

**WSR 13-18-003**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket TC-121328, General Order R-572—Filed August 21, 2013, 2:11 p.m., effective September 21, 2013]

In the matter of amending and adopting rules in chapter 480-30 WAC, relating to passenger transportation companies.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 13-12-072, filed with the code reviser on June 5, 2013. The commission has authority to take this action pursuant to RCW 80.01.040, 81.04.160, 81.04.250, 81.68.030, and 81.68.040.

**2 STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

**3 DATE OF ADOPTION:** The commission adopts these rules on the date this order is entered.

**4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

**5** To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. This order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

**6 REFERENCE TO AFFECTED RULES:** This order amends and adopts the following sections of the Washington Administrative Code:

Amend	WAC 480-30-071	Reporting requirements.
Adopt	WAC 480-30-075	Review of the effects of adopted rule amendments.
Amend	WAC-480-30-096	Certificates, application filings, general.
Amend	WAC 480-30-116	Certificates, application docket, and objections, auto transportation company.
Amend	WAC 480-30-126	Certificates, applications, auto transportation company.

Amend	WAC 480-30-136	Procedure for applications subject to objection, information required of applicant and objecting company.
Adopt	WAC 480-30-140	Standards for determining "public convenience and necessity," "same service," and "service to the satisfaction of the commission."
Amend	WAC 480-30-156	Certificates, temporary, auto transportation company.
Amend	WAC 480-30-261	Tariffs and time schedules, definitions used in.
Amend	WAC 480-30-276	Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules.
Amend	WAC 480-30-286	Tariffs and time schedules, posting.
Adopt	WAC 480-30-420	Fare flexibility.

**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on September 5, 2012, at WSR 12-18-074, advising interested persons that the commission was considering entering a rule making to consider amending chapter 480-30 WAC to allow flexibility in setting rates and promote competition in the auto transportation industry. The commission opened Docket TC-121328 to commence this proceeding.

**8** The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all auto transportation companies holding certificates and the commission's list of transportation attorneys, as well as other persons who have participated in recent stakeholder activities concerning auto transportation companies. Pursuant to the notice, the commission received comments from the Washington Refuse and Recycling Association, SeaTac Shuttle, LLC (SeaTac Shuttle), Bremerton-Kitsap Airporter, Inc. (Bremerton-Kitsap), and Pacific Northwest Transportation, Inc. (Capitol Aeroporter).

**9 ADDITIONAL NOTICES AND ACTIVITIES PURSUANT TO PREPROPOSAL STATEMENT:** On February 8, 2013, the commission issued a set of draft rules and received written comments on the draft rules by March 12, 2013, from SeaTac Shuttle, Capitol Aeroporter and Steve Salins, representing Shuttle Express, Inc. (Shuttle Express). The commission convened a workshop on March 22, 2013, to discuss the draft rules. Representatives of SeaTac Shuttle, Capitol Aeroporter, Shuttle Express, Wickkiser International Companies, Inc. (Wickkiser), and Bremerton-Kitsap attended the workshop. Following the workshop, the commission received additional

written comments from SeaTac Shuttle, Bremerton-Kitsap, Capitol Aeroporter, and Wickkiser.

10 On April 15, 2013, the commission issued a second set of draft rules for comment and a small business economic impact statement (SBEIS) questionnaire requesting responses. SeaTac Shuttle and Capitol Aeroporter submitted multiple written comments. Shuttle Express and Bremerton-Kitsap also filed written comments in response to the second draft.

11 All comments submitted and draft rules issued by the commission are available on the commission's web site at <http://www.utc.wa.gov/121328>. Similarly, a summary of the comments on the draft rules filed in this docket, and the commission's responses to the issues raised in the comments, are available on the commission's web site.

12 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) and SBEIS with the code reviser on June 5, 2013, at WSR 13-12-072. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 13-12-072 at 1:30 p.m., on Friday, July 26, 2013, in the Commission's Hearing Room at 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission by July 8, 2013.

13 The proposal would amend rules governing the commission's review of applications for authority to operate a passenger transportation company in Washington. These rules are WAC 480-30-096, 480-30-116, 480-30-126, 480-30-136, and 480-30-140. The changes provide greater clarity to existing companies, applicants and the commission during the application process and will reduce the time and resources spent during the process. The proposed rules also allow companies to apply for flexibility to set their fares up to a maximum of twenty-five percent above their current base fare, and to increase the fares above the maximum by an additional five percent each year (WAC 480-30-420). The proposed rules provide that the commission will review these changes to the rules after five years to evaluate the impact of the changes on the companies and the customers they serve (WAC 480-30-075). They would also modify existing rules governing reporting requirements, and tariffs and time schedules (WAC 480-30-071, 480-30-261, 480-30-276, and 480-30-286), and clarify rules governing applications for temporary certificates (WAC 480-30-156).

14 **WRITTEN COMMENTS:** In response to the CR-102 notice, the commission received written comments from SeaTac Shuttle, Bremerton-Kitsap, and Capitol Aeroporter. In general, the companies agreed with the proposals to streamline the application process and provide fare flexibility, but expressed concerns about the sufficiency of the proposed maximum fare and the limit on annual increases, and about how the commission will implement the changes to standards for considering applications. Summaries of all written comments and the commission's responses are contained in Appendix B.

15 SeaTac Shuttle raised the following objections and concerns:

(1) The proposed rules in WAC 480-30-096 (2)(a), (b) and (c) will allow the commission to consider incomplete applications;

(2) WAC 480-30-116 (2) and (3) narrow the scope of objections to applications;

(3) The proposed rule in WAC 480-30-140 (2)(f) eliminates the distinction between "territories" and "routes"; and

(4) The language in WAC 480-30-140 (3)(a)(ii) requires a company to make reasonable efforts to continually expand and improve its service, and to be responsive to consumer requests. The company believes that market demand is fixed and limited, and that the agency's rules and regulations impede improvements in service.

16 Bremerton-Kitsap reiterated concerns made in prior comments that the commission might approve both door-to-door service and scheduled service in the same rural territory, forcing one or both companies out of business because the market will not sustain both.

17 Capital [Capitol] Aeroporter also repeated prior comments. Specifically, the company continues to be concerned that the proposed twenty-five percent maximum fare increase with a five percent annual increase will not be sufficient. It also urges the commission to consider the stability and sustainability of service when considering applications. Finally, it proposes the commission adopt a policy statement in rule to guide interpretation of the rules.

18 **RULE-MAKING HEARING:** The commission considered the proposed rules, together with proposed correcting and clarifying changes, for adoption at a rule-making hearing on Friday, July 26, 2013, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Jeffrey D. Goltz. The commission heard oral comments from Ann Rendahl, the commission's director of legislation and policy, representing commission staff; Michael Lauver, representing SeaTac Shuttle; Richard Johnson, representing Wickkiser; Jim Fricke, representing Capitol Aeroporter; and Richard Asche, representing Bremerton-Kitsap.

19 Mr. Lauver (SeaTac Shuttle) supported the swift adoption of the rules, but raised three specific concerns:

(1) The interpretation of the term "same service" in WAC 480-30-140(2) is too narrow and could result in the commission granting an application in competition with an existing carrier, which could result in harm to that carrier;

(2) The proposed rules in WAC 480-30-156(7) allow the commission to issue temporary certificates as a precursor to permanent applications, which he asserted is contrary to the statutory intent; and

(3) Subsection (13) of the flexible fare rule (WAC 480-30-420) provides that a request for changes to the base fare "will be subject to an earnings review." Mr. Lauver fears that the phrase may be interpreted to mean the commission would apply the 93/7 operating ratio methodology it currently applies in auto transportation company rate cases.

Mr. Lauver also asked the commission to continue efforts in recent years to pursue legislation to deregulate the industry.

20 Mr. Johnson (Wickkiser) also supported the commission's swift adoption of the proposed rules, noting

that the market will determine the companies' rates following adoption of the rules. Mr. Johnson does not support efforts to deregulate the industry. He expressed concern that the proposed rules refer to "routes" and appear to express preference for "routes" over "territories." He argued that routes are narrower in scope than territories, and that companies can provide more service in a territory.<sup>1</sup>

<sup>1</sup> Mr. Lauver later concurred with Mr. Johnson's comments regarding routes and territories.

21 Mr. Fricke (Capitol Aeroporter) stated that he supports continued regulation of the industry. He identified several concerns about the cost and complexity of current rate regulation. For that reason, he supported the proposed fare flexibility rule, yet raised a concern he had expressed in prior comments that the twenty-five percent maximum rate and five percent annual increase might not be sufficient, and that limited exceptions to the rule should be allowed. Mr. Fricke also repeated concerns he had identified in prior comments:

(1) The commission should include in WAC 480-30-001 a policy statement that balances the interest of a new application with the interest of the greater public, citing his company's prior experience when the commission granted competing service to Centralia-SeaTac Express;

(2) The term "same service" in WAC 480-30-140(2) should be interpreted as essentially the same or similar;

(3) The distinction between "door-to-door" and "scheduled" service should refer to routes, as door-to-door service can also be scheduled; and

(4) In the third sentence of WAC 480-30-126(5) regarding financial requirements for applications, the word "not" should be removed to require a full analysis of financial fitness.

22 Mr. Asche (Bremerton-Kitsap) and Mr. Solin agreed with the statements by the other commenters.

23 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** Written and oral comments suggested changes to the proposed rules. For the following reasons, the commission rejects the following suggested changes:

24 **Policy guidance.** Capitol Aeroporter suggested in several written comments and at the hearing that the commission should include a statement of policy in the rule chapter to guide interpretation of the rules. The company asserted such a statement should explain that the commission balances the interests of granting new applications with the interests of the greater public. The commission declines the suggestion, as the chapter already includes such a section, WAC 480-30-001 Purpose of chapter. That provision states, in pertinent part:

The purpose of these rules is to administer and enforce chapters 81.68 and 81.70 RCW by establishing the following standards that apply to auto transportation companies and to charter and excursion carriers, to the extent allowed by the individual chapters of law:

- Public safety;
- Fair practices;
- Just, reasonable and sufficient rates;
- Nondiscriminatory application of rates;
- Adequate and dependable service;
- Consumer protection; and

- Compliance with statutes, rules and commission orders.

This statement of purpose continues to provide guiding principles for implementing the existing and proposed rules. Further, we discuss in this order the policy reasons for the proposed rules.

25 As we stated above, the commission initiated this rule making to consider changes to the rules that would give companies flexibility in setting rates and promote competition in the auto transportation industry. The commission has worked extensively with stakeholders over the last several years to review regulation of the auto transportation industry, and has determined that auto transportation companies operate within a competitive market for passenger service in the state. Many alternatives to auto transportation company service exist, including taxis, limousines, public transit, rail, or intrastate airline service. Individuals may drive to SeaTac International Airport and park at the Port of Seattle or in one of the many private lots. They may also obtain rides from family or friends. The commission must review current rules and processes to ensure that they recognize current competitive conditions. It must also ensure that its processes are streamlined and efficient.

26 **Streamlined application process.** Several companies raised concerns or suggested changes to proposed rules related to streamlining the commission's application process. For the reasons stated below, we decline to adopt these suggested changes.

27 In written comments, SeaTac Shuttle objected to language in subsections (2)(a), (b) and (c) of WAC 480-30-096, asserting that it would allow the commission to consider incomplete applications. The company notes that these subsections include the word "may" instead of "must," such that the commission may approve applications that are incomplete. For example, the subsections state, in relevant part, "The commission *may* reject or defer consideration of an application if ..." and "The commission *may* reject or dismiss an application if ...." We note that this language is in the existing rule and is not amended in the proposed rule. We are satisfied that the current language is working and has not resulted in the commission processing applications that lack substantive information.

