) Discusses the delegation process with the patient or authorized representative, including the level of training of the nursing assistant or home care aide delivering care.

(b) Obtains written consent. The patient, or authorized representative, must give written, consent to the delegation process under chapter 7.70 RCW. Documented verbal consent of patient or authorized representative may be acceptable if written consent is obtained within thirty days; electronic consent is an acceptable format. Written consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse ~~((or))~~ nursing assistant, or home care aide will be participating in the process.

PLAN

(11) Document in the patient's record the rationale for delegating or not delegating nursing tasks.

(12) Provide specific, written delegation instructions to the nursing assistant or home care aide with a copy maintained in the patient's record that includes:

(a) The rationale for delegating the nursing task;

(b) The delegated nursing task is specific to one patient and is not transferable to another patient;

(c) The delegated nursing task is specific to one nursing assistant or one home care aide and is not transferable to another nursing assistant or home care aide;

(d) The nature of the condition requiring treatment and purpose of the delegated nursing task;

(e) A clear description of the procedure or steps to follow to perform the task;

(f) The predictable outcomes of the nursing task and how to effectively deal with them;

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the

registered nurse delegator, health care provider, or emergency services;

(j) The action to take in situations where medications and/or treatments and/or procedures are altered by health care provider orders, including:

(i) How to notify the registered nurse delegator of the change;

(ii) The process the registered nurse delegator uses to obtain verification from the health care provider of the change in the medical order; and

(iii) The process to notify the nursing assistant or home care aide of whether administration of the medication or performance of the procedure and/or treatment is delegated or not;

(k) How to document the task in the patient's record;

(l) Document teaching done and a return demonstration, or other method for verification of competency; and

(m) Supervision shall occur at least every ninety days. With delegation of insulin injections, the supervision occurs at least weekly for the first four weeks, and may be more frequent.

(13) The administration of medications may be delegated at the discretion of the registered nurse delegator, including insulin injections. Any other injection (intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) is prohibited. The registered nurse delegator provides to the nursing assistant or home care aide written directions specific to an individual patient.

IMPLEMENT

(14) Delegation requires the registered nurse delegator teach the nursing assistant or home care aide how to perform the task, including return demonstration or other method of verification of competency as determined by the registered nurse delegator.

(15) The registered nurse delegator is accountable and responsible for the delegated nursing task. The registered nurse delegator monitors the performance of the task(s) to assure compliance with established standards of practice, policies and procedures and appropriate documentation of the task(s).

EVALUATE

(16) The registered nurse delegator evaluates the patient's responses to the delegated nursing care and to any modification of the nursing components of the patient's plan of care.

(17) The registered nurse delegator supervises and evaluates the performance of the nursing assistant or home care aide, including direct observation or other method of verification of competency of the nursing assistant or home care aide. The registered nurse delegator reevaluates the patient's condition, the care provided to the patient, the capability of the nursing assistant or home care aide, the outcome of the task, and any problems.

(18) The registered nurse delegator ensures safe and effective services are provided. Reevaluation and documentation occurs at least every ninety days. Frequency of supervision is at the discretion of the registered nurse delegator and may be more often based upon nursing assessment.

(19) The registered nurse must supervise and evaluate the performance of the nursing assistant or home care aide with delegated insulin injection authority at least weekly for the first four weeks. After the first four weeks the supervision shall occur at least every ninety days.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-940 Washington state nursing care quality assurance commission community-based and in-home care setting delegation decision tree.

(1)	Does the patient reside in one of the following settings? A community-based care setting as defined by RCW 18.79.260 (3)(e)(i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).	No →	Do not delegate
Yes ↓			
(2)	Has the patient or authorized representative given consent to the delegation?	No →	Obtain the written, informed consent
Yes ↓			
(3)	Is RN assessment of patient's nursing care needs completed?	No →	Do assessment, then proceed with a consideration of delegation
Yes ↓			
(4)	Does the patient have a stable and predictable condition?	No →	Do not delegate
Yes ↓			
(5)	Is the task within the registered nurse's scope of practice?	No →	Do not delegate
Yes ↓			
(6)	Is the nursing assistant <u>or home care aide</u> , registered or certified and properly trained in the nurse delegation for nursing assistants <u>or home care aides</u> ? Is the nursing assistant <u>or home care aide</u> trained in diabetes care and insulin injections when delegating insulin?	No →	Do not delegate
Yes ↓			
(7)	Does the delegation exclude the administration of medications by injection other than insulin, sterile procedures or central line maintenance?	No →	Do not delegate
Yes ↓			
(8)	Can the task be performed without requiring judgment based on nursing knowledge?	No →	Do not delegate

Yes ↓			
(9)	Are the results of the task reasonably predictable?	No →	Do not delegate
Yes ↓			
(10)	Can the task be safely performed according to exact, unchanging directions?	No →	Do not delegate
Yes ↓			
(11)	Can the task be performed without a need for complex observations or critical decisions?	No →	Do not delegate
Yes ↓			
(12)	Can the task be performed without repeated nursing assessments?	No →	Do not delegate
Yes ↓			
(13)	Can the task be performed properly?	No →	Do not delegate
Yes ↓			
(14)	Is appropriate supervision available? With insulin injections, the supervision occurs at least weekly for the first four weeks.	No →	Do not delegate
Yes ↓			
(15)	There are no specific laws or rules prohibiting the delegation?	No →	Do not delegate
Yes ↓			
(16)	Task is delegable		

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-950 How to make changes to the delegated tasks. (1) **Medication.** The registered nurse delegator discusses with the nursing assistant or home care aide the process for continuing, rescinding, or adding medications to the delegation list when the changes occur:

(a) The registered nurse delegator verifies the change in medication or a new medication order with the health care provider;

(b) If the medication dosage or type of medication changes or for the same problem (i.e., one medication is deleted and another is substituted) and the patient remains in a stable and predictable condition, delegation continues at the registered nurse delegator's discretion; and

(c) If a new medication is added, the registered nurse delegator reviews the criteria and process for delegation prior to delegating the administration of the new medication to the nursing assistant or home care aide. The registered nurse delegator maintains the authority to decide if the new medication can be delegated immediately, if a site visit is warranted prior to delegation, or if delegation is no longer appropriate. If delegation is rescinded, the registered nurse delegator initiates and participates in developing an alternative plan to meet the needs of the patient.

(2) Treatments and/or procedures.

(a) The registered nurse delegator verifies the change in the medical order with the health care provider.

(b) The registered nurse delegator decides if the new treatment or procedure can be delegated immediately, if a site visit is warranted prior to delegation, or if delegation is no longer appropriate. If rescinding delegation, the registered nurse delegator initiates and participates in developing an alternative plan to meet the needs of the patient.

Transferring delegation to another registered nurse.

(3) The registered nurse delegator may transfer the delegation process to another registered nurse. The registered nurse assuming responsibility assesses the patient, the skills of the nursing assistant or home care aide, and the plan of care. The registered nurse is accountable and responsible for the delegated task. The registered nurse delegator must document the following in the patient's record:

(a) The reason and justification for another registered nurse assuming responsibility for the delegation;

(b) The registered nurse assuming responsibility must agree, in writing, to perform the supervision; and

(c) The nursing assistant or home care aide and patient have been informed of this change.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-960 Rescinding delegation. (1) The registered nurse delegator may rescind delegation of the nursing task based on the following circumstances which may include, but are not limited to:

(a) The registered nurse delegator believes patient safety is being compromised;

(b) The patient's condition is no longer stable and predictable;

(c) When the frequency of staff turnover makes delegation impractical to continue in the setting;

(d) A change in the nursing assistant's or home care aide's willingness or competency to do the task;

(e) When the task is not being performed correctly;

(f) When the patient or authorized representative requests rescinding the delegation;

(g) When the facility's license lapsed; or

(h) When caregivers are not currently registered, certified, or have restrictions to practice.

(2) In the event delegation is rescinded, the registered nurse delegator initiates and participates in developing an alternative plan to provide continuity of the task or assumes responsibility for performing the task.

(3) The registered nurse delegator documents the reason for rescinding delegation of the task and the plan for continuing the task.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-970 Accountability, liability, and coercion. (1) The registered nurse delegator and nursing assistant or home care aide are accountable for their own individual actions in the delegation process. While the delegated task becomes the responsibility of the nursing assistant

or home care aide, the registered nurse delegator retains overall accountability for the nursing care of the patient.

(2) Under RCW 18.79.260 (3)(d)(iv), delegating nurses acting within their delegation authority shall be immune from liability for any action performed in the course of their delegation duties.