28 Also in written comments, SeaTac Shuttle objects to the language in subsections (2) and (3) of WAC 480-30-116, which it says narrows the scope of objections to applications. The company states that incumbent companies are the best source of information as to the regulatory and financial fitness of an applicant. The company does not believe the agency can or will adequately investigate regulatory and financial fitness.

29 The existing rule language in subsection (2) provides that a "certificate holder may file a protest to an application published in the application docket." Existing subsection (3) addresses intervention in a proceeding. The proposed rule language would amend these subsections to narrow the scope of the objection to the issues of whether the existing company is providing the same service and whether the service is to the satisfaction of the commission. The proposed rules are more consistent with the statutory requirements than current rule or practice, as RCW 81.68.040 does not identify regulatory and

financial fitness as matters for objection by existing companies. Indeed, a review of prior orders reveals that the commission and applicants invest significant time and resources on challenges to an applicant's financial or regulatory fitness, business model, or service model, even though the statute does not identify these as grounds for an objection.

30 During the hearing, Capitol Aeroporter requested the commission remove the word "not" from the third sentence of WAC 480-30-126 (5)(b) regarding financial fitness. The proposed rule states:

The applicant demonstrates the financial ability to provide the proposed service. "Financial ability" means that the applicant has sufficient financing or assets to begin operations and continue them for a reasonable period while developing business. This determination does not require a comprehensive analysis of cost and revenue estimates of the full scope of proposed operations and balancing start-up and long-run operating costs over an extended period;

The company requests that an applicant be required to demonstrate and project start-up and long-term operating costs. This is contrary to how the commission has in prior cases required applicants to demonstrate financial fitness.<sup>2</sup> The commission requires only that a company is fit to enter the market, not that it will be able to operate over the long term.

<sup>2</sup> See *Application of San Juan Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. No. 1899, Commission Decision and Order Granting Administrative Review and Reversing Initial Order Denying Application, pp 3-4 (Mar. 7, 1991); see also *Application of Valentinetti, Steve & Brian Hartley, d/b/a Seattle Super Shuttle*, Docket TC-001566, Commission Decision and Order Reversing Initial Order; Denying Application ¶¶ 42-43 (Feb. 15, 2002).

31 **Standards for considering applications.** The companies provided several comments regarding the commission's proposed standards for reviewing applications, expressing concern about how the standards would be applied and affect existing certificate holders. The comments expressed concern about the commission's distinction between "territories" and "routes" and also between "door-to-door" service and "scheduled route" service. They also expressed concern about the expectation that companies will make reasonable efforts to expand and improve service, and the narrow application of the terms "same service" and "route." For the reasons discussed below, the commission does not believe changes to the proposed rules are necessary.

32 The commission has authority to interpret the current statutory language to apply standards for entry in the market. Under RCW 81.68.040, no company may provide auto transportation service without the commission granting a certificate "declaring that public convenience and necessity require such operation." Further, the statute provides in relevant part:

The commission may, *after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, or when the existing auto transportation company does not*

*object, and in all other cases with or without hearing, issue the certificate as prayed for; or for good cause shown, may refuse to issue same, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.* (Emphasis added.)

33 In other words, if an existing company asserts that it provides the same service in the same area that the applicant seeks to provide, and the company objects, the commission must determine whether the existing carrier does, in fact, "provide the same service" and "will not provide service to the satisfaction of the commission." Further, the statute states that the commission may determine, "in its judgment," that public convenience and necessity require the proposed service. Thus, without legislative change, the commission must apply the standards for entry of a new service, that is considering whether the service is the same as an existing service, whether the existing service is provided to the commission's satisfaction, and whether the new service would be consistent with the public convenience and necessity. However, the statute allows the commission a great deal of flexibility in applying the standards to determine entry into the market. In fact, the state court of appeals has found such discretion and flexibility in a case involving the grant of overlapping service:

The statute states that the commission may grant an overlapping certificate only if it finds that the incumbent "will not provide [service] to the satisfaction of the commission." The statute does not specify how the commission is to make that determination. Indeed, on its face it would seem to give the commission discretion to assess an incumbent carrier's future conduct in any logical and reasonable way supported by the evidence.<sup>3</sup>

<sup>3</sup> *Pacific Northwest Transp. Serv., Inc. v. Washington Utils. and Transp. Comm'n*, 91 Wn. App. 589, 596-97, 959 P.2d 160 (1998).

34 The court also found that "[t]he public is benefited by an incumbent carrier being motivated to improve its service."<sup>4</sup> Under this case, the commission has the discretion and authority to interpret and apply these standards "in any logical and reasonable way supported by the evidence,"<sup>5</sup> and there is public benefit in encouraging competition by motivating carriers to continually improve service.

<sup>4</sup> *Id.* at 597.

<sup>5</sup> *Id.*

35 The commission developed the standards in the proposed rules for reviewing applications with the intent to inform existing companies and applicants how the commission would evaluate applications. The standards are based in part on the commission's interpretation of the statutory requirements in chapter 81.68 RCW and applications adjudicated over the past three decades, as well as an effort to increase opportunities to provide new or improved service to consumers within the limits allowed by the statute. The proposed rules are not intended to express a policy preference between types of service, for example, door-to-door service and scheduled service. Rather, the intent is to provide a clear framework for companies to make choices

regarding how best to serve consumers and the commission to evaluate those choices.

36 Door-to-door service is a premium service, providing consumers with a more direct and more convenient service with the expectation that it will cost more to use. Scheduled service is intended to provide service at a lower cost but with some trade-off in convenience. Companies choose which service to offer based on their analysis of market demand.<sup>6</sup> While every route serves a "territory" in the sense that consumers who ride along the company's route are drawn from the population that lives within a reasonable distance of that route, door-to-door service may naturally serve a greater territory more flexibly.

<sup>6</sup> While we recognize that door-to-door service also can be a scheduled service, when we refer to scheduled service in this order, we are referring to service between points designated by the company, whereas door-to-door service is between a point designated by the customer and a point designated by the company.

37 SeaTac Shuttle, with concurrence from Wickkiser and Bremerton-Kitsap, asserted that the proposed rule in WAC 480-30-140 (2)(f) eliminates the distinction between "territories" and "routes." The subsection states that the commission may consider:

For scheduled service, the proposed route's relation to the nearest route served by an existing certificate holder. The commission views routes narrowly for the purpose of determining whether service is the same. Alternative routes that may run parallel to an objecting company's route, but which have a convenience benefit to customers, may be considered a separate and different service;

38 The proposed rule clearly distinguishes between scheduled service (along a route) and door-to-door service within a territory, allows companies to choose to offer those two services, and enables the commission to more properly judge whether the company is providing the same service the applicant proposes to provide. The commission has applied this standard in prior cases, determining that door-to-door service and scheduled service are not the same service, and granting applications to provide one type of service in a territory already served by the other type of service.<sup>7</sup>

<sup>7</sup> See *Application of Pacific Northwest Transportation Services*, Order M.V.C. No. 1458, Commission Order on Reconsideration at 3 (Sep. 20, 1984); *Application of San Juan Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. No. 1834, Commission Decision and Order Granting Reconsideration; Affirming Final Order at 3 (Aug. 31, 1989); *Application of Jeffrey Lynn Porter d/b/a Pennco Transportation*, Order M.V.C. No. 2241, Commission Decision and Order Granting in part Staff's Petition for review, Denying Protestant's Petition for Review, and Granting Application, with Conditions at 9-10 (Dec. 2, 1998); and *Application of Heckman Motors, Inc., d/b/a Olympic Bus Lines Inc.* (Docket TC-000676) and *Application of Jeffrey Lynn Porter d/b/a Pennco Transportation* (Docket TC-000835), Initial Order, ¶¶ 21-29 (Nov. 9, 2000).

39 SeaTac Shuttle objected to the proposed language in WAC 480-30-140 (3)(a)(ii) that requires a company to make reasonable efforts to continually expand and improve its service, and to be responsive to consumer requests. The company believes that market demand is fixed and limited, and that the agency's rules and regulations impede improvements in service. The commission responded to similar

comments regarding earlier draft rules by inserting the term "reasonable" and by qualifying the phrase "responsive to consumer requests," with a requirement that the company only review its tariff and certificate in response to consumer requests for service, and when reasonable, propose changes to the commission. If the commission chooses, based on the facts and circumstances of an application, to deny the requested change, the company will not be penalized for not making the change. However, the commission does not intend for companies to ignore their tariff and certificate requirements. The court of appeals in *Pacific Northwest Transportation Services* noted that there is a benefit in motivating companies to continually improve service.<sup>8</sup> Further, the commission has held in prior cases that the state's restriction on entry is not a barrier behind which a company is shielded from competition, from providing service that is responsive to changing requirements of the market, or providing new services within a territory.<sup>9</sup>

<sup>8</sup> *Pacific Northwest Transp. Serv.*, 91 Wn. App. at 597.

<sup>9</sup> *Application of Sharyn Pearson & Linda Zepp d/b/a Centralia-Seatac Airport Express*, Order M.V.C. No. 2041, Commission Decision and Order Granting Review; Modifying Initial Order; Granting Application in part at 3 (Mar. 11, 1994).

40 SeaTac Shuttle and Capital [Capitol] Aeroporter both expressed concern that the commission's interpretation of the statutory phrase "same service" is too narrow and suggested the commission modify the term to read "essentially the same" or "similar." As discussed above, the commission interprets the statute to reflect clearly the state's interest that it should draw a bright line between service offerings. The proposed rule describes adequately the factors the commission will consider in determining, on the facts, whether the service proposed is the same as the service currently provided. As it has in prior cases, the commission can and must draw distinctions between what is the "same" service in a particular market.<sup>10</sup> For example, subsection (2)(e) of the proposed rule states the commission may consider the topography, character, and condition of the territory. In using these factors, the commission expects that whether an alternative route has a convenience benefit to customers, and is therefore a "separate and different service," may be very different in different environments.

<sup>10</sup> See *Application of Richard E. & Helen N. Asche, Bremerton-Kitsap Airporter, Inc., d/b/a Bremerton-Kitsap Airporter, Bremerton-Seatac Airporter, Inc., The Sound Connection*, Order M.V.C. No. 1443, Commission Decision and Order Granting Exceptions, in Part; Modifying Proposed Order; Granting Application in Part at 5-6 (May 16, 1984); See also *Application of Pacific Northwest Transportation Services*, Order M.V.C. No. 1458, Commission Order on Reconsideration at 3 (Sep. 20, 1984); *Application of San Juan Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. No. 1809, Commission Decision and Order Granting Application as Amended in Part at 16 (Apr. 21, 1989); *Application of SeaTac Shuttle, LLC, d/b/a SeaTac Shuttle*, Docket TC-030489, Order 03, Final Order on Administrative Review; Granting Motion to Strike; Denying Motion to Respond; Affirming and Adopting Initial Order; Granting Application, ¶ 44 (Nov. 26, 2003).

41 Capitol Aeroporter expressed at hearing and in written comments that the commission should consider the stability and sustainability of existing service when

evaluating an application for new or extended service. The company cites, as an example, the commission's decision to allow a competitor to enter a portion of its market and the company's view of the impacts of that decision. The commission addressed this concern by including in proposed WAC 480-30-140 (1)(b) that the commission, in reviewing an application, will consider "whether increased competition will benefit the traveling public, including its possible impact on sustainability of service."

42 By including this language, the commission acknowledges that it must assess both the benefits and risks of competition when considering a new service. However, the commission disputes the assumption on the part of some companies that markets have a fixed service saturation point that has already been reached in all markets, or that a company does not have the ability or responsibility to adapt its service and business model to a changing competitive market.

43 Bremerton-Kitsap stated in written comments the concern that the commission will jeopardize the sustainability of both services if the commission chooses to allow both door-to-door service and scheduled route service within a specific rural territory. This argument relies upon the assumption that a density of ridership is necessary to sustain service. As mentioned above, the commission believes the rule adequately reflects the commission's intent to weigh the benefits of competition together with the impact on sustainability of service. Further, proposed WAC 480-30-140 (2)(d) provides that the commission may consider whether population density warrants additional facilities or transportation. The commission believes, however, that it is possible that a market may support both types of service, since, as previously stated, one type of service caters to consumers willing to pay for a premium service, while the other type of service caters to consumers willing to make a trade-off between price and convenience. The commission determined this very issue in prior application cases.<sup>11</sup>

<sup>11</sup> See *Application of Jeffrey Lynn Porter d/b/a Pennco Transportation*, Order M.V.C. No. 2241, Commission Decision and Order Granting in part Staff's Petition for review, Denying Protestant's Petition for Review, and Granting Application, with Conditions at 9-10 (Dec. 2, 1998); see also *Application of Heckman Motors, Inc., d/b/a Olympic Bus Lines Inc.* (Docket TC-000676) and *Application of Jeffrey Lynn Porter d/b/a Pennco Transportation* (Docket TC-000835), Initial Order, ¶¶ 21-29 (Nov. 9, 2000).

44 **Temporary certificates.** At hearing and in written comments on draft rules, SeaTac Shuttle objected to language relating to temporary certificates in proposed rule WAC 480-30-156(7). The company argues that the commission should not issue temporary certificates as a precursor to permanent authority and that doing so is contrary to the legislature's intent. The company asserts that the commission should only issue temporary certificates to fill a temporary and unmet need in an unserved area. The commission understands the company's concern, but finds the legislature clearly intended when it enacted RCW 81.68.046 that the commission should have the option of issuing temporary certificates, including in areas where an existing company provides service.

45 The current language in WAC 480-30-156(7) allows a company to file applications simultaneously for temporary

and permanent authority. The proposed amended language at issue modifies the period for which the commission may grant a temporary certificate to "up to one hundred and eighty days *based on an estimate regarding how long it will take to complete review of the permanent application.*" (Emphasis added to reflect amended language.) The amended language will allow the commission flexibility in responding to a variety of circumstances surrounding an application for a temporary certificate.

46 **Fare flexibility.** At the hearing and in written comments, several companies suggested changes to the proposed rule governing fare flexibility, WAC 480-30-420, specifically, increasing the amount of the maximum fare and annual increases, allowing exceptions for specific fares, and limiting earnings reviews. For the reasons discussed below, the commission declines to adopt these suggested changes.

47 Under RCW 81.04.250, the commission has authority to adopt a flexible ratemaking methodology for transportation companies. The statute provides in relevant part:

The commission may, upon complaint or upon its own motion, prescribe and authorize just and reasonable rates for the transportation of persons or property for any public service company subject to regulation by the commission as to rates and service, whenever and as often as it deems necessary or proper. . . .

*In exercising this power, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.* (Emphasis added.)

48 Given the competitive market within which auto transportation companies operate, we find it appropriate to allow companies to establish their fares subject to a maximum fare of twenty-five percent above their current base fare, with the option to increase fares annually up to five percent from the maximum fare. However, we do so together with the proposed rules governing streamlining of the application process and clarifying of the application standards to ensure sufficient opportunities for competition within the passenger transportation market.

49 For the purpose of reviewing a company's filing to request fare flexibility, the commission will evaluate the filing within the context of WAC 480-30-420 and not within the context of traditional economic regulation, such as profit, operating margin, revenues, salaries, bonuses, cross subsidies, discrimination between customers and over-earning. Consistent with the effort to streamline the application process and clarify application standards, the commission proposes reduced regulatory requirements for setting fares. This will likely result in savings in administrative costs for the commission and companies, as well as a reduction in the time for processing tariff filings.

50 At hearing and in written comments, Capitol Aeroporter raised the concern that the proposed twenty-five percent maximum fare increase with a five percent annual increase will not be sufficient to allow companies to recover their costs. We disagree. The company identifies potential future cost factors of increases in ferry fares, minimum wage, healthcare costs and fuel that are difficult to predict. The opportunity for a twenty-five percent initial maximum fare with annual five percent increases should give the companies

sufficient room to address costs and to compete in the market. Further, the proposed review of the amended rules after a five-year period will allow the commission to adjust the annual increase percentage if necessary. Comments during the hearing indicate that the companies expect the market will determine the fares the companies charge within the twenty-five percent maximum fare allowed by the proposed rule.<sup>12</sup>

<sup>12</sup> This was the testimony at the adoption hearing of Richard Johnson, representing Wickkiser. We agree. Take Capitol Aeroporter's rates for an example. Currently, the round trip fare from Olympia to Seattle-Tacoma International Airport for two passengers is \$127.50. Should Capitol Aeroporter take advantage of all the allowable rate increases, rates could increase over current rates by 60 percent in five years, resulting in a fare, five years from now, of over \$200. Fare increases of that magnitude may lead consumers to make different choices for traveling to the airport. We believe such fare increases would either (1) cause a number of potential passengers to seek other, less costly, options, thereby providing downward pressure on rates, (2) encourage others to seek to enter the market with lower fares, arguing that fares of that magnitude cannot be part of a service "to the satisfaction of the commission" under WAC 480-30-140 (3)(iv), or (3) both. In any event, if a company does not believe this rule provides sufficient fare flexibility, the company has the option of not opting into the flexible fare methodology in the first instance and may simply file tariffs with what it believes to be the appropriate rates.

51 Also at the hearing and in prior written comments, Capitol Aeroporter argued that the proposed rule should allow exceptions for higher fares for certain distant or hard-to-serve locations. As with the suggestion for a higher maximum fare and annual increase, we do not adopt the suggestion. The proposed rule will give the companies the flexibility to establish fares within their territory and along their routes to compete in the market. This means that some fares may be higher and reach the maximum fare amount, while other fares may not. The five-year review will allow the commission to evaluate how the companies have operated under the flexible fare rule and make adjustments as necessary.

52 Finally, at hearing, SeaTac Shuttle objected to the language in proposed WAC 480-30-420(13) which provides that a company's request for an increase in its base fare "may be subject to an earnings review or rate case." The company assumes that an earnings review means the commission would use the 93/7 operating ratio methodology for establishing rates. We decline to modify the language in the proposed rule, as the term "earnings review" does not determine the method for conducting such a review. The 93/7 operating ratio is an earnings review methodology the commission currently applies in auto transportation company rate cases. However, an earnings review encompasses a number of methods and does not refer solely to the 93/7 or any other operating ratio methodology. The commission has flexibility under RCW 81.04.250 to determine the appropriate means of determining rates and fares, including the method for conducting an earnings review.

53 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as

proposed in the CR-102 at WSR 13-12-072 with the correcting and clarifying changes described below.

54 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 13-12-072 to correct and clarify the rules to ensure clarity in implementing the rules:

55 **WAC 480-30-075(1):** The commission modifies WAC 480-30-075(1) for clarity by deleting the following words at [the] end of the first sentence "adopted by the commission on (date)." We remove this language to avoid trying to estimate a correct adoption date in the rules. The published rules will provide information identifying the rules adopted and amended in the rule making.

56 **WAC 480-30-096 (3)(h) and (i):** The language in this rule is corrected. The word "and" between subsections (3)(h) and (i) is deleted and added between subsections (3)(i) and (j), as subsection (3)(j) is the last subsection.

57 **WAC 480-30-096 (7), (3)(d):** The language in subsection (7) is intended to explain that applicants for extension of authority must file tariff and time schedules only for the proposed service. To ensure clarity the commission deletes the language in subsection (7) and adds the phrase "for the proposed service" following the language in subsection (3)(d).

58 **WAC 480-30-140 (3)(c):** The phrase in subsection (3)(c), "in determining that the company does not meet the criteria of service to the satisfaction of the commission" is deleted from the first sentence, as it is redundant with the first phrase in the sentence.

59 **WAC 480-30-420 (7) and (14):** The language in subsection (14) of the proposed rules is modified to clarify that companies that advertise or provide notice of flexible fares or changes in fares may not state that the commission approves or sets specific fares. The language in subsection (7) concerning notice is amended to include a cross-reference to subsection (14).

60 **WAC 480-30-140 (2)(f) and (g), (3)(a)(i), (ii), and (iv):** These subsections of the proposed rule refer to "scheduled route service," while the proposed WAC 480-30-096 includes a definition for "scheduled service." The terms in the proposed rules should be consistent, so the commission deletes the word "route" from the term "scheduled route service."

61 **WAC 480-30-420(15):** In the explanatory chart following subsection (15), the language related to year one is changed from "25% increase in Base Fare" to "25% above Base Fare" to be consistent with the language in subsection (2)(c) of the rule.

62 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-30-071, 480-30-096, 480-30-116, 480-30-126, 480-30-136, 480-30-156, 480-30-261, 480-30-276 and 480-30-286 should be amended, and WAC 480-30-075, 480-30-140 and 480-30-420 should be adopted to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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 3, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 9, 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 9, Repealed 0.

**ORDER**

**63 THE COMMISSION ORDERS:**

64 The commission amends WAC 480-30-071, 480-30-096, 480-30-116, 480-30-126, 480-30-136, 480-30-156, 480-30-261, 480-30-276 and 480-30-286, and adopts WAC 480-30-075, 480-30-140 and 480-30-420 to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

65 This order and the rule set out below, after being recorded in the order register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, August 21, 2013.

Washington Utilities and Transportation Commission

David W. Danner, Chairman

Philip B. Jones, Commissioner

Jeffrey D. Goltz, Commissioner

**Appendix A  
(Chapter 480-30 WAC Rules)**

**Appendix B  
(Comment Summary Matrix)**

**TC-121328 – Auto Transportation Rule Making  
Stakeholder Comments on Proposed Rules and Commission Response  
(July 19, 2013)**

<b>Company</b>	<b>WAC Section</b>	<b>Comment</b>	<b>Commission Response</b>
SeaTac Shuttle, LLC June 21, 2013			
	WAC 480-30-096 (2)(a), (b), (c)	The company objects that the proposed rule will allow the commission to process an application that is incomplete, by stating that the commission "may" reject or defer consideration of an application until the applicant provides all required information.	The commission disagrees. The language the company objects to is in the existing rule, and is not a proposed change. The commission is satisfied that the current language is working and has not resulted in staff processing applications that are missing substantive information.
	WAC 480-30-116 (2), (3)	The company objects that the proposed rule excludes objections by companies not serving the proposed territory and limits the scope of the objection to exclude regulatory and financial fitness. The company believes the commission will not have vital information as a result.	The commission disagrees. The commission's proposal aligns the rule to RCW 81.68.040, which only allows objections from companies that are providing service in the territory in question, and only to show that the company is providing the same service to the satisfaction of the commission. The commission is confident the staff will adequately investigate an applicant's fitness prior to bringing forward the application for commission action.
	WAC 480-30-140 (2)(f)	The company objects to the language on the grounds that it ignores territories and elevates routes to primary consideration. The company is concerned that the proposed rule ignores the distinction between scheduled service, which provides service at an optimal location at a lower price, and door-to-door service, which provides a premium service at a higher fare.	The commission disagrees that the language eliminates the concept of territories. Consistent with WAC 480-30-036, the proposed amendment to WAC 480-30-096 defines "scheduled service" as service provided between a location specifically named by the company and a point specifically named by the company. In response to the company's concern about language in the first version of WAC 480-30-XXX (2)(f) in draft rule that territories did not exist, the commission added the phrase "for scheduled route service" to make it clear that the provision would not apply to door-to-door service. "Location to point" service necessarily requires a route, even if it serves a "territory" or geographic market.