(3) Under RCW 18.88A.230(1), nursing assistants and under RCW 18.88B.070(3), home care aides following written delegation instructions from registered nurse delegators for delegated tasks shall be immune from liability.

(4) Complaints regarding delegation of nursing tasks may be reported to the aging and adult services administration of the department of social and health services or via a toll-free telephone number.

(5) All complaints related to registered nurse delegators shall be referred to the nursing care quality assurance commission.

(6) All complaints related to nursing assistants or home care aides performing delegated tasks shall be referred to the secretary of health.

(7) Under RCW 18.79.260 (3)(c), no person may coerce the registered nurse delegator into compromising patient safety by requiring the nurse to delegate if the registered nurse delegator determines it is inappropriate to do so. Registered nurse delegators shall not be subject to any employer reprisal or disciplinary action by the Washington nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

(8) Under RCW 18.88A.230(2), nursing assistants and under RCW 18.88B.070(4), home care aides shall not be subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing task based on patient safety issues.

WSR 13-15-064**PERMANENT RULES****DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)

[Filed July 15, 2013, 2:02 p.m., effective August 15, 2013]

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

Purpose: WAC 246-840-010 and 246-840-840, amended. ESSB 6237, passed in 2012, added "clinics" to the list of facilities where a nursing technician may be employed. The amended rules make them consistent with the law change. WAC 246-840-010(18) is amended to clarify that nursing technicians may be enrolled in an approved school of nursing "in the United States or its territories." This change does not alter the intent of the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 246-840-010 and 246-840-840.

Statutory Authority for Adoption: RCW 18.79.110.

Other Authority: ESSB 6237, chapter 153, Laws of 2012.

Adopted under notice filed as WSR 13-10-059 on April 29, 2013.

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

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

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

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

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

Date Adopted: June 11, 2013.

Paula R. Meyer, MSN, RN
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-047, filed 11/24/10, effective 1/1/11)

WAC 246-840-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) An "advanced registered nurse practitioner (ARNP)" is a registered nurse who has had formal graduate education and has achieved national specialty certification for the nurse practitioner, nurse anesthetist, or nurse midwife role. A nurse with this preparation may qualify as an ARNP as described in WAC 246-840-300.

(2) "Advanced nursing practice" is the delivery of nursing care by registered nurses who have acquired experience and formal education that prepares them for independent practice.

(3) "Client advocate" means a licensed registered nurse or practical nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and/or choices by providing the client with adequate information about their care and options.

(4) "Commission" means the Washington state nursing care quality assurance commission.

(5) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(6) "Conditional approval" of a school of nursing is the approval given a school of nursing that has not met the requirements of the law and the rules and regulations of the commission; conditions are specified that must be met within a designated time to rectify the deficiency.

(7) "Delegation" means the licensed practical nurse or registered nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The licensed practical nurse or registered nurse delegating the task retains the responsibility and accountability for the nursing care of the client. The licensed practical nurse or registered nurse delegating the task supervises the performance of the unlicensed person. Delegation in community and in-home

care settings is defined by WAC 246-840-910 through 246-840-970.

(a) Nursing acts delegated by the licensed practical nurse or registered nurse shall:

(i) Be within the area of responsibility of the licensed practical nurse or registered nurse delegating the act;

(ii) Be such that, in the opinion of the licensed practical nurse or registered nurse, it can be properly and safely performed by the unlicensed person without jeopardizing the patient welfare;

(iii) Be acts that a reasonable and prudent licensed practical nurse or registered nurse would find are within the scope of sound nursing judgment.

(b) Nursing acts delegated by the licensed practical nurse or registered nurse shall not require the unlicensed person to exercise nursing judgment nor perform acts which must only be performed by a licensed practical nurse or registered nurse, except in an emergency situation (RCW 18.79.240 (1)(b) and (2)(b)).

(c) When delegating a nursing act to an unlicensed person it is the licensed practical nurse or the registered nurse who shall:

(i) Make an assessment of the patient's nursing care need before delegating the task;

(ii) Instruct the unlicensed person in the delegated task or verify competency to perform or be assured that the person is competent to perform the nursing task as a result of the systems in place by the health care agency;

(iii) Recognize that some nursing interventions require nursing knowledge, judgment, and skill and therefore may not lawfully be delegated to unlicensed persons.

(8) "Faculty" means persons who are responsible for the educational nursing program and who hold faculty appointment in the school.

(9) "Full approval" of a school of nursing is the approval signifying that a nursing program meets the requirements of the law and the rules and regulations of the commission.

(10) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own, receipt of the examination results after thirty days after the nurse technician's date of graduation, or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(11) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.

(12) "Immediately available" as applied to nursing technicians, means that a registered nurse who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed. This may include the use of two-way communication devices which allow conversation between the nursing technician and a registered nurse who has agreed to act as supervisor.

(a) In a hospital setting, a registered nurse who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by

the registered nurse prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, a registered nurse who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

(13) "Initial approval" of nursing programs is the approval given a new nursing program based on its proposal prior to the graduation of its first class.

(14) "Limited educational authorization" is an authorization to perform clinical training through a commission approved refresher course. This authorization does not permit practice for employment. A limited educational authorization may be issued to:

(a) A person whose Washington state license has been expired or inactive for three years or more and who applies for reinstatement and enrolls in a refresher course; or

(b) An applicant endorsing from another state or territory if the applicant's license from that jurisdiction is on inactive or expired status. The applicant must be enrolled in a refresher course.

(15) "Minimum standards of competency" means the knowledge, skills and abilities that are expected of the beginning practitioner.

(16) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching/learning component in clinical settings.

(17) "Nurse administrator" is an individual who meets the qualifications contained in WAC 246-840-555 and who has been designated as the person primarily responsible for the direction of the program in nursing. Titles for this position may include, among others, dean, director, coordinator or chairperson.

(18) "Nursing technician" means a nursing student preparing for registered nurse licensure who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic, and who:

(a) Is currently enrolled in good standing and attending a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination that there is good cause to continue the registration period(-); or

(c) Is enrolled in an approved school of nursing in the United States or its territories. Approved schools for nursing technicians include the list of registered nursing programs (schools) approved by state boards of nursing in the United States or its territories as preparation for the NCLEX registered nurse examination, and listed in the NCLEX bulletin as meeting minimum standards. Approved schools do not include nontraditional schools as defined in subsection (16) of this section.

(19) "Philosophy" means the beliefs and principles upon which the curriculum is based.

(20) "Program" means a division or department within a state supported educational institution, or other institution of

higher learning charged with the responsibility of preparing persons to qualify for the licensing examination.

(21) "Registered nurse" as used in these rules shall mean a nurse as defined by RCW 18.79.030(1).

(22) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(23) "Traditional program of nursing" means a program that has a curriculum which includes a faculty supervised teaching/learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 04-13-053, filed 6/11/04, effective 6/11/04)

WAC 246-840-840 Nursing technician. The purpose of the nursing technician credential is to provide additional work related opportunities for students enrolled in an ADN or BSN program, within the limits of their education, to gain valuable judgment and knowledge through expanded work opportunities.

(1) The nursing technician is as defined in WAC 246-840-010(~~((19))~~) (18).

(2) The nursing technician shall have knowledge and understanding of the laws and rules regulating the nursing technician and shall function within the legal scope of their authorization under chapter 18.79 RCW and shall be responsible and accountable for the specific nursing functions which they can safely perform as verified by their nursing program.

(3) The nursing technician shall work directly for the hospital, clinic or nursing home and may not be employed in these facilities through a temporary agency.

WSR 13-15-070

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed July 16, 2013, 9:58 a.m., effective August 16, 2013]

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

Purpose: Chapter 246-110 WAC, Contagious disease—School districts and day care centers, the amended rule improves clarity and makes it consistent with the list of contagious diseases that may affect children in schools and/or childcare centers with best public health practice and the notifiable conditions listed in chapter 246-101 WAC.

Citation of Existing Rules Affected by this Order: Amending chapter 246-110 WAC.

Statutory Authority for Adoption: RCW 43.20.050.

Other Authority: RCW 28A.210.010.

Adopted under notice filed as WSR 13-10-055 on April 29, 2013.

Changes Other than Editing from Proposed to Adopted Version: There were four small changes to the text:

- WAC 246-110-020(2) is changed to read "When there is an outbreak of a contagious disease, as defined in WAC 246-110-010, and there is the potential for a case or cases within a school or childcare center, the local health officer, after consultation with the secretary of health or designee **if appropriate**, shall ...";
- WAC 246-110-020 (3)(c) is changed to read "Pursue, in consultation with the secretary of health or designee **if appropriate**, and school or childcare officials, the investigation ...";
- WAC 246-110-020(2) "medically appropriate" is changed to "appropriate"; and
- WAC 246-110-020 (2)(d) "infectious, exposed, or susceptible" is changed to "infectious, or exposed and susceptible."