Company	WAC Section	Comment	Commission Response
			This provision is based on the commission's long-standing policy of examining whether the company's choice of pick-up locations and the company's choice of travel routes provides service to the satisfaction of the commission. The commission understands that the companies object to certain prior decisions by the commission regarding the application of satisfaction standard, while in other cases the companies have benefited from the standard. Some companies would not have a certificate [certificate] today if the commission had not applied the standard in this way.
	WAC 480-30-140 (3)(a)(ii)	The company objects to the language on the grounds that it requires a company to provide service beyond what the market demands.	The commission disagrees. The proposed rule only requires a company to make a reasonable effort to expand and improve its service. Whether the company is meeting market demands is a question of fact that will be determined when a potentially competing application is adjudicated.
	WAC 480-30-140 (3)(a)(iii)	The company objects to the requirement in WAC 480-30-140 (3)(a)(iii) that the company be responsive to consumer requests, on the grounds that chapters 81.68 RCW and 480-30 WAC preclude the satisfaction of every request.	The commission disagrees. The proposed rule only requires that a company be responsive to consumer requests by reviewing the company's tariff and certificate in response to request, and when reasonable, propose changes to the commission.
	480-30-ZZZ (WAC 480-30-075)	The company believes a section from the draft rules was not included in the proposed rule. The company expects the commission to continue to pursue legislation to deregulate the industry, making this section moot.	The commission disagrees. The draft rule was codified as WAC 480-30-075 and is included in the proposed rule near the front of the proposal.
<b>Bremerton-Kitsap Airporter (June 19, 2013)</b>			
	WAC 480-30-096	The company expressed concern that rural areas or communities are not responsive to door-to-door service, but the rule provides that a company may apply for either scheduled service, door-to-door service, or both. Authorizing a new company to provide door-to-door service in competition with an existing scheduled service carrier may force both companies to reduce service.	The commission disagrees. If a company applies for door-to-door service within a rural territory, the commission will evaluate whether there is an unmet need for door-to-door service. Further, other provisions in the draft rules address the concern about the effects of competition on an existing company.
<b>Pacific Northwest Transportation Services (Capitol Aeroporter) (July 10, 2013)</b>			
		The company reiterates its proposal from May 17, 2013, that the commission adopt a policy statement in the rules to guide interpretation of the rules.	The commission disagrees. The existing rules in chapter 480-30 WAC include a statement on policy in WAC 480-30-001. The rule language is appropriate and does not require amendment. The commission will address in the adoption order any explanation of the policy or intent of the changes in rules.
		The company reiterates its position that the rule changes should streamline and make more efficient the certificate application process while maintaining the stability and sustainability of existing transportation services. The commission should weigh, during the application process, the potential adverse impact on passengers of existing services vs. the potential benefits to new passengers.	The commission agrees and believes that the proposed rules will streamline the application process while providing adequate opportunity to evaluate whether an existing certificate holder is providing the same service to the satisfaction of the commission as an applicant. The proposed rule provides the opportunity for the commission to consider impacts on the companies and customers in the market.

Company	WAC Section	Comment	Commission Response
	WAC 480-30-420	The company reiterates its comment from May 17, 2013, that the rules should allow consumer-driven fares rather than provide the twenty-five percent cap with the five percent annual increase. The company believes that once the maximum fares are reached the five percent per annum increase will probably be insufficient during generally high inflation periods or if direct competition is authorized.	The commission disagrees. While the commission appreciates the company's assessment of possible future cost increases, they are speculative in nature. The initial increase of twenty-five percent plus five percent additional each year is sufficient for this new program. The evaluation after five years will give the companies and the commission a better sense of whether additional flexibility is needed going forward. Further, the companies retain the ability to file a new tariff proposing a new set of "base" fares, if the proposed adjustments prove inadequate.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-071 Reporting requirements.** (1) **Auto transportation company annual reports.** An annual report is an end-of-the-year summary of financial and operational activity that each regulated auto transportation company is required to file with the commission.

(a) Each year the commission provides an annual report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual report. A company that does not receive an annual report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual report showing all requested information by May 1 of the succeeding year. Information provided on the annual report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual report after the May 1 due date if the commission receives a request for extension before May 1.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual report.

(e) A company selling, canceling, transferring, or in some other manner discontinuing operations must submit an annual report for that portion of the year in which the company operated.

(f) The commission will provide an annual report form for companies charging flexible fares subject to WAC 480-30-420, requiring financial reporting only of the gross intrastate revenues reported to the state department of revenue for the previous calendar year, data to facilitate the commission's review under WAC 480-30-075, and such safety data as the commission may require.

(2) **Charter and excursion carrier annual safety reports.** An annual safety report is a summary of motor vehicle and safety operating information that each charter and excursion carrier is required to file with the commission.

(a) Each year the commission provides an annual safety report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual safety report. A company that does not receive an annual safety report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual safety report showing all requested information by ~~((December 31))~~ May 1 of each year. Information provided on the annual safety report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual safety report after the ~~((December 31))~~ May 1 due date if the commission receives a request for extension before ~~((December 31))~~ May 1.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual safety report.

(3) **Other reports.** The commission may require a company to file periodic or other special reports.

NEW SECTION

**WAC 480-30-075 Review of the effects of adopted rule amendments.** (1) Beginning January 1, 2019, the commission will evaluate the effects of WAC 480-30-140, 480-30-420, and the amendments to WAC 480-30-071, 480-30-096, 480-30-116, 480-30-126, 480-30-136, and 480-30-286. The issues that may be considered include, but are not limited to:

(a) Whether the amendments increased opportunities to maintain and expand safe, fair, adequate, dependable and fairly priced auto transportation services to the public;

(b) Whether the amendments reduced the cost to the companies of complying with the tariff and application regulations in this chapter and the cost to the agency of enforcing the regulations;

(c) Whether the amendments reduced the duration of time required to process tariffs and applications;

(d) Whether the amendments increased opportunities for new and existing companies to provide service;

(e) A comparison of fares charged by companies under WAC 480-30-420 and fares charged by companies under the standard tariff rules, and by other public and private transportation service providers;

(f) Whether there has been an increase in consumer complaints about unreasonable or unfair fares; and

(g) Whether the changes have resulted in an increase in ridership.

(2) The commission will accomplish the evaluation required under subsection (1) of this section through a rule-making proceeding under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-096 Certificates, application filings, general.** (1) A ~~((company))~~ person must submit its certificate application on forms provided by the commission.

(2) Applications must include all requested information, attachments, signed statements, and filing fees.

(a) The commission may reject or defer consideration of an application until the applicant provides all required information;

(b) The commission may reject or defer consideration of an application until the applicant pays any outstanding fees, fines, or penalties; or

(c) The commission may reject or dismiss an application if it includes false, misleading, or incomplete information.

(3) Applications for auto transportation certificate authority must include, but are not limited to:

(a) A complete description of the proposed service including, but not limited to:

(i) The line, route, or service territory described in terms such as streets, avenues, roads, highways, townships, ranges, cities, towns, counties, or other geographic descriptions;

(ii) Whether the service will be:

• "Door-to-door service" - Service provided between locations identified by the passengers and points specifically named by the company in its filed tariff and time schedule. Door-to-door service requires a time schedule in compliance with WAC 480-30-281 (2)(c) and may be restricted to "by reservation only"; and/or

• "Scheduled service" - Service provided between locations specifically named by the company (e.g., the X Hotel at 4th and Main) and points specifically named by the company in its filed tariff and time schedule. Scheduled service requires the company to file a time schedule in compliance with WAC 480-30-281 (2)(b) and may be restricted to "by reservation only."

(b) A map of the proposed line, route, or service territory that meets the standards described in WAC 480-30-051;

(c) A statement of the applicant's assets and liabilities;

(d) A proposed tariff and time schedule for the proposed service;

(e) A statement of conditions from the applicant and statements from members of the public that ((justify)) demonstrate that public convenience and necessity requires the proposed service;

(f) Ridership and revenue forecasts for the first twelve months of operation;

(g) A ~~((pro forma))~~ projected balance sheet and income statement for the first twelve months of operation;

(h) A list of equipment currently owned or leased, or proposed to be purchased or leased, to be used in providing the proposed service; ~~((and))~~

(i) A statement of the applicant's prior experience and familiarity with the commission's statutes and rules, specifically safety requirements that govern the operations it proposes; and

(j) Evidence of compliance with state tax, labor, employment, business, and vehicle licensing laws and rules. The commission will accept valid, verifiable account

numbers showing the applicant has established accounts with other state agencies.

(4) The provisions of this rule do not apply to applications for auto transportation company certificate authority to provide intrastate service over an interstate regular route under a federal grant of authority. Refer to WAC 480-30-101.

(5) An application for new authority filed by a person not currently holding a certificate may propose a tariff that in addition to the applicant's proposed fares includes a request that the company be granted flexible fare authority under WAC 480-30-420 with the proposed maximum fares shown in compliance with the rule. Before the commission grants such authority, it will determine that the proposed base fares are fair, just, reasonable, and sufficient.

(6) A person holding a certificate applying for a name change or mortgage is not required to comply with WAC 480-30-096(3).

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-116 Certificates, application docket, ~~((protests,))~~ and ~~((intervention))~~ objections, auto transportation company.** (1) **Application docket.** The commission publishes a notice of pending certificate applications in the application docket. The commission mails the application docket to each existing auto transportation company certificate holder, to each person with a pending auto transportation company certificate application ~~((, to affected local jurisdictions or agencies,))~~ and to any other interested person who has asked to receive copies of the application docket. It includes notice of auto transportation company certificate applications for:

(a) New certificate authority.

(b) Extension of existing certificate authority.

(c) Transfer or lease of all or a portion of certificate authority.

(2) **~~((Protests))~~ Objections.** An existing auto transportation company ~~((certificate holder may file a protest to an application published in the application docket))~~ may object to an application for new authority or an extension of authority published in the application docket only if the company holds a certificate that authorizes the same service and the company provides the same service published in the application docket. No company may file an objection to applications for transfers or lease of all or a portion of certificate authority.

(a) **Form of ~~((protests))~~ objections.** ~~((Protests))~~ **Objections** must:

(i) Be filed within thirty days of the date the commission mailed the application docket.

(ii) Be filed according to the provisions of WAC 480-07-370.

(iii) Be served on the applicant and the applicant's attorney, if ~~((one is identified in the application docket))~~ the attorney has filed with the commission a notice of appearance.

(iv) Specify ~~((the reasons for the protest))~~ why the company believes it is providing the same service to the

satisfaction of the commission and why it is filing the objection.

(v) ~~((Specify the protestant's interest in the proceeding-  
(vi)))~~ Specify the approximate number of witnesses the ~~((protestant))~~ objecting company intends to present and an estimate of hearing time required for the ~~((protestant's))~~ objecting company's presentation(~~(;~~

~~(vii))~~.

(vi) Include the name and address of each person on whose behalf the ~~((protest))~~ objection is filed including that person's certificate number, a copy of the certificate authority, and identification of the portion or portions of the ~~((protestant's))~~ objector's certificate that is the basis for the ~~((protest))~~ objection, and specifically identify the portion or portions of the objector's certificate that authorizes the same service requested by the applicant.

~~((viii))~~ (vii) Describe any restrictive amendment that could eliminate the ~~((protestant's))~~ objecting company's interest in the application.

(b) **Failure to file ~~((protest))~~ objection on time.** A person who fails to file ~~((a protest))~~ an objection within the thirty-day ~~((protest))~~ notice period may not in any way participate further in the proceeding, unless that person can show that the commission did not provide proper notice of the pending application, or that good cause exists for the failure to make a timely ~~((protest))~~ objection.