The first two changes make it clearer that a health officer is not required to consult with the secretary of health before issuing an order. This is more in line with the statutory authority of a health officer. The third change takes into account that some of the actions a health officer may wish to take to control or eliminate the spread of the contagious disease (such as conducting a disease investigation, closing a school, etc.) may fall outside of a "medically appropriate" action. The fourth change makes it clearer that there is not a need to exclude someone from school or childcare if they are exposed to a contagious disease but not susceptible to it.

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

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

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

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

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

Date Adopted: June 13, 2013.

Michelle A. Davis
Executive Director

Chapter 246-110 WAC

CONTAGIOUS DISEASE—SCHOOL DISTRICTS AND (~~DAY CARE~~) CHILDCARE CENTERS

AMENDATORY SECTION (Amending WSR 92-02-019, filed 12/23/91, effective 1/23/92)

WAC 246-110-001 Purpose. (~~The following regulations are adopted by the board of health for the purpose of governing the presence on or about any school or day care center premises of susceptible persons who have, or have been exposed to, a communicable disease.~~) The rules in this chapter identify certain contagious diseases that may affect children, or others who are susceptible, in schools, and childcare centers. When an outbreak or potential outbreak of a contagious disease is identified in a school or childcare center, the rules in this chapter identify what schools, childcare centers and local health officers may do to control or prevent a potential outbreak of the contagious disease. These (~~regulations~~) rules are in addition to other requirements imposed by chapter 246-100 WAC, Communicable and certain other diseases and chapter 246-101 WAC, Notifiable conditions.

(~~In furtherance of the purpose and intent of the law and these regulations, it is recommended that parents of students whose medical supervision seems inadequate should be encouraged to obtain the services of a physician for the child. When the economic situation warrants, the parents should be guided to the appropriate source of community sponsored medical care.~~) These (~~regulations are not intended to imply that any diagnosis or treatment will be performed by~~) rules do not require school or (~~day care~~) childcare center personnel to diagnose or treat children.

AMENDATORY SECTION (Amending WSR 91-02-051, filed 12/27/90, effective 1/31/91)

WAC 246-110-010 Definitions. (~~As used in this portion of these regulations, these terms shall mean:~~

(1) "~~Contact~~" means a person exposed to an infected person, animal, or contaminated environment which might provide an opportunity to acquire the infection.

(2) "~~Exposure~~" means such association with a person or animal in the infectious stage of a disease, or with a contaminated environment, as to provide the opportunity to acquire the infection.

(3) "~~Susceptible~~" means a person who does not possess sufficient resistance, whether natural or induced, to a pathogenic agent or disease to prevent contracting that disease when exposed thereto.

(4) "~~Communicable disease (contagious disease)~~" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. Communicable (contagious) diseases include, but are not limited to:

- (a) Chickenpox
 - (b) Conjunctivitis (bacterial)
 - (c) Diphtheria
 - (d) Giardiasis
 - (e) Hepatitis A
 - (f) ~~Invasive Haemophilus influenzae disease (excluding otitis media)~~
 - (g) Measles
 - (h) Meningitis (bacterial)
 - (i) Mumps
 - (j) Pediculosis
 - (k) Pertussis
 - (l) Rubella
 - (m) Salmonellosis
 - (n) Shigellosis
 - (o) Tuberculosis
- (5) "School" means each building, facility, and location at or within which any or all portions of a preschool, kindergarten and grades one through twelve program of education and related activities are conducted for two or more children by or in behalf of any public school district and by or in behalf of any private school or private institution subject to approval by the state board of education.

(6) "Day care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours and is licensed pursuant to chapter 74.15 RCW.

(7) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Childcare center" means any facility or center licensed by the department of early learning as described in chapter 43.215 RCW that regularly provides care for a group of children for periods of less than twenty-four hours per day.

(2) "Contact" means a person exposed to a contagious person or animal, or a contaminated source which might provide an opportunity to acquire the infection.

(3) "Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases include, but are not limited to:

- (a) Bacterial Meningitis
- (i) Haemophilus influenzae invasive disease (excluding Otitis media)
- (ii) Meningococcal
- (b) Diarrheal diseases due to or suspected to be caused by an infectious agent
- (i) Cryptosporidiosis
- (ii) Giardiasis
- (iii) Hepatitis A
- (iv) Salmonellosis
- (v) Shigellosis
- (vi) Shiga toxin-producing Escherichia coli (STEC)
- (c) Diseases spread through the air - Tuberculosis
- (d) Vaccine preventable diseases
- (i) Chickenpox (Varicella)

- (ii) Diphtheria
- (iii) German measles (Rubella)
- (iv) Measles (Rubeola)
- (v) Mumps
- (vi) Whooping cough (Pertussis)

(4) "Contaminated" means containing or having contact with infectious agents that pose an immediate threat to present or future public health.

(5) "Exposed" means such association with a person or animal in the infectious stage of a disease, or with a contaminated source, which provides the opportunity to acquire the infection.

(6) "Infectious agent" means an organism that is capable of producing infection or infectious disease.

(7) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases as determined by the local health officer.

(8) "School" means each building, facility, and location at or within which any or all portions of a preschool, kindergarten, and grades one through twelve program of education and related activities are conducted for two or more students or children by or on behalf of any public school district and by or on behalf of any private school or private institution subject to approval by the state board of education.

(9) "Susceptible" means a person who has no immunity to an infectious agent.

AMENDATORY SECTION (Amending WSR 92-02-019, filed 12/23/91, effective 1/23/92)

WAC 246-110-020 Control of (~~communicable~~) (~~contagious~~) (~~and~~) disease. (1) When (~~there is an outbreak of a contagious disease~~) a school or childcare center becomes aware of the presence of a contagious disease at the facility, as defined in WAC 246-110-010, (~~such that~~) the officials at the school or childcare center shall notify the appropriate local health officer for guidance.

(2) When there is an outbreak of a contagious disease, as defined in WAC 246-110-010, and there is the potential for a case or cases within a school or (~~day care~~) childcare center, the local health officer, (~~if appropriate~~) after consultation with the secretary of health or designee if appropriate, shall take all (~~medically~~) appropriate actions deemed to be necessary to control or eliminate the spread of the disease (~~and~~) within their local health jurisdiction including, but not limited to:

- (a) Closing part or all of the affected school(s) or (~~day care~~) childcare center(s) (~~and~~ ~~or part(s) thereof~~);
- (b) Closing other schools or (~~day care~~) childcare centers (~~in the local health officer's jurisdiction~~);
- (c) (~~Causing the cessation of selected~~) Canceling activities or functions at schools or (~~day care~~) childcare centers (~~activities or functions~~);
- (d) Excluding from schools or (~~day care~~) childcare centers (~~in the local health officer's jurisdiction~~) any students, staff, and volunteers who are (~~infected with, or deemed to be susceptible to~~) infectious, or exposed and susceptible to the disease.

(~~and~~) (3) Prior to taking action the health officer shall:

(a) Consult with and discuss the ramifications of action with the superintendent of the school district, or the chief administrator of the ~~((day care))~~ childcare center or their designees on the proposed action; and

(b) Provide ~~((the board of directors and))~~ the superintendent of the school district or the chief administrator of the ~~((day care))~~ childcare center or their designees a written decision, in the form and substance of an order, directing them to take action(;

~~(3) Where these actions have been taken, the local health officer shall, in addition:~~

~~((a) Set the terms and conditions permitting)).~~ The order must set the terms and conditions permitting:

(i) Schools or ((day care)) childcare centers to reopen;

(ii) Activities and functions to resume; and

(iii) Excluded students, staff and volunteers to be readmitted(; ~~and)).~~

~~((b))~~ (c) Pursue, in consultation with the secretary of health or designee if appropriate, and school ((and/or day care) or childcare officials, the investigation of the source of disease, or ((order)) those actions necessary to ((the ultimate)) ultimately control ((of)) the disease.

Changes Other than Editing from Proposed to Adopted Version: Language has been added to recognize that 2E2SHB [1971], which eliminates these taxes effective August 1, 2013.

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

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

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

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

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

Date Adopted: July 16, 2013.