(3) ~~((Intervention. Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to WAC 480-07-355 for information on intervention))~~ The adjudication of applications subject to an objection filed under RCW 81.68.040 will be accomplished in the simplest and most expeditious manner consistent with state law. The adjudication will be limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the commission.

(4) **Applications not subject to the docket and ~~((protest))~~ objection provisions of this rule.** This rule does not apply to:

(a) Applications for charter and excursion carrier certificates;

(b) Applications to reinstate a certificate canceled for cause under the provisions of WAC 480-30-181, when the application is filed within thirty days of the certificate cancellation date;

(c) Applications for name change;

(d) Applications to mortgage an auto transportation company certificate; and

(e) Applications for an auto transportation company certificate under a federal grant of authority to provide intrastate service over an interstate route(~~(;~~ and

~~(f) Applications for temporary certificate authority).~~

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-126 Certificates, applications, auto transportation company.** (1) A person applying for a certificate to provide auto transportation company services must have the knowledge, experience, and resources to conduct the service it proposes in its application. The applicant must be fit, willing and able to comply with state law and the requirements of this chapter.

(2) The commission must determine that the public convenience and necessity, as defined in WAC 480-30-140(1), requires the proposed service when considering an application for a new certificate or extension of an existing certificate. An applicant must support its application with statements by independent members of the public who need the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority, or a statement by a representative of a city, county or regional transportation planning organization who is knowledgeable about the need for service in the territory in which the applicant seeks authority.

(3) Auto transportation company certificate applications are subject to the application docket notice and ~~((protest))~~ objection provisions of WAC 480-30-116.

(4) The commission may set for hearing any auto transportation company certificate application.

(5) ~~((The commission must provide the opportunity for a hearing and determine that an existing auto transportation company is not providing service to the satisfaction of the commission before it may grant a new certificate or extension of an existing certificate to provide service in a territory already served by another auto transportation company, unless the existing auto transportation company or companies do not object to the application by filing a protest under the provisions of WAC 480-30-116-))~~ If no existing company files an objection under RCW 81.68.040, the commission may grant an original application or an extension of authority, if:

(a) The applicant demonstrates a need for service not provided by an existing auto transportation company holding a certificate by filing statements by independent members of the public who need the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority, or a statement by a representative of a city, county or regional transportation planning organization who is knowledgeable about the need for service in the territory in which the applicant seeks authority;

(b) The applicant demonstrates the financial ability to provide the proposed service. "Financial ability" means that the applicant has sufficient financing or assets to begin operations and continue them for a reasonable period while developing business. This determination does not require a comprehensive analysis of cost and revenue estimates of the full scope of proposed operations and balancing start-up and long-run operating costs over an extended period; and

(c) The applicant demonstrates that it is willing and able to comply with commission laws and rules.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-136 (~~Certificates, application hearings, auto transportation~~) Procedure for applications subject to objection, information required of applicant and objecting company.** (~~(1) Auto transportation company certificate application hearings are governed by the provisions of chapter 480-07 WAC.~~

~~(2) When an application has been protested, the commission will generally not consider written statements from witnesses that have not been available for cross examination at hearing.~~

~~(3) An applicant must be prepared to present information at hearing, through documents or the testimony of witnesses, including but not limited to, the following:~~

~~(a) A description of the service proposed and the cost of that service for the area to be served;~~

~~(b) An estimate of the cost of the facilities to be used in providing the proposed service;~~

~~(c) The condition of the applicant's equipment and the applicant's program for maintenance and repair;~~

~~(d) A statement of the assets available to the applicant that will be used to provide the proposed service;~~

~~(e) Prior experience, if any;~~

~~(f) Familiarity with the statutes and rules that govern the proposed operations;~~

~~(g) The public need for the proposed service.~~

~~(i) The commission will not accept as support an applicant's own statements that its proposed service is needed by the public.~~

~~(ii) The applicant must support its application with independent witnesses who actually require the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority.~~

~~(4) If an applicant requests a certificate or extension of certificate to operate in a territory already served by another certificate holder, the applicant must also show that the existing transportation company or companies will not provide service in that territory to the satisfaction of the commission.~~

~~(5) When determining if the territory at issue is already served by another certificate holder the commission may, among other things consider:~~

~~(a) The authority of existing companies and whether or not they are serving to the full extent of that authority.~~

~~(b) The kinds, means, and methods of service provided.~~

~~(c) Whether the type of service provided reasonably serves the market.~~

~~(d) Whether the population density warrants additional facilities or transportation.~~

~~(e) The topography, character, and condition of the territory into which the proposed services are to be introduced, and the proposed territory's relation to the nearest territory through which transportation service is already provided.~~

~~(f) Whether a grant of the requested authority and the resulting increased competition will benefit the public.)~~ (1) The commission will consider applications for which an objection has been received through brief adjudicative proceedings under WAC 480-07-610, unless the presiding

officer determines, based on the facts and circumstances presented, that a hearing or different process is required.

(2) After one or more companies file an objection to an application, the commission will issue a notice of brief adjudication to the objecting company and the applicant, and request the filing of additional information to determine the nature of the objection proceeding. This information may include, but is not limited to:

(a) Statements from independent witnesses provided by an objecting company to demonstrate that the objecting company is providing the same service as the proposed service, to the satisfaction of the commission.

(b) Statements from independent witnesses provided by an objecting company to demonstrate that the traveling public will be harmed by the granting of the application.

(c) Additional supplementary information, evidence or testimony provided by the applicant to demonstrate that public convenience and necessity requires the proposed service.

(3) In considering an objection filed by a company holding a certificate, the commission will determine whether or not the objecting company will provide the same service to the satisfaction of the commission.

(a) If the commission determines that the objecting company holds a certificate to provide the same service in the same territory, that the service is the same as proposed in the application, and that the objecting company is providing the same service to the satisfaction of the commission, the commission will not issue a certificate.

(b) If the commission determines that the objecting company will not provide the same service to the satisfaction of the commission, the commission may grant the application.

#### NEW SECTION

**WAC 480-30-140 Standards for determining "public convenience and necessity," "same service," and "service to the satisfaction of the commission."** (1) Public convenience and necessity.

(a) In the context of auto transportation services, "public convenience and necessity" means that every member of the public should be reasonably afforded the opportunity to receive auto transportation service from a person or company certificated by the commission.

(b) In reviewing applications under this chapter, the commission may, among other things, consider differences in operation, price, market features, and other essential characteristics of a proposed auto transportation service, tailoring its review to the individual circumstances of the application in evaluating whether the public convenience and necessity requires the commission to grant the request for the proposed service and whether an existing company is providing the same service to the satisfaction of the commission. The commission will also consider whether increased competition will benefit the traveling public, including its possible impact on sustainability of service.

(2) Same service. When determining whether one or more existing certificate holders provide the same service in

the territory at issue, the commission may, among other things, consider:

(a) The certificate authority granted to the existing companies and whether or not they are providing service to the full extent of that authority;

(b) The type, means, and methods of service provided;

(c) Whether the type of service provided reasonably serves the market;

(d) Whether the population density warrants additional facilities or transportation;

(e) The topography, character, and condition of the territory in which the objecting company provides service and in which the proposed service would operate;

(f) For scheduled service, the proposed route's relation to the nearest route served by an existing certificate holder. The commission views routes narrowly for the purpose of determining whether service is the same. Alternative routes that may run parallel to an objecting company's route, but which have a convenience benefit to customers, may be considered a separate and different service; and

(g) Door-to-door service and scheduled service in the same territory will not be considered the same service.

(3) Service to the satisfaction of the commission.

(a) The determination of whether the objecting company is providing service to the satisfaction of the commission is dependent on, but not limited to, whether the objecting company:

(i) Holds authority to provide, and provides, the same service as proposed by the applicant in the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled service, in which the service is proposed;

(ii) Has made a reasonable effort to expand and improve its service to consumers within the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled service, in which the service is proposed;

(iii) Provides the service in a manner that is convenient, safe, timely, direct, frequent, expeditious, courteous and respectful, meets the advertised or posted schedules, fulfills commitments made to customers, meets consumer preferences or needs for travel, is responsive to consumer requests by reviewing the company's tariff and certificate in response to requests and when reasonable, proposing changes to the commission, and meets other reasonable performance expectations of consumers;

(iv) Has provided the same service as proposed by the applicant in the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled service, in which the service is proposed, that is competitive with those proposed by the applicant.

(b) Whether an objecting company will provide service to the satisfaction of the commission is based on the objecting company's performance regarding the criteria in (a) of this subsection prior to the date an application for proposed service is filed with the commission. The consideration period will depend on the circumstances, but will generally be for no more than one year. The commission will take into consideration extraordinary events, such as severe weather or unforeseeable disasters, when weighing the performance of

an objecting company and consumer response to that performance. The commission will also take into consideration whether the testimony shows a pattern of behavior and whether the company has policies and procedures in place to mitigate or resolve alleged or actual service issues.

(c) In considering whether the objecting company has provided service to the satisfaction of the commission, the commission will consider statements or testimony from members of the public that they choose not to use the objecting company's services because the company fails to meet any of the satisfaction criteria identified in (a) of this subsection to the witness' satisfaction, unless the service failure was caused by extraordinary events as determined by the commission. Objecting companies may present witnesses to counter claims of an applicant and to substantiate the level of service and customer satisfaction provided.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-156 Certificates, temporary, auto transportation company.** (1) **Temporary certificates prohibited.** The commission is prohibited from granting a temporary certificate to operate in territory that is:

(a) Contained in an existing certificate, unless the existing certificate holder is not providing service to the satisfaction of the commission or does not object to the temporary certificate.

(b) Contained in a pending certificate application unless the temporary certificate application filing is made by the applicant or the applicant does not object to the temporary certificate.

(2) **Requirements.** Temporary certificate applications must meet the (~~general filing~~) requirements of WAC 480-30-096.

(3) **Public interest.** The commission may grant a temporary certificate after determining that granting the requested authority is consistent with the public interest. In determining if the requested temporary authority is consistent with the public interest, the commission (~~will~~) may consider factors including, but not limited to:

(a) The fitness of the applicant.

(b) The need for the requested service.

(c) Availability of existing service.

(d) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.

(4) **Support statements required.** Applicants for temporary certificates must include signed (~~and sworn~~) support statements from (~~one or more~~) potential customers identifying all pertinent facts relating to need for the proposed service.

(5) **Investigation of applications.** Commission staff will investigate the facts surrounding an application and need for the proposed service before making a recommendation that the commission grant or deny an application for temporary certificate. (~~The staff investigation will include notice of the temporary certificate application to those companies identified in subsection (1) of this section, and~~

allow twenty days for those companies to object to the temporary certificate application.))

(6) **Special terms, conditions, and limitations.** The commission may impose special terms, conditions, and limitations in connection with the grant of any temporary certificate.

(7) **Length of service allowed under temporary certificate.** The commission may grant a temporary certificate for up to one hundred eighty days based on an estimate regarding how long it will take to complete review of the permanent certificate application. If a company files an auto transportation company certificate application and a temporary certificate application within thirty days of each other or files an auto transportation company certificate application within thirty days of the order granting the temporary certificate, then the temporary certificate will continue until the commission grants, denies, or dismisses the parallel certificate application, or until the temporary certificate is otherwise canceled, whichever happens first.

(8) **Docketing.** The commission will publish on its application docket(=

(a)) a list of temporary certificate applications that the commission (~~considered and granted, including any terms and conditions attached to the grant of such authorities; and~~

(b) ~~A list of temporary certificate applications the commission considered and denied~~) has received.

(9) ~~((Protests))~~ **Objections.** An existing auto transportation company or applicant for certificate may file (~~a protest~~) an objection opposing the grant or denial of a temporary certificate.

(10) **Form of ~~((protests))~~ objections.** ~~((Protests))~~ Objections must:

(a) Be filed with the commission in writing within ~~((ten))~~ twenty days after the date the commission mails its notice;

(b) Contain a statement of the specific grounds on which the ~~((protest))~~ objection is made;

(c) Contain a statement of the ~~((protestant's))~~ objecting company's interest in the proceeding;

(d) Be served on the applicant; and

(e) Be served on the applicant's representative, if one is stated in the notice.

~~((11) Disposition of protests. The commission may grant or deny a protest without hearing.~~

~~(12) Brief adjudicative proceedings. The commission may order a brief adjudicative proceeding on its own motion or at the request of a party.~~

~~(13) Intervention. Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to chapter 480-07 WAC for information on intervention.)~~

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-261 Tariffs and time schedules, definitions used in.** Definitions of general terms and terms specific to driver and equipment safety are contained in WAC 480-30-036 and 480-30-216, respectively. Unless the

language or context indicates that a different meaning is intended, the following definitions apply:

**"Charge"** means a fare or rate assessed by an auto transportation company for providing a service other than the transportation of a passenger(s). For example: The charge for carrying extra baggage on board the bus.

**"Checked baggage"** means passenger baggage that is accepted for transportation but is not carried in the passenger compartment of the vehicle.

~~((**"Fare" or "ticket price"** means a rate assessed by an auto transportation company for the transportation of a passenger(s).))~~

**"Fare"** means an amount in the company's tariff assessed for services provided by an auto transportation company. The term "rate" has the same meaning.

**"Joint fare"** means a fare or rate (~~(charged)~~) assessed by an auto transportation company for the transportation of a passenger(s) that applies from a point located on one auto transportation company's route to a point located on another auto transportation company's route, made by agreement or arrangement between the companies. A joint fare agreement is also known as a through-ticketing agreement.

**"Local fare"** means a fare or rate charged by an auto transportation company for the transportation of a passenger(s) between stations within a single company's authority.

**"Long and short haul clause"** means a clause that prohibits an auto transportation company from charging more for a shorter than for a longer haul over the same route.

**"Rate"** means an amount in a company's tariff ~~((approved by the commission or allowed to become effective by operation of law,))~~ assessed for services provided by an auto transportation company. ~~((For example: Passenger fares, ticket prices, additional baggage charges))~~ The term "fare" has the same meaning.

**"Sales commission"** means a fee paid to an agent for selling tickets on behalf of an auto transportation company.

**"Seasonal fares and seasonal time schedules"** means ~~((filing of))~~ tariffs or time schedules naming different fares, routes, or arrival and/or departure times for different periods of the year. For example: A company may offer more scheduled routes during certain periods than it does in others; or, a company may assess different fares in heavily traveled months than it does during off-peak months.

**"Through fare"** means a single fare or rate applying from point of origin to point of destination that combines two or more fares or rates in one auto transportation company's tariff or fares or rates from two or more auto transportation companies.

**"Ticket price"** means a fare or rate assessed by an auto transportation company for the transportation of a passenger(s).

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-276 Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules.** (1) **Tariffs.** Except as authorized by the commission pursuant to WAC 480-30-420, no auto

transportation company may assess rates that are higher, lower, or different from those contained in the company's filed tariff. Further, no auto transportation company may accept a payment for service provided that is higher, lower, or different from the rates contained in the company's filed tariff.

(2) **Time schedules.** An auto transportation company must provide service along all routes, and to all points, listed on the company's filed time schedule. Further, an auto transportation company must make a good faith effort to operate in compliance with the times of arrival and/or departure shown on the company's filed time schedule.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

**WAC 480-30-286 Tariffs and time schedules, posting.** An auto transportation company must maintain a copy of its filed tariff and its filed time schedule in the company's offices and at each passenger facility. Each vehicle operated must carry a copy of the schedule and fares for each route served by that vehicle. The company must make these documents available to customers for inspection on request during the company's regular business hours. Vehicles operated by an auto transportation company operating subject to flexible fares under WAC 480-30-420 must carry a copy of the flexible fare tariff and current time schedule, subject to the requirements of WAC 480-30-420(7).

NEW SECTION

**WAC 480-30-420 Fare flexibility.** (1) It is in the public interest to provide flexibility to auto transportation companies to charge fares for service.

(2) For the purposes of this section, the following definitions apply:

(a) "Base fare" means the fares set forth in the company's tariff, except for tariff supplements, in effect on the date the company files a proposed tariff for flexible fares as a means to establish maximum fares.

(b) "Flexible fares" means the authority to charge, at the company's discretion, fares in any amount at or below the maximum fares.

(c) "Maximum fare" means a fare set initially at twenty-five percent above the company's base fare, as published in the company's effective tariff, except for tariff supplements. After a maximum fare has been published and become effective, the maximum fare will increase annually by five percent.

(3) A company may file a tariff with the commission to charge flexible fares. Because the filing authorizes the company to increase or decrease any fare at any time, singly or in any combination, the tariff must be filed on thirty days' notice to the commission under RCW 81.28.050. The tariff must show the base fares in effect on the date of the tariff filing and the maximum fares the company may charge. Once the commission approves a flexible fare tariff, the base fare used to establish the maximum fare does not operate as a minimum fare.

(4) A company's tariff filing to charge flexible fares under this section is not subject to a review under WAC 480-30-421 or 480-30-426.

(5) If a company seeks to charge fares above the maximum fare, the company must file tariff revisions in compliance with WAC 480-30-421 or 480-30-426 and all other filing requirements, including tariff publication rules and notice requirements.

(6) If a company seeks to offer free fares, the company must file tariff revisions, if not already contained in the tariff, in compliance with WAC 480-30-396 and all other filing requirements, including tariff publication rules and notice requirements.

(7) Any change in the fares charged by a company at or below the maximum fares is not considered a tariff change and is not subject to tariff filing rules, publication rules and notice requirements under this chapter. Companies may provide notice of changes in fares that the company will charge by posting their actual fares on the company's web site, or notices or brochures provided to customers, subject to the requirements in subsections (8) and (14) of this section.

(8) If a company changes the fare it charges, at or below the maximum rate, it must honor the fares charged for tickets previously sold. However, the company may refund the amount paid for a ticket above the new fare.

(9) A tariff filing whose only purpose is to add a new service option or a service level which has not been previously included in the company's tariff must be filed on at least one business-day notice to the commission in compliance with WAC 480-30-301.

(10) A tariff filing that changes the fare design that results in an increase in the effective base fare must be filed on at least thirty calendar days' notice to the commission as required by WAC 480-30-311 and must comply with filing requirements in WAC 480-30-421 or 480-30-426, as well as tariff filing, publication and notice requirements under this chapter. A company may request an exemption from the tariff filing, publication or notice requirements. An example of a change in the fare design would be current fares published by zip code and proposed fares published by mileage.

(11) A company authorized to charge flexible fares must use the fares to recover all costs associated with providing passenger service, including, but not limited to, fuel costs, tolls, ferry fares, surcharges, and taxes. Any fuel surcharge in effect at the time the company is authorized to charge flexible fares will be canceled and not included in the base fare. A company may not impose any charge on any customer other than a single fare for passenger service provided. This would not affect the company assessing charges for accessorial services (e.g., baggage, cancellation fees, or refund transaction fees) published in the company's tariff at the time the commission approves a flexible fares tariff.

(12) Effective May 1, 2014, and each May 1st thereafter, a company's maximum fare will increase by five percent. Each company will implement the adjusted flexible fare by filing the appropriate tariff pages at least thirty days before the effective date of the change.

(13) If a company seeks to change the base fare upon which the commission has approved flexible fares, the proposed tariff filing will be subject to an earnings review or



rate case under WAC 480-30-421 or 480-30-426, and all tariff publication rules and notice requirements.

(14) In providing notice to consumers or in its advertising, the company may not state that the commission approved or established a specific fare, but may state that the fare is set pursuant to a flexible fare tariff.

(15) An example of the maximum fare calculation follows:

Year	Base Fare	Maximum Fare	Explanation
0	\$41.00	\$41.00	
1	\$41.00	\$51.25	25% above Base Fare
2	\$41.00	\$53.81	5% increase in Maximum Fare
3	\$41.00	\$56.50	5% increase in Maximum Fare
4	\$41.00	\$59.33	5% increase in Maximum Fare
5	\$41.00	\$62.29	5% increase in Maximum Fare
6	\$41.00	\$65.41	5% increase in Maximum Fare

Note: Rounding: Fares are rounded to \$.01.  
 If the value of the number to the right of the rounding digit is less than five, the rounding digit is left unchanged.  
 If the value of the number to the right of the rounding digit is five or higher, the rounding digit is raised by one.

**WSR 13-18-005**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed August 22, 2013, 8:32 a.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: The department is amending the following rules to remove medical language references: WAC 388-404-0005, 388-406-0010, 388-406-0040, 388-406-0060, 388-406-0065, 388-418-0007, 388-418-0020, 388-422-0005, 388-422-0010, 388-422-0020, 388-422-0030, 388-424-0006, 388-424-0009, 388-434-0005, 388-458-0011, 388-458-0016, 388-458-0025, 388-458-0030, 388-470-0005, 388-470-0012, 388-470-0045, 388-470-0060, 388-470-0070, 388-476-0005, 388-478-0005, 388-488-0005, 388-489-0020, 388-490-0005, and 388-492-0110. The department is repealing WAC 388-416-0010. These changes are necessary as the health care authority (HCA) is amending, repealing or creating medical assistance programs rules under Title 182 WAC to implement new regulations. The changes comply with 2E2SHB 1738, chapter 15, Laws of 2011, which designated HCA as

the single state agency responsible for administration and supervision of Washington's medicaid programs.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-416-0010; and amending WAC 388-404-0005, 388-406-0010, 388-406-0040, 388-406-0060, 388-406-0065, 388-418-0007, 388-418-0020, 388-422-0005, 388-422-0010, 388-422-0020, 388-422-0030, 388-424-0006, 388-424-0009, 388-434-0005, 388-458-0011, 388-458-0016, 388-458-0025, 388-458-0030, 388-470-0005, 388-470-0012, 388-470-0045, 388-470-0060, 388-470-0070, 388-476-0005, 388-478-0005, 388-488-0005, 388-489-0020, 388-490-0005, and 388-492-0110.

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

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011.

Adopted under notice filed as WSR 13-11-025 on May 8, 2013.

Changes Other than Editing from Proposed to Adopted Version: 1. Language removed in the proposed rule in WAC 388-424-0008 Citizenship and alien status—Work quarters, was added back into the rule during the permanent filing. The change was made because federal medical programs are considered federal means-testing benefits, and should be considered when determining Social Security work quarters. The permanent rule keeps the language in WAC 388-424-0008 as currently written.

2. Language was amended in WAC 388-422-0005 What happens to my child, spousal and medical support when I get public assistance?, to clarify what services a family will receive when they agree to cooperate with the division of child support (DCS) in providing IV-D services. Changes include (1) retaining the definition of "medical support" in subsection (1)(e); (2) adding the word "cash" to subsection (2) to clarify the type of support; (3) creating a new subsection (3) to state the following, "When you receive TANF or SFA cash benefits, DCS will open up a full support enforcement services case for you. "Full support enforcement services" is defined in WAC 388-14A-1020; (4) adding the word "cash" to subsection (4) to clarify the type of support.

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 29, Repealed 1.

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 29, Repealed 1.

Date Adopted: August 14, 2013.

Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-121, filed 1/22/01, effective 3/1/01)

**WAC 388-404-0005 How does a child's age and attendance in school affect their eligibility for TANF and SFA?** (1) To be eligible for temporary assistance for needy families (TANF) or state family assistance (SFA), a child must be:

- (a) Under age eighteen; or
- (b) Under age nineteen, and participating full-time in a secondary school program or the same level of vocational or technical training.
  - (i) "Participating" means the educational or training institution finds that the child:
    - (A) Meets the school's attendance requirements; and
    - (B) Is making acceptable progress in finishing the program.
  - (ii) The educational or training institution sets the definition of "full-time" attendance and the number of classes a child must take.
  - (iii) A secondary education includes high school, a GED program, and state-approved home schools.
- (2) If a child age eighteen or older has already met the requirements to finish the educational program, the child is no longer eligible for TANF or SFA.

(3) If the child does not qualify for assistance under subsection (1) of this section, they may qualify for SFA if the child is under age twenty-one and:

- (a) Gets an education due to their disability as stated in RCW 28A.155.020; or
- (b) Participates full-time in a secondary education program or an equal level of vocational training as defined in (1)(b) above.

~~((4) If a child that gets SFA is age nineteen or over, they are not eligible for family medical or SFA-related medical.))~~

AMENDATORY SECTION (Amending WSR 11-13-030, filed 6/7/11, effective 7/8/11)

**WAC 388-406-0010 How do I apply for cash assistance or Basic Food benefits?** (1) You can apply for cash assistance(~~(- medical assistance-))~~) or Basic Food by giving us an application form in person, by mail, by fax, or by completing an online application.

(2) If your entire assistance unit (AU) gets or is applying for supplemental security income (SSI), your AU can file an application for Basic Food at the local Social Security administration district office (SSADO).

(3) If you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason, a legal guardian, caretaker, or authorized representative can apply for you.

(4) You can apply for cash assistance(~~(- medical assistance-))~~) or Basic Food with just one application form.

(5) If you apply for benefits at a local office, we accept your application on the same day you come in. If you apply at an office that does not serve the area where you live, we send your application to the appropriate office by the next business day so that office receives your application on the same day we send it.

(6) We accept your application for benefits if it has at least:

(a) For cash (~~(and medical))~~) assistance (~~(combined))~~), the name, address, and signatures of the responsible adult AU members or person applying for you. A minor child may sign if there is no adult in the AU. Signatures must be handwritten, electronic or digital as defined by the department, or a mark if witnessed by another person.

~~(b) ((For medical assistance only, the name, address, and signature of the applicant. If the application is for a child, it may be signed by an adult caretaker in the absence of a parent, or by the child in the absence of a parent or adult caretaker.~~

~~(e))~~) For Basic Food, the name, address, and signature of a responsible member of your AU or person applying for you as an authorized representative under WAC 388-460-0005.

(7) As a part of the application process, we may require you to:

(a) Complete an interview if one is required under WAC 388-452-0005;

(b) Meet WorkFirst participation requirements for four weeks in a row if required under WAC 388-310-1600(12);

(c) Give us the information we need to decide if you are eligible as required under WAC 388-406-0030; and

(d) Give us proof of information as required under WAC 388-490-0005 so we can determine if you are eligible.

(8) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 11-02-036, filed 12/29/10, effective 2/1/11)

**WAC 388-406-0040 What happens if the processing of my application is delayed?** (1) We process your application for benefits as soon as possible. We do not intentionally delay processing your application for benefits for any reason. If we have enough information to decide eligibility for(~~(=~~

~~(a))~~) Basic Food, we promptly process your request for benefits even if we need more information to determine eligibility for cash (~~(or medical;~~

~~(b) Medical assistance, we promptly process your request for medical even if we need more information to determine eligibility for cash or Basic Food)).~~

(2) If you have completed your required interview under WAC 388-452-0005 and we have enough information to determine eligibility, then we promptly process your application even if it is after thirty days from the date of your application.

(3) If additional information is needed to determine eligibility, we give you:

(a) A written request for the additional information; and

(b) An additional thirty days to provide the information.

(4) If you fail to keep or reschedule your interview in the first thirty calendar days after filing your application, your application will be denied on the thirtieth day, or the first business day after the thirtieth day. If you are still interested in Basic Food benefits, you will need to reapply. Benefits will be based on your second application date.

(5) If we have not processed your application for Basic Food by the sixtieth day and:

(a) You are responsible for the delay, we deny your request for benefits.

(b) If we are responsible for the delay, we:

(i) Promptly process your request if we have the information needed to determine eligibility; or

(ii) Deny your request if we don't have enough information to determine eligibility. If we deny your request, we notify you of your right to file a new application and that you may be entitled to benefits lost.

(6) If you reapply for Basic Food by the sixtieth day of your first application, met your interview requirements under WAC 388-452-0005, and are eligible, we start your benefits from:

(a) The date of your first application, if we caused the delay in the first thirty days; or

(b) The date we have enough information to make an eligibility decision, if you caused the delay in the first thirty days.

**AMENDATORY SECTION** (Amending WSR 11-16-028, filed 7/27/11, effective 8/27/11)

**WAC 388-406-0060 What happens when my application is denied?** (1) We (the department) deny your application for cash(~~(, medical)~~) or Basic Food benefits if:

(a) You do not show for your interview appointment for cash or Basic Food if required under WAC 388-452-0005, you have not rescheduled, and your application is over thirty days old; or

(b) We do not have the information we need to determine your eligibility within ten days of requesting the information from your assistance unit (AU) under WAC 388-490-0005, and you did not ask for additional time to give us the information; or

(c) Your entire AU does not meet certain eligibility criteria to get benefits; or

(d) For Basic Food, your application has not been processed by the sixtieth day because of a delay on your part.

(2) If we deny your application, you do not get benefits unless:

(a) You mistakenly apply for benefits you already get; or

(b) We reconsider your eligibility under WAC 388-406-0065 and you are eligible to get benefits.

(3) We can reconsider if you are eligible for benefits under the requirements of WAC 388-406-0065 even after your application is denied.

(4) We give or send a letter to you explaining why your application was denied as required under WAC 388-458-0011.

(5) If you disagree with our decision about your application, you can ask for a fair hearing. If we deny your application because we do not have enough information to decide that you are eligible, the hearing issue is whether you are eligible using:

(a) Information we already have; and

(b) Any more information you can give us.

**AMENDATORY SECTION** (Amending WSR 08-15-011, filed 7/3/08, effective 8/3/08)

**WAC 388-406-0065 Can I still get benefits even after my application is denied?** (1) If we (the department) deny your application for benefits, we can redetermine your eligibility for benefits without a new application if:

(a) For cash (~~(or medical assistance)~~), you give us the information we need within thirty days from the date we denied your application;

(b) You stop participating as required to reopen cash assistance under WAC 388-310-1600(12) due to one of the good reasons described in WAC 388-310-1600(3) or because you get an excused absence, as described in WAC 388-310-0500(5);

(c) For Basic Food, you give us the information we need within sixty days of the date you applied for benefits.

~~(2) ((For medical assistance, if the thirty days to reconsider your application under subsection (1) of this section has ended you can still get benefits without a new application if:~~

~~(a) You request a fair hearing timely; and~~

~~(b) You give us the information needed to determine eligibility and you are eligible.~~

~~(3))~~ If you are eligible for cash or Basic Food, we decide the date your benefits start according to WAC 388-406-0055. ~~((If you are eligible for medical assistance, we decide the date your benefits start according to chapter 388-416 WAC.))~~ For all programs the eligibility date is based on the date of your original application that was denied.

**AMENDATORY SECTION** (Amending WSR 08-14-105, filed 6/30/08, effective 8/1/08)

**WAC 388-418-0007 When do I have to report changes in my circumstances?** (1) If your household has a change of circumstances you are **not required to report** under WAC 388-418-0005, then you do not need to contact us about this change. If you tell us about this change, we take action based on the new information. This includes:

(a) Asking for more information we need to determine your eligibility and benefits under WAC 388-490-0005;

(b) Increasing your benefits when we have proof of a change that makes you eligible for more benefits; or

(c) Reducing or stopping your benefits based on the change.

(2) If you **are applying for** benefits and have had a change:

(a) After the date you applied but before your interview, you must report the change during your interview; or

(b) After you have been interviewed, you must report changes that we require someone who receives benefits to report as described under WAC 388-418-0005. You must report this change by the tenth day of the month following the month the change happened.

(3) If you **receive** cash assistance(~~(, medical)~~) or Basic Food, you must report changes required under WAC 388-418-0005 by the tenth day of the month following the month the change happened.

(4) For a change in income, the date a change happened is the date you receive income based on this change. For

example, the date of your first paycheck for a new job, or the date of a paycheck showing a change in your wage or salary.

(5) If we require you to complete a mid-certification review, you must complete the review to inform us of your circumstances as described under WAC 388-418-0011 in order to keep receiving benefits.

(6) If you receive TANF/SFA, and you learn that a child in your assistance unit (AU) will be gone from your home longer than one hundred eighty days, you must tell us about this within five calendar days from the date you learn this information.

(a) If you do not report this within five days, the child's caretaker is not eligible for cash benefits for one month; and

(b) We continue to budget the ineligible person's countable income as described in WAC 388-450-0162 to determine the benefits for the people still in the AU.

(7) If you report changes late, you may receive the wrong amount or wrong type of benefits. If you receive more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

AMENDATORY SECTION (Amending WSR 06-13-043, filed 6/15/06, effective 7/17/06)

**WAC 388-418-0020 How does the department determine the date a change affects my cash and Basic Food benefits?** (1) Unless otherwise specified, the rules in this chapter refer to cash(~~(, medical assistance,)~~) and Basic Food benefits.

(2) If you report a change that happened between the date you applied for benefits and the date we interview you under WAC 388-452-0005, we take this change into consideration when we process your application for benefits.

(3) If we learn about a change in your circumstances from another person, agency, or by matching with any number of systems, we determine the impact this change has on your benefits. We may request additional information under WAC 388-490-0005 or update your benefits based on this information.

(4) For cash and Basic Food programs (~~(other than pregnancy medical and children's medical)~~), if you report a change in your income that we expect to continue at least a month beyond the month when you reported the change, we recalculate the income we estimated under WAC 388-450-0215 based on this change. (~~(Changes in income during a certification period do not affect pregnancy medical or children's medical assistance.)~~)

(5) When a change causes an increase in benefits, you must provide proof of the change before we adjust your benefits.

(a) If you give us the proof within ten days from the date we requested it, we increase your benefits starting the month after the month you reported the change.

(b) If you give us the proof more than ten days after the date we requested it, we increase your benefits starting the month after the month we got the proof.

(c) If you are eligible for more benefits and we have already sent you benefits for that month, we provide you the additional benefits within ten days of the day we got the proof.

(6) When a change causes a decrease in benefits, we reduce your benefit amount without asking for proof.

(a) If you report a change within the time limits in WAC 388-418-0007, and you are not reporting this as part of a mid-certification review, we decrease your benefits starting the first month following the advance notice period. The advance notice period:

(i) Begins on the day we send you a letter about the change, and

(ii) Is determined according to the rules in WAC 388-458-0025.

(b) If you do not report a change you must tell us about under WAC 388-418-0005, or you report a change later than we require under WAC 388-418-0007, we determine your eligibility as if you had reported this on time. If you received more benefits than you should, we set up an overpayment as described under chapter 388-410 WAC.

(7) If we are not sure how the change will affect your benefits, we send you a letter as described in WAC 388-458-0020 requesting information from you.

(a) We give you ten days to provide the information. If you need more time, you can ask for it.

(b) If you do not give us the information in time, we will stop your benefits after giving you advance notice, if required, as described in WAC 388-458-0030.