Alan R. Lynn
Assistant Director

WSR 13-15-074
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 16, 2013, 1:24 p.m., effective August 16, 2013]

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

Purpose: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program. The telecommunications relay services (TRS) and Washington telephone assistance program (WTAP) tax rates are determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

The department is amending WAC 458-20-270 to recognize:

- The tax rates effective July 1, 2013, which are the same as those for the previous year, and
- 2E2SHB 1971 (chapter 8, Laws of 2013 2nd sp. sess.), which, effective August 1, 2013, eliminates these taxes and funds the programs by biennial general fund appropriations.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-270 Telephone program excise tax rates.

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

Other Authority: RCW 43.20A.725 and 80.36.430.

Adopted under notice filed as WSR 13-10-014 on April 22, 2013.

AMENDATORY SECTION (Amending WSR 12-14-039, filed 6/27/12, effective 7/28/12)

WAC 458-20-270 Telephone program excise tax rates. RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

Effective August 1, 2013, Second Engrossed Second Substitute House Bill No. 1971 (chapter 8, Laws of 2013 2nd sp.s.) repeals the TRS and WTAP taxes. Telephone service providers will no longer collect these taxes as of the effective date.

The monthly telephone program excise tax rates per switched access line are as follows:

Period	TRS Rate	WTAP Rate
((7/1/2008—6/30/2009	12 cents	13 cents))
7/1/2009 - 6/30/2010	11 cents	13 cents
7/1/2010 - 6/30/2011	19 cents	14 cents
7/1/2011 - 6/30/2012	19 cents	14 cents
7/1/2012 - 6/30/2013	17 cents	14 cents
<u>7/1/2013 - 7/31/2013</u>	<u>17 cents</u>	<u>14 cents</u>

WSR 13-15-089
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket UE-112133, General Order R-571—Filed July 18, 2013, 12:27 p.m., effective August 18, 2013]

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 13-16 issue of the Register.

WSR 13-15-144
PERMANENT RULES
DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed July 23, 2013, 1:29 p.m., effective August 23, 2013]

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

Purpose: Chapter 246-817 WAC the rules implement E2SB [E2SSB] 5620 (chapter 23, Laws of 2012) by establishing requirements for dental anesthesia assistant certification and providing clarification. The rules also amend chapter 246-817 WAC by adding dental anesthesia assistants, dental assistants and expanded function dental auxiliaries to WAC 246-817-450 and 246-817-460, which are the dental quality assurance commission's sexual misconduct rules.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-185, 246-817-440, 246-817-450, 246-817-460, 246-817-710, and 246-817-720.

Statutory Authority for Adoption: Chapter 18.350 RCW, RCW 18.32.0365, 18.32.640, 18.130.050(14).

Other Authority: RCW 18.260.120.

Adopted under notice filed as WSR 13-09-039 on April 11, 2013.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 6, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 3, Amended 6, Repealed 0.

Date Adopted: June 7, 2013.

Paul W. Bryan, D.M.D., Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 10-07-026, filed 3/8/10, effective 4/8/10)

WAC 246-817-185 Temporary practice permits—Eligibility. Fingerprint-based national background checks may cause a delay in credentialing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed.

(1) A temporary practice permit, as defined in RCW 18.130.075, shall be issued at the written request of an applicant for dentists, expanded function dental auxiliaries, dental anesthesia assistants, and dental assistants. The applicant must be credentialed in another state, with credentialing standards substantially equivalent to Washington.

(2) The conditions of WAC 246-817-160 must be met for applicants who are graduates of dental schools or colleges not accredited by the American Dental Association Commission on Dental Accreditation.

NEW SECTION

WAC 246-817-205 Dental anesthesia assistant certification requirements. An applicant for certification as a dental anesthesia assistant must submit to the department:

(1) A completed application on forms provided by the secretary;

(2) Applicable fees as defined in WAC 246-817-99005;

(3) Evidence of:

(a) Completion of a commission approved dental anesthesia assistant education and training. Approved education and training includes:

(i) Completion of the "Dental Anesthesia Assistant National Certification Examination (DAANCE)" or predecessor program, provided by the American Association of Oral and Maxillofacial Surgeons (AAOMS); or

(ii) Completion of the "Oral and Maxillofacial Surgery Assistants Course" course provided by the California Association of Oral and Maxillofacial Surgeons (CALAOMS); or

(iii) Completion of substantially equivalent education and training approved by the commission.

(b) Completion of training in intravenous access or phlebotomy. Training must include:

(i) Eight hours of didactic training that must include:

(A) Intravenous access;

(B) Anatomy;

(C) Technique;

(D) Risks and complications; and

(ii) Hands on experience starting and maintaining intravenous lines with at least ten successful intravenous starts on a human or simulator/manikin; or

(iii) Completion of substantially equivalent education and training approved by the commission;

(c) A current and valid certification for health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);

(d) A valid Washington state general anesthesia permit of the oral and maxillofacial surgeon or dental anesthesiologist where the dental anesthesia assistant will be performing his or her services;

(e) Completion of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8; and

(4) Any other information determined by the commission.

AMENDATORY SECTION (Amending WSR 06-07-036, filed 3/8/06, effective 4/8/06)

WAC 246-817-440 Dentist continuing education requirements. (1) **Purpose.** The dental quality assurance commission (DQAC) has determined that the public health, safety and welfare of the citizens of the state will be served by requiring all dentists, licensed under chapter 18.32 RCW, to continue their professional development via continuing education after receiving such licenses.

(2) **Effective date.** The effective date for the continuing education requirement for dentists is July 1, 2001. The first reporting cycle for verifying completion of continuing education hours will begin with renewals due July 1, 2002, and each renewal date thereafter. Every licensed dentist must sign an affidavit attesting to the completion of the required number of hours as a part of their annual renewal requirement.

(3) **Requirements.** Licensed dentists must complete twenty-one clock hours of continuing education, each year, in conjunction with their annual renewal date. DQAC may randomly audit up to twenty-five percent of practitioners for compliance after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

(4) **Acceptable continuing education - Qualification of courses for continuing education credit.** DQAC will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the practitioner, or enhance services provided to patients.

For the purposes of this chapter, acceptable continuing education means courses offered or authorized by industry recognized state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors, or types of continuing education courses may include, but are not limited to:

(a) The American Dental Association, Academy of General Dentistry, National Dental Association, American Dental Hygienists' Association, National Dental Hygienists' Association, American Dental Association specialty organizations, including the constituent and component/branch societies.

(b) Basic first aid, CPR, BLS, ACLS, OSHA/WISHA, or emergency related training; such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies.

(c) Educational audio or videotapes, films, slides, internet, or independent reading, where an assessment tool is required upon completion are acceptable but may not exceed seven hours per year.

(d) Teaching a seminar or clinical course for the first time is acceptable but may not exceed ten hours per year.

(e) Nonclinical courses relating to dental practice organization and management, patient management, or methods of health delivery may not exceed seven hours per year. Estate

planning, financial planning, investments, and personal health courses are not acceptable.

(f) Dental examination standardization and calibration workshops.

(g) Provision of clinical dental services in a formal volunteer capacity may be considered for continuing education credits when preceded by an educational/instructional training prior to provision of services. Continuing education credits in this area shall not exceed seven hours per renewal cycle.

(5) Refer to chapter 246-12 WAC, Part 7, administrative procedures and requirements for credentialed health care providers for further information regarding compliance with the continuing education requirements for health care providers.

NEW SECTION

WAC 246-817-445 Dental anesthesia assistant continuing education requirements. (1) To renew a certification a certified dental anesthesia assistant must complete a minimum of twelve hours of continuing education every three years and follow the requirements of chapter 246-12 WAC, Part 7.

(2) Continuing education must involve direct application of dental anesthesia assistant knowledge and skills in one or more of the following categories:

(a) General anesthesia;

(b) Moderate sedation;

(c) Physical evaluation;

(d) Medical emergencies;

(e) Health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);

(f) Monitoring and use of monitoring equipment;

(g) Pharmacology of drugs; and agents used in sedation and anesthesia.

(3) Continuing education is defined as any of the following activities:

(a) Attendance at local, state, national, or international continuing education courses;

(b) Health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS), or emergency related classes;

(c) Self-study through the use of multimedia devices or the study of books, research materials, or other publications.

(i) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization. A maximum of two hours is allowed per reporting period.

(ii) Books, research materials, or other publications. The required documentation for this activity is a two-page synopsis of what was learned written by the credential holder. A maximum of two hours is allowed per reporting period.

(d) Distance learning. Distance learning includes, but is not limited to, correspondence course, webinar, print, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/on-line-learning, or computer broadcasting/webcasting. A maximum of four hours of distance learning is allowed per reporting period.

SEXUAL MISCONDUCT ((~~RULES FOR DENTISTS~~))

AMENDATORY SECTION (Amending WSR 08-01-137, filed 12/19/07, effective 1/19/08)

WAC 246-817-450 Definitions. The definitions in this section apply throughout this section and WAC 246-817-460 unless the context requires otherwise.

(1) "~~(Dentist)~~ Health care provider" means an individual applying for a credential or credentialed specifically as defined in chapters 18.32, 18.260, and 18.350 RCW.

(2) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient.

(3) "Key party" means a person legally authorized to make health care decisions for the patient.

(4) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients, including palliative care, as consistent with community standards of practice for the dental profession. The activity must be within the scope of practice of the ~~((dentist))~~ health care provider.

(5) "Patient" means an individual who receives health care services from a ~~((dentist))~~ health care provider. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the ~~((dentist))~~ health care provider and the person. The fact that a person is not receiving treatment or professional services is not the sole determining factor.

AMENDATORY SECTION (Amending WSR 08-01-137, filed 12/19/07, effective 1/19/08)

WAC 246-817-460 Sexual misconduct. (1) A ~~((dentist))~~ health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the ~~((dentist's))~~ health care provider's scope of practice;
- (c) Rubbing against a patient or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Examination of or touching genitals without using gloves;
- (g) Not allowing a patient privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (h) Not providing the patient a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient or key party;

(j) Removing patient's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the ~~((dentist))~~ health care provider;

(l) Masturbation or other sex act by the ~~((dentist))~~ health care provider in the presence of the patient or key party;

(m) Soliciting a date with a patient or key party;

(n) Discussing the sexual history, preferences or fantasies of the ~~((dentist))~~ health care provider;

(o) Any behavior, gestures, or expressions that can reasonably be interpreted as seductive or sexual;

(p) Sexually demeaning behavior including any verbal or physical contact which can reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient or key party;

(q) Photographing or filming the body or any body part or pose of a patient or key party, other than for legitimate health care purposes; or for the educational or marketing purposes with the consent of the patient; and

(r) Showing a patient or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) A ~~((dentist))~~ health care provider shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the ~~((dentist's))~~ health care provider's sexual needs.

(3) A ~~((dentist))~~ health care provider shall not engage in the activities listed in subsection (1) of this section with a former patient or key party if the ~~((dentist))~~ health care provider:

(a) Uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the ~~((dentist's))~~ health care provider's personal or sexual needs.

(4) When evaluating whether a ~~((dentist))~~ health care provider has engaged or has attempted to engage in sexual misconduct, the commission will consider factors, including but not limited to:

(a) Documentation of a formal termination;

(b) Transfer of care to another health care provider;

(c) Duration of the ~~((dentist-patient))~~ health care provider-patient relationship;

(d) Amount of time that has passed since the last dental health care services to the patient;

(e) Communication between the ~~((dentist))~~ health care provider and the patient between the last dental health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's personal or private information was shared with the ~~((dentist))~~ health care provider;

(g) Nature of the patient's health condition during and since the professional relationship; and

(h) The patient's emotional dependence and vulnerability.

(5) Patient or key party initiation or consent does not excuse or negate the ~~((dentist's))~~ health care provider's responsibility.

(6) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the dental profession; or

(c) Providing dental services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the ~~((dentist))~~ health care provider where there is no evidence of, or potential for, exploiting the patient.

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-710 Definitions~~((The definitions in this section apply throughout WAC 246-817-701 through 246-817-790 unless the context clearly requires otherwise)).~~ The definitions in this section apply throughout WAC 246-817-701 through 246-817-790 unless the context clearly requires otherwise.

(1) **"Analgesia"** is the diminution of pain in the conscious patient.

(2) **"Anesthesia"** is the loss of feeling or sensation, especially loss of sensation of pain.

(3) **"Anesthesia ~~((assistant/anesthesia))~~ monitor"** means a credentialed health care provider specifically trained in monitoring patients under sedation and capable of assisting with procedures, problems and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(4) **"Anesthesia provider"** means a dentist, physician anesthesiologist, dental hygienist or certified registered nurse anesthetist licensed and authorized to practice within the state of Washington.

(5) **"Close supervision"** means that a supervising dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervising dentist is continuously on-site and physically present in the treatment facility while the procedures are performed by the assistive personnel and capable of responding immediately in the event of an emergency. The term does not require a supervising dentist to be physically present in the operatory.

(6) **"Deep sedation/analgesia"** is a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~((6))~~ **"Direct supervision"** means that a licensed provider whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedure to be performed. A dentist must be physically pres-

ent in the treatment facility while the procedures are performed.)

(7) **"Dental anesthesia assistant"** means a health care provider certified under chapter 18.350 RCW and specifically trained to perform the functions authorized in RCW 18.350.040 under supervision of an oral and maxillofacial surgeon or dental anesthesiologist.

(8) **"Direct visual supervision"** means ~~((direct))~~ supervision by an oral and maxillofacial surgeon or dental anesthesiologist by verbal command and under direct line of sight ~~((to the activity being performed, chairside)).~~

~~((8))~~ (9) **"General anesthesia"** is a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof may be impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

~~((9))~~ (10) **"Local anesthesia"** is the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

~~((10))~~ (11) **"Minimal sedation"** is a drug induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

~~((11))~~ (12) **"Moderate sedation"** is a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Moderate sedation can include both moderate sedation/analgesia (conscious sedation) and moderate sedation with parenteral agent.

~~((12))~~ (13) **"Parenteral"** means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract (i.e., intramuscular, intravenous, intranasal, submuscular, subcutaneous, intraosseous).

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-720 Basic life support requirements. Dental staff providing direct patient care in an in-office or out-patient setting must hold a current and valid health care provider basic life support (BLS) certification. Dental staff providing direct patient care include: Licensed dentists, licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants.

Newly hired office staff providing direct patient care are required to obtain the required certification within forty-five days from the date hired.

NEW SECTION

WAC 246-817-771 Dental anesthesia assistant. (1) A dental anesthesia assistant must be certified under chapter 18.350 RCW and WAC 246-817-205.

(2) A dental anesthesia assistant may only accept delegation from an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.

(3) Under close supervision, the dental anesthesia assistant may:

(a) Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia; and

(b) Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

(4) Under direct visual supervision, the dental anesthesia assistant may:

(a) Draw up and prepare medications;

(b) Follow instructions to deliver medications into an intravenous line upon verbal command;

(c) Adjust the rate of intravenous fluids infusion beyond a keep open rate;

(d) Adjust an electronic device to provide medications, such as an infusion pump;

(e) Administer emergency medications to a patient in order to assist the oral and maxillofacial surgeon or dental anesthesiologist in an emergency.

(5) The responsibility for monitoring a patient and determining the selection of the drug, dosage, and timing of all anesthetic medications rests solely with the supervising oral and maxillofacial surgeon or dental anesthesiologist.

(6) A certified dental anesthesia assistant shall notify the commission in writing, on a form provided by the department, of any changes in his or her supervisor.

(a) The commission must be notified of the change prior to the certified dental anesthesia assistant accepting delegation from another supervisor. The certified dental anesthesia assistant may not practice under the authority of this chapter unless he or she has on file with the commission such form listing the current supervisor.

(b) A supervisor must be an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.

(c) For the purposes of this subsection "any change" means the addition, substitution, or deletion of supervisor from whom the certified dental anesthesia assistant is authorized to accept delegation.

WSR 13-15-148**PERMANENT RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 13-144—Filed July 23, 2013, 3:00 p.m., effective August 23, 2013]

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

Purpose: Amend rules for commercial salmon fishing in Puget Sound, including WAC 220-47-307, 220-47-311, 220-47-411, and 220-47-428.

Citation of Existing Rules Affected by this Order: Amending WAC 220-47-307, 220-47-311, 220-47-411, and 220-47-428.

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

Adopted under notice filed as WSR 13-06-072 on March 6, 2013, and WSR 13-10-088 on May 1, 2013.

Changes Other than Editing from Proposed to Adopted Version: Minor changes were made to WAC 220-47-307, 220-47-311, and 220-47-411. Changes made to WAC 220-47-307 reflect edits to correct an area description to remain consistent with what has been agreed to with the tribes and has been in the commercial regulations pamphlet in prior years. Amendments to WAC 220-47-311 and 220-47-411 were made based on requests by the industry and included changes in fishing hours for Puget Sound pink fisheries and changes in soak times to ninety minutes for Area 10 pink fisheries.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: July 8, 2013.

Philip Anderson
Director

AMENDATORY SECTION (Amending WSR 12-15-034, filed 7/12/12, effective 8/12/12)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - (1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

(3) Additional coho seasonal closure: September 1 through September 21, closed to gillnets in the waters of Area 7B west of a line from Point Francis (48°41'((42)) 46"N, 122°36'((40)) 32"W) to the red and green buoy southeast of Point Francis (48°40'((22)) 27"N, 122°35'((30)) 24"W), then to the northernmost tip of Eliza Island (48°39'((37)) 38"N, 122°35'((45)) 14"W), then along the eastern shore of the island to ~~((a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W), and then southeastward along that line to Fish Point))~~ its southernmost tip (48°38'40"N,

122°34'57"W) and then north of a line from the southernmost tip of Eliza Island to Carter Point (48°38'24"N, 122°36'31"W). Nontreaty purse seiners fishing September 1-21 in this area must release coho.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlinn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

(3) Adjusted pink seasonal closure: Those waters easterly of a line projected from the southernmost point of Area 8D, the point of which begins from a line projected 225° from the pilings at Old Bower's Resort to a point 2,000 feet offshore, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, and waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

(5) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock,

those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodspout marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending WSR 12-15-034, filed 7/12/12, effective 8/12/12)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	((40/11, 10/14,)) <u>10/12, 10/13, 10/15, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2((5+/3))</u>
	7AM - 5PM	<u>11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9((5+/40))</u>
Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).		
7B, 7C:	6AM - 9PM	((8/45)) <u>8/14</u>
7B, 7C:	6AM - 8PM	((8/22, 8/29, 9/5)) <u>8/21, 8/28, 9/4</u>
7B:	7AM - 8PM	((9/10, 9/12, 9/14)) <u>9/9, 9/11, 9/13</u>
	7AM - 7PM	((9/17, 9/19, 9/21)) <u>9/16, 9/18, 9/20</u>
	7AM ((9/23)) <u>9/22</u>	6PM ((10/27)) <u>10/26</u>
	7AM ((10/29)) <u>10/28</u>	4PM ((11/2)) <u>11/1</u>
	7AM ((11/5)) <u>11/4</u>	4PM ((11/9)) <u>11/8</u>
	7AM ((11/12)) <u>11/11</u>	4PM ((11/16)) <u>11/15</u>
	7AM ((11/19)) <u>11/18</u>	4PM ((11/23)) <u>11/22</u>
	7AM ((11/26)) <u>11/25</u>	4PM ((11/30)) <u>11/29</u>
Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squaticum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.		
8:	<u>6AM - 7PM</u>	<u>8/21, 8/22, 8/26, 8/27, 9/4</u>
8A:	<u>7AM - 7PM</u>	<u>8/19, 8/20, 8/28, 8/29, 9/3</u>
	7AM - 7PM	Limited participation - Two boats (((9/17, 9/24)) <u>9/23, 9/30</u>)
8D:	7AM - 7PM	((9/17, 9/24, 10/1, 10/8)) <u>9/23, 9/30</u>
	7AM - 6PM	((10/16, 10/22, 10/24, 10/29)) <u>10/14, 10/21, 10/28, 10/30</u>
	7AM - 5PM	((11/5, 11/7,)) <u>11/4, 11/11, 11/13, ((11/20)) 11/18</u>
10:	<u>7AM - 7PM</u>	Limited participation -5 boats <u>8/15, 8/21, 8/22, 8/27</u>
10, 11:	7AM - 6PM	((10/15, 10/23, 10/25, 10/29)) <u>10/22, 10/28, 10/30</u>
	7AM - 5PM	((11/6, 11/8, 11/12, 11/20)) <u>11/5, 11/11, 11/13, 11/19, 11/26</u>

AREA	TIME	DATE
12, 12B:	7AM - 6PM	((10/15, 10/23, 10/25, 10/29)) <u>10/22, 10/28, 10/30</u>
	7AM - 5PM	((11/6, 11/8, 11/12, 11/20)) <u>11/5, 11/11, 11/13, 11/19</u>
12C:	7AM - 5PM	((11/6, 11/8, 11/12, 11/20)) <u>11/11, 11/13, 11/19, 11/26</u>

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.

Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September ((2)) 1 in Area 7B.

Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

All other saltwater and freshwater areas - Closed.

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.

AMENDATORY SECTION (Amending WSR 12-15-034, filed 7/12/12, effective 8/12/12)

WAC 220-47-411 Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM - 7PM	9/21, ((9/22,)) <u>9/24, 9/25, 9/26, 9/27, ((9/28))</u> <u>9/30, 10/1, 10/2, 10/3, 10/4, ((10/5))</u> <u>10/7, 10/8, 10/9, 10/10, 10/11, ((10/12))</u> <u>10/14, 10/15, 10/16, 10/17, 10/18, ((10/19))</u> <u>10/21, 10/22, 10/23, 10/24, 10/25</u>	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM - Midnight; use of recovery box required	((10/11, 10/14,)) <u>10/12, 10/13, 10/15, 10/17, 10/18, 10/19</u> ((10/20))	6 1/4"
	7AM - Midnight	<u>10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9</u> ((11/10))	6 1/4"

Note: In Areas 7 and 7A after October 9 but prior to October ((21)) 20, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM - 8AM	NIGHTLY ((8/12)) <u>8/11, 8/13, 8/14, ((8/15))</u> <u>8/18, 8/19, 8/20, 8/21, ((8/22, 8/26, 8/28, 8/29, 8/30))</u> <u>8/25, 8/27, 8/28</u>	7"
7B, 7C:	7AM ((9/2)) <u>9/1</u>	7AM ((9/7)) <u>9/6</u>	5"
7B:	7AM ((9/9)) <u>9/8</u>	7AM ((9/13)) <u>9/12</u>	
	7AM ((9/16)) <u>9/15</u>	7AM ((9/20)) <u>9/19</u>	5"
	7AM ((9/23)) <u>9/22</u>	Midnight ((10/27)) <u>10/26</u>	5"
	7AM ((10/29)) <u>10/28</u>	4PM ((11/2)) <u>11/1</u>	6 1/4"
	6AM ((11/5)) <u>11/4</u>	4PM ((11/9)) <u>11/8</u>	6 1/4"
	6AM ((11/12)) <u>11/11</u>	4PM ((11/16)) <u>11/15</u>	6 1/4"
	6 AM ((11/19)) <u>11/18</u>	4PM ((11/23)) <u>11/22</u>	6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH
	7 AM ((11 / 26)) <u>11/25</u>	-	4PM ((11 / 30)) <u>11/29</u>	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	<u>5AM</u>	=	<u>10PM</u>	<u>8/19, 8/20, 8/28, 8/29</u>	<u>5" minimum and 5 1/2" maximum</u>
	<u>6AM</u>	=	<u>10PM</u>	<u>9/3</u>	<u>5" minimum and 5 1/2" maximum</u>

Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	<u>5AM</u>	=	<u>10PM</u>	<u>8/21, 8/22, 8/26, 8/27</u>	<u>5" minimum and 5 1/2" maximum</u>
	<u>6AM</u>	=	<u>10PM</u>	<u>9/4</u>	<u>5" minimum and 5 1/2" maximum</u>
	6PM	-	8AM	Limited participation; 2 boats only ((9 / 19)) <u>9/24</u>	5"
	6PM	-	8AM	NIGHTLY ((9 / 25 , 9 / 26)) <u>10/1, 10/2</u>	5"

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	6PM	-	8AM	NIGHTLY ((9 / 16 , 9 / 20 , 9 / 23 , 9 / 27 , 9 / 30 , 10 / 4)) <u>9/22, 9/26, 9/29, 10/3, 10/6, 10/10</u>	5"
	6PM ((9 / 17)) <u>9/23</u>	-	8AM ((9 / 20)) <u>9/26</u>	5"	
	6PM ((9 / 24)) <u>9/30</u>	-	8AM ((9 / 27)) <u>10/3</u>	5"	
	6PM ((10 / 4)) <u>10/7</u>	-	8AM ((10 / 4)) <u>10/10</u>	5"	
	5PM	-	8AM	((10 / 7 , 10 / 11)) <u>10/13, 10/17</u>	5"
	5PM ((10 / 8)) <u>10/14</u>	-	8AM ((10 / 11)) <u>10/17</u>	5"	
	5PM	-	9AM	((10 / 14 , 10 / 18 , 10 / 21 , 10 / 25 , 10 / 28 , 11 / 1)) <u>10/20, 10/24, 10/27, 10/31, 11/3, 11/7</u>	5"
	5PM ((10 / 15)) <u>10/21</u>	-	9AM ((10 / 18)) <u>10/24</u>	5"	
	5PM ((10 / 22)) <u>10/28</u>	-	9AM ((10 / 25)) <u>10/31</u>	5"	
	5PM ((10 / 29)) <u>11/4</u>	-	9AM ((11 / 4)) <u>11/7</u>	5"	
	6AM	-	6PM	((11 / 7 , 11 / 8 , 11 / 14 , 11 / 15 , 11 / 21 , 11 / 22)) <u>11/13, 11/14, 11/20, 11/21, 11/27, 11/28</u>	6 1/4"
	6AM	-	4PM	((11 / 9 , 11 / 16 , 11 / 23)) <u>11/15, 11/22, 11/29</u>	6 1/4"
9A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM ((8 / 19)) <u>8/25</u>	-	7PM ((10 / 27)) <u>11/2</u>	5"	

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10:	<u>7PM</u>	=	<u>7AM</u>	<u>Limited participation - 5 boats 8/14, 8/19, 8/20, 8/27</u>	<u>4 1/2" minimum and 5 1/2" maximum</u>
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Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than ((~~45~~)) 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.

10, 11:	5PM	-	9AM	NIGHTLY ((10 / 16 , 10 / 17 , 10 / 21 , 10 / 30 , 10 / 31)) <u>10/20, 10/23, 11/3, 11/6</u>	6 1/4"
	<u>5PM</u>	=	<u>8AM</u>	<u>10/29</u>	<u>6 1/4"</u>

AREA	TIME		DATE(S)	MINIMUM MESH	
	4PM	-	9AM	NIGHTLY ((11/4, 11/13, 11/18)) <u>11/12, 11/17, 11/24</u>	6 1/4"
	4PM	-	Midnight	NIGHTLY ((10/24, 11/7, 11/14, 11/21)) <u>10/31, 11/14, 11/20, 11/27</u>	6 1/4"
12A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.					
12, 12B:	7AM	-	8PM	((10/16, 10/18, 10/22, 10/24, 10/30, 11/1)) <u>10/21, 10/23, 10/29, 10/31, 11/4, 11/6</u>	6 1/4"
	6AM	-	6PM	((11/5, 11/7, 11/13, 11/15, 11/19)) <u>11/12, 11/14, 11/18, 11/20</u>	6 1/4"
12C:	6AM	-	6PM	((11/5, 11/7, 11/13, 11/15, 11/19, 11/21)) <u>11/12, 11/14, 11/18, 11/20, 11/24, 11/25</u>	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending WSR 12-15-034, filed 7/12/12, effective 8/12/12)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME		DATE(S)
12A:	7AM	-	7PM
			8/21, 8/22, 8/23, ((8/24)) <u>8/26</u> , 8/27, 8/28, 8/29, 8/30, ((8/31)) <u>9/2</u> , 9/3, 9/4, 9/5, 9/6, ((9/7)) <u>9/9</u> , 9/10, 9/11, 9/12, 9/13, ((9/14)) <u>9/16</u> , 9/17, 9/18, 9/19, 9/20, ((9/21)) <u>9/23</u> , 9/24, 9/25, 9/26, 9/27((-9/28))
12H:	7AM	-	7PM
			November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.

Purpose: Housekeeping to update names, titles, and addresses referencing the Institute for Extended Learning.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-01-006.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 13-11-134 on May 22, 2013.

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

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

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

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

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

Date Adopted: July 23, 2013.

Kathleen Roberson
Executive Assistant
to the CFO

WSR 13-15-149
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed July 23, 2013, 3:03 p.m., effective August 23, 2013]

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

AMENDATORY SECTION (Amending WSR 11-20-021, filed 9/23/11, effective 10/24/11)

WAC 132Q-01-006 Organization and operation. (1) Organization: Washington State Community College District 17, Community Colleges of Spokane including Spokane Community College(~~-~~) and Spokane Falls Community College ((~~and the Institute for Extended Learning~~)), is estab-

lished in Title 28B RCW as a public institution of higher education. District 17 is governed by a five-member board of trustees, appointed by the governor. The board employs a chancellor who establishes the structure of the administration.

(2) **Operation:** The administrative office is located at 501 North Riverpoint Boulevard, P.O. Box 6000, Spokane, Washington 99217-6000. Spokane Community College is located at 2000 North Greene Street, Spokane, Washington 99217-5499; Spokane Falls Community College is located at 3410 West Fort George Wright Drive, Spokane, Washington 99224-5288(~~the Institute for Extended Learning is located at 2917 West Fort George Wright Drive, Spokane, Washington 99224-5202~~). The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, except for legal holidays. During summer months, sections of the district may operate on an alternate schedule and throughout the year, evening services are provided. Specific information is available through each campus.

(3) Additional and detailed information concerning the educational offerings may be obtained from the college catalog, available on the Community Colleges of Spokane web site and at various locations including college libraries, admissions, and counseling offices.

WSR 13-15-150
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed July 23, 2013, 3:03 p.m., effective August 23, 2013]

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

Purpose: Housekeeping to update names, titles, and addresses referencing the Institute for Extended Learning.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-20-005 and 132Q-20-265.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 13-11-135 on May 22, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: July 23, 2013.

Kathleen Roberson
Executive Assistant
to the CFO

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

WAC 132Q-20-005 Definitions. As used in this chapter the following words and phrases shall mean:

(1) **Annual permits** - Permits, which are valid for fall through summer quarters.

(2) **Appropriate vice-president** - The chief administrative officer over student services regardless of current position title.

(3) **Board** - The board of trustees of Washington State Community College District 17, also known as Community Colleges of Spokane (CCS).

(4) **Campus** - Any or all real property owned, leased, operated or maintained by Community Colleges of Spokane.

(5) **Campus safety** - College security officers, criminal justice, work-study students, contracted security personnel, or employees, who are responsible to the appropriate vice-president or designee for campus safety.

(6) **College** - Any community college or separate instructional unit which may be created by the board of trustees of Community Colleges of Spokane.

(7) **Community Colleges of Spokane (CCS)** - Spokane Community College, Spokane Falls Community College, (~~Institute for Extended Learning~~) and the District Office.

(8) **CCS Facilities** are facilities owned by CCS or the CCS Foundation.

(9) **Employee** - Any person employed or representing Community Colleges of Spokane on a full- or part-time basis.

(10) **Invited guest permits** - Permits which are valid for an individual invited to campus by a department for a specific period designated on the permit.

(11) **Quarterly permits** - Permits valid for a specified academic quarter.

(12) **Special permits** - Permits issued under special circumstances such as carpool permits, issued to employees who participate in commuter trip reduction; and honorary permits which are issued to Community Colleges of Spokane employees upon retirement.

(13) **Student** - Any person who is or has officially registered at any college or instructional unit with the Community Colleges of Spokane and with respect to whom the college maintains education records or personally identifiable information.

(14) **Vehicle** - An automobile, truck, motorcycle, scooter, or any vehicle powered by a motor.

(15) **Vendors** - Persons contracted to provide services to CCS.

(16) **Visitors** - Any person, excluding students, employees, vendors and invited guests who lawfully visit the campus for purposes, which are in keeping with the colleges' role as institutions of higher learning in the state of Washington.

AMENDATORY SECTION (Amending WSR 11-23-162, filed 11/22/11, effective 12/23/11)

WAC 132Q-20-265 Appeals. (1) Each college shall establish a parking appeals board consisting of no less than three members appointed by the president. The appeals board membership shall be evenly balanced among faculty, stu-

dents and classified staff. (~~Appeals from IEL sites shall be considered by the SFCC parking appeals board.~~)

(2) The parking appeals boards shall use criteria on which to fairly judge appeals including, but not limited to:

- (a) Did an institutional error occur?
- (b) Were there extenuating circumstances that caused the error to occur?
- (c) Did the person make a good faith effort to comply with the parking rules?

WSR 13-15-151
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed July 23, 2013, 3:04 p.m., effective August 23, 2013]

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

Purpose: Housekeeping to update names, titles, and addresses referencing the Institute for Extended Learning.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-30-105.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 13-11-136 on May 22, 2013.

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

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

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

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

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

Date Adopted: July 23, 2013.

Kathleen Roberson
Executive Assistant
to the CFO

AMENDATORY SECTION (Amending WSR 07-10-042, filed 4/25/07, effective 6/25/07)

WAC 132Q-30-105 Definitions. For the purposes of this chapter, the following terms shall mean:

- (1) "Accused student" means any student accused of violating the standards of conduct for students.
- (2) "Appeal board" is a district-wide board composed of one administrator from each college appointed by the chief executive of that college. The appeal board considers appeals from a student conduct board's determination or from the sanctions imposed by the chief student services officer. The board is convened by the chief student services officer.

(3) The "chief student services officer" is that person designated by the college president (~~or executive vice president~~) to be responsible for the administration of the standards of conduct for students. The term also includes a college official designated by the chief student services officer to act on his/her behalf in matters related to this chapter.

(4) "College" means Spokane Community College, Spokane Falls Community College, (~~or the Institute for Extended Learning, at~~) and all locations of Community Colleges of Spokane (CCS).

(5) "College official" includes any person employed by the college performing assigned duties.

(6) "College premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the Community Colleges of Spokane (including adjacent streets and sidewalks).

(7) "Complainant" means any member of CCS who submits a charge alleging that a student violated the standards of conduct for students. When students believe they have been victimized by someone's misconduct, they have the same rights under these standards as are provided to the complainant, even if another member of CCS submitted the charge itself.

(8) "Faculty member" means a teacher, counselor, or librarian or person who is otherwise considered by the college to be a member of its faculty.

(9) "Instructional day" means Monday through Friday, except for federal or state holidays, when students are in attendance for instructional purposes.

(10) "Member of CCS" includes any person who is a student, faculty member, college official, or any other person employed by CCS. A person's status in a particular situation is determined by the chief student services officer.

(11) "Student" includes a person taking courses at the college, either full-time or part-time. The term also includes persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular quarter but have a continuing relationship with the college (including suspended students), students on study abroad programs or who have been notified of their acceptance for admission. "Student" also includes "student organization."

(12) "Student organization" means any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

(13) "Student conduct board" is a board appointed by the chief executive officer of the college to hear complaints referred by the chief student services officer to determine whether a student has violated the standards of conduct for students, and to impose sanctions when a violation has been committed. The board shall have at least one member from the respective groups: Faculty, students, administration. The chief student services officer convenes the board and appoints the chair.

WSR 13-15-152
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed July 23, 2013, 3:05 p.m., effective August 23, 2013]

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

Purpose: Housekeeping to update names, titles, and addresses referencing the Institute for Extended Learning.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-113-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 13-11-137 on May 22, 2013.

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

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

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

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

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

Date Adopted: July 23, 2013.

Kathleen Roberson
 Executive Assistant
 to the CFO

AMENDATORY SECTION (Amending WSR 11-20-025, filed 9/23/11, effective 10/24/11)

WAC 132Q-113-010 Designation of legislative liaisons. As required by RCW 42.17.190, those persons holding the following positions within Washington State Community College District 17 are designated legislative liaisons for Washington State Community College District 17 and those community colleges contained within Community Colleges of Spokane:

- (1) Members of the board of trustees;
- (2) Chancellor;
- (3) College presidents(~~(-chief executive officer)~~);
- (4) District management services officers; and
- (5) All those persons designated in writing by the chancellor of Washington State Community College District 17, which writing shall be made available among the records maintained by the office of the chancellor of Washington State Community College District 17.

WSR 13-15-153
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed July 23, 2013, 3:06 p.m., effective August 23, 2013]

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

Purpose: Housekeeping to update names, titles, and addresses referencing the Institute for Extended Learning.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-136-020 and 132Q-136-050.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 13-11-138 on May 22, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: July 23, 2013.

Kathleen Roberson
 Executive Assistant
 to the CFO

AMENDATORY SECTION (Amending WSR 11-20-027, filed 9/23/11, effective 10/24/11)

WAC 132Q-136-020 Definitions. As used in this chapter, the following terms shall have the following meaning:

(1) "Facilities" shall include all structures, building, grounds, parking lots, sidewalks and airspace owned or controlled by District 17.

(2) "District" or "District 17" shall include Spokane Community College, Spokane Falls Community College, ~~((the Institute of Extended Learning))~~ and any other college or organizational unit of Washington State Community College District 17 hereafter established by the district board of trustees.

(3) "Use of facilities" shall include the holding of events, the posting and removal of signs, all forms of advertising, commercial activities, charitable solicitation and any other activity which takes place in or on facilities owned or controlled by District 17.

(4) "Scheduling office" shall be the office within the organization of the district which is designated as the office responsible for scheduling a particular district facility. The designation of scheduling offices shall be made by the chancellor, or staff so designated by the chancellor, pursuant to WAC 132Q-136-010(2).

(5) "User fee" shall be the fee, if any, charged any user for the use of facilities, including a use fee, fees for special custodial, attendant or security services, fees for supervisor services, fees for the use of special district equipment in conjunction with the use of facilities and any other fees established pursuant to WAC 132Q-136-010(2). The schedule of user fees may be amended from time to time.

(6) "Academic or administrative unit sponsorship" shall mean that the head of an academic or administrative unit within the district has reviewed a request for use of facilities, has determined that such use of facilities meets the general policy concerning the use of district facilities pursuant to WAC 132Q-136-010(1) and all limitations on the use of facilities pursuant to WAC 132Q-136-040, has determined that the academic or administrative unit is willing to sponsor the proposed use of facilities and has signed the appropriate request form.

AMENDATORY SECTION (Amending Resolution No. 22, filed 9/14/84)

WAC 132Q-136-050 Reservation, scheduling and approval procedure. (1) To reserve or schedule the use of facilities, faculty, staff, official student organizations or outside parties shall contact the appropriate college (~~or institute~~) scheduling office. The scheduling office shall provide all appropriate scheduling procedures, forms and agreements and shall arrange for all necessary approvals, reservations, scheduling and payments.

(2) No less than fourteen days prior to the anticipated date for use of district facilities, any individual or organization desiring to reserve or schedule facility use shall present all required forms, fully completed, to the appropriate scheduling office. The scheduling office shall process the completed application and secure all required approvals. The individual or organization requesting the use of facilities shall be notified of the disposition of the request within ten days. Such fourteen day notice may be waived by the scheduling office provided that such waiver does not disrupt normal facility operation.

(3) Full payment of the appropriate user fee, if any, or satisfactory payment arrangements are required prior to the use of district facilities.

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

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

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

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

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

Date Adopted: July 23, 2013.

Kathleen Roberson
Executive Assistant
to the CFO

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-276-030 Central and field organization. Washington State Community College District 17 is a community college district organized under RCW 28B.50.040. The administrative office of the district and its staff is located at 501 North Riverpoint Boulevard, P.O. Box 6000, Spokane, Washington, 99217-6000. The district operates two colleges, Spokane Community College, located at 2000 North Greene Street, Spokane, Washington, 99217-5499; and Spokane Falls Community College, located at 3410 West Fort George Wright Drive, Spokane, Washington, 99224-5288. The district also delivers instructional programming (~~((through the Institute for Extended Learning))~~) in the counties of Ferry, Lincoln (except Consolidated School District 105-157-166J and the Lincoln County portion of Common School District 167-202), Pend Oreille, Spokane, Stevens, and Whitman. (~~((The administrative offices of the Institute for Extended Learning are located at 3305 West Fort George Wright Drive, Spokane, Washington 99224-5228-))~~)

**WSR 13-15-154
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE**

[Filed July 23, 2013, 3:07 p.m., effective August 23, 2013]

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

Purpose: Housekeeping to update names, titles, and addresses referencing the Institute for Extended Learning.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-276-030.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 13-11-139 on May 22, 2013.

**WSR 13-15-155
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed July 23, 2013, 3:30 p.m., effective August 23, 2013]

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

Purpose: Clarifies requirements in WAC 170-295-1070 regarding state training and registry system (STARS) continuing education for child care center staff.

Citation of Existing Rules Affected by this Order: Amending WAC 170-295-1070.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070; chapter 43.215 RCW.

Adopted under notice filed as WSR 13-11-001 on May 1, 2013.

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

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

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

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

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

Date Adopted: July 23, 2013.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-1070 What continuing state training and registry system (STARS) training is required for child care center staff? (1) The director, program supervisor and lead teachers must complete ten clock hours or one college credit of continuing education yearly after completing the initial training required in WAC 170-295-1010.

(2) The director and program supervisor must have five of the ten hours in program management and administration for the first two years in their respective positions. Each additional year, three of the ten hours required must be in program management and administration.

(3) ~~((Agencies or organizations that have been approved by the Washington state training and registry system (STARS) may offer up to six clock hours of continuing education each year to their employees. The remaining four hours must be obtained from other training offered in the community.))~~ The continuing education must be delivered by a state-approved trainer, or consist of training that has been department-approved through MERIT.