(8) Within ten days of the day we learn about a change, we send advance notice according to the rules in chapter 388-458 WAC and take necessary action to provide you the correct benefits. If you request a hearing about a proposed decrease in benefits before the effective date or within the notice period as described in WAC 388-458-0040, we wait to take action on the change.

(9) If you disagree with a decision we made to change your benefits, you may request a fair hearing under chapter 388-02 WAC. The fair hearing rules in chapter 388-02 WAC do not apply for a "mass change." A mass change is when we change the rules that impact all recipients and applicants.

(10) When you request a hearing and receive continued benefits:

(a) We keep giving you the same benefits you got before the advance notice of reduction until the earliest of the following events occur:

(i) For Basic Food only, your certification period expires;

(ii) The end of the month the fair hearing decision is mailed;

(iii) You state in writing that you do not want continued benefits;

(iv) You withdraw your fair hearing request in writing;

or

(v) You abandon your fair hearing request; or

(vi) An administrative law judge issues a written order that ends continued benefits prior to the fair hearing.

(b) We establish an overpayment claim according to the rules in chapter 388-410 WAC when the hearing decision agrees with the action we took.

(11) Some changes have a specific effective date as follows:

(a) When cash assistance benefits increase because a person is added to your assistance unit, we use the effective date rules for applications in WAC 388-406-0055.

(b) When cash assistance benefits increase because you start paying shelter costs, we use the date the change occurred.

(c) When a change in law or regulation changes the benefit amount, we use the date specified by the law or regulation.

~~((d) When institutional medical assistance participation changes, we calculate the new participation amount beginning with the month your income or allowable expense changes.))~~

AMENDATORY SECTION (Amending WSR 10-02-037, filed 12/30/09, effective 1/30/10)

**WAC 388-422-0005 What happens to my child(=spousal) and ((medical)) spousal support when I get public assistance?** (1) The following definitions apply to this chapter:

(a) **"We"** means the department of social and health services.

(b) **"You"** means a person applying for or getting benefits from us.

(c) **"Benefits"** means ~~((family medical and related alien emergency medical (AEM);))~~ TANF or SFA cash assistance.

(d) **"Support"** means the money paid to meet a support order whether it is called child support, spousal support, alimony, maintenance, or medical support.

(e) **"Medical support"** means either or both:

(i) The set dollar amount for health care costs in a support order; or

(ii) Health insurance coverage for a dependent child.

(f) **"Assistance unit"** or **"AU"** means the group of people who live together and whose income and resources we count to decide your eligibility for benefits and the amount of those benefits.

(2) When you apply for TANF or SFA cash benefits, you permanently assign to the state your current cash support for the months you get assistance. If you applied for TANF or SFA cash benefits before October 1, 2008, support for months before you begin receiving assistance (also called "arrear" under WAC 388-14A-2036) is temporarily assigned to the state. For more information about permanently and temporarily assigned support see:

(a) Permanently assigned arrears, WAC 388-14A-2037.

(b) Temporarily assigned arrears, WAC 388-14A-2038.

~~(3) ((You assign your rights to medical support under WAC 388-505-0540 when you apply for or get benefits from the following:~~

~~(a) Family medical; or~~

~~(b) Children's medical))~~ When you receive TANF or SFA cash benefits, DCS will open up a full support enforcement services case for you. "Full support enforcement services" is defined in WAC 388-14A-1020.

(4) You assign your rights to cash support when your application for benefits is approved by the department.

(5) If you have a good reason (WAC 388-422-0020) DCS may not be able to establish or collect child support (WAC 388-14A-2060).

(6) If you receive any support payments before you assign your rights to support, we count this as unearned income to your AU (WAC 388-450-0025).

(7) If you receive any direct support payments during the month you apply, you must report these payments and we may count them as unearned income in determining your eligibility for benefits.

(8) If you keep any support payments you receive after you assign your rights to support, DCS may collect this money from you (WAC 388-14A-5505).

AMENDATORY SECTION (Amending WSR 02-19-041, filed 9/11/02, effective 10/12/02)

**WAC 388-422-0010 Do I have to cooperate with the division of child support (DCS)?** (1) When you get benefits, you must cooperate with DCS as required to establish or collect child support, unless you have a good reason for not cooperating.

(2) DCS defines what cooperating with them to establish or collect child support means in WAC 388-14A-2040.

(3) If you are a two-parent household, you and the other parent must help DCS establish paternity for each child in your AU, if necessary.

(4) DCS determines whether you are cooperating with them. See WAC 388-14A-2041(1) for reasons why DCS might determine that you are not cooperating.

(5) If you get TANF or SFA and do not have a good reason for not cooperating with DCS, we(~~(=~~

~~(a))~~ reduce your cash benefits by twenty-five percent(~~(=~~

~~and~~ ~~(b) Stop your medical benefits unless you are pregnant. The children in your AU will continue to get medical.~~

~~(6) If you get family medical and do not have a good reason for not cooperating with DCS, your medical will stop unless you are pregnant. The children in your AU will continue to get medical.))~~

~~((7))~~ (6) If you are afraid that cooperating with DCS may be dangerous for you or a child in your care, see WAC 388-14A-2045 for a definition of what a good reason to not cooperate with DCS is. We also call this "good cause."

AMENDATORY SECTION (Amending WSR 02-19-041, filed 9/11/02, effective 10/12/02)

**WAC 388-422-0020 What if you are afraid that cooperating with the division of child support (DCS) may be dangerous for you or the child in your care?** (1) You can be excused from cooperating with DCS when you have a good reason. A good reason not to cooperate is also called good cause. You have a good reason when you can prove that:

(a) Cooperating with DCS would result in serious physical or emotional harm to you or the child in your care.

(b) Establishing paternity or getting support would be harmful to the child who:

(i) Was conceived as a result of incest or rape; or

(ii) Is the subject of legal adoption proceedings pending before a superior court; or

(iii) Is the subject of ongoing discussions between you and a public or licensed child placement agency to decide whether you will keep the child or put the child up for adoption. The discussions cannot have gone on for more than three months.

(2) Once you claim good cause for TANF/SFA, you have twenty days to give us the information that proves you have good cause not to cooperate with DCS. This information can include official records, sworn statements, or other information that supports your good cause claim. If you need to, you may ask for:

- (a) More time to give proof; or
- (b) Help in getting proof.

(3) While we review your good cause claim, DCS does not take any action to establish or enforce support on your case.

(4) You have the right to:

(a) Be told of your right to claim good cause for not cooperating with DCS;

(b) Get benefits while we are deciding your good cause claim, as long as you have given the proof needed to make a decision;

(c) Get a decision within thirty days from the date you made your good cause claim, as long as you have given the proof needed to make a decision within twenty days; and

(d) Get information about how to request a fair hearing if we deny your good cause claim.

(5) If we approve your good cause claim, we periodically review the claim depending on your circumstances.

(6) To see what DCS does when good cause is approved see WAC 388-14A-2060.

AMENDATORY SECTION (Amending WSR 02-19-041, filed 9/11/02, effective 10/12/02)

**WAC 388-422-0030 What happens if my support is more than my TANF or SFA cash benefit?** (1) If DCS collects current support that is more than your TANF or SFA cash benefit for two months in a row, your cash benefit stops at the end of the third month.

(2) ~~((You can read WAC 388-418-0025 for information on continued medical benefits.~~

~~((3)))~~ You may be able to get continued food assistance benefits.

~~((4)))~~ (3) You can read WAC 388-310-0800 to see what kinds of support services you may be able to get.

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

**WAC 388-424-0006 Citizenship and alien status—Date of entry.** (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on receiving TANF ~~((and nonemergency medicaid for nonpregnant adults)).~~

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, or

who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar for TANF ~~((and nonemergency medicaid for nonpregnant adults,))~~ unless exempt. The five-year bar starts on the date that "qualified" status is obtained. ~~((The medicaid and CHIP programs do not have a five-year bar for children under nineteen, children under twenty-one years of age who are residing in a medical institution as described in WAC 388-505-0230, or pregnant women.))~~

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Cuban/Haitian entrants;
- (d) Persons granted withholding of deportation or removal;
- (e) Refugees;
- (f) Special immigrants from Iraq and Afghanistan;
- (g) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR); and

(h) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

**WAC 388-424-0009 Citizenship and alien status—Social Security number (SSN) requirements.** (1) Any person who has applied for a Social Security number (SSN) as part of their application for benefits cannot have benefits delayed, denied, or terminated pending the issuance of the SSN by the Social Security Administration (SSA).

(2) The following immigrants are not required to apply for an SSN:

(a) An alien, regardless of immigration status, who is applying for a program listed in WAC ~~((388-476-0005(7)))~~ 388-476-0005(6);

(b) A nonqualified alien ~~((who is not applying for children or pregnancy related medical as listed in WAC 388-424-0010(4)))~~; and

(c) Members of a household who are not applying for benefits for themselves.

(3) "Qualified and nonqualified aliens," as defined in WAC 388-424-0001, who are applying for federal benefits but who are not authorized to work in the U.S., must still apply for a nonwork SSN. The department must assist them in this application without delay.

(4) Any person who is otherwise eligible for benefits may choose not to provide the department with an SSN without jeopardizing the eligibility of others in the household. See WAC 388-450-0140 for how the income of such individuals is treated.

AMENDATORY SECTION (Amending WSR 04-19-134, filed 9/21/04, effective 10/1/04)

**WAC 388-434-0005 How often does the department review my eligibility for benefits?** (1) If you receive cash assistance, the department reviews your eligibility for assistance at least once every twelve months.

(2) When it is time for your eligibility review, the department requires you to complete a review. We use the information you provide to determine your eligibility for all assistance programs.

(3) If you complete an interview for assistance with a department representative and sign the printed application for benefits (AFB) form, you do not have to complete a separate review form.

(4) For cash assistance, an eligibility review form or the AFB must be dated and signed by both husband and wife, or both parents of a child in common when the parents live together.

~~(5) ((For medical assistance, a signature is not required to complete your review.~~

~~((6))~~ We may review your eligibility at any time if we decide your circumstances need to be reviewed sooner.

~~((7))~~ (6) At your review, we look at:

(a) All eligibility requirements under WAC 388-400-0005 through ~~((388-400-0035, 388-503-0505 through 388-503-0515, and 388-505-0210 through 388-505-0220))~~ 388-400-0030;

(b) Changes since we last determined your eligibility; and

(c) Changes that are anticipated for the next review period.

~~((8) If you receive medical assistance, we set your certification period according to WAC 388-416-0010, 388-416-0015, 388-416-0020, and 388-416-0035.~~

~~(9) Clients~~) (7) You are responsible for attending an interview if one is required under WAC 388-452-0005.

~~((10))~~ (8) If you do not complete the eligibility review for cash assistance, we consider you to be withdrawing your request for continuing assistance(~~(=~~

~~(= and~~

~~(b) Your medical assistance will continue for twelve consecutive months from the month we received your most recent application or eligibility review)).~~

~~((11))~~ (9) We will send you written notice as described under chapter 388-458 WAC before assistance is suspended, terminated, or a benefit error is established as a result of your eligibility review.

~~((12) If you currently receive Categorically Needy (CN) medical assistance, and you are found to no longer be eligible for benefits, we will determine if you are eligible for other medical programs. Until we decide if you are eligible for another program, your (CN) medical assistance will continue under WAC 388-418-0025.~~

~~(13))~~ (10) When you need a supplemental accommodation under WAC 388-472-0010, we will help you meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 12-19-036, filed 9/12/12, effective 10/13/12)

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

(2) On this letter, we tell you:

(a) Why you cannot get benefits;

(b) The rules that support our decision;

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

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

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

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

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

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

(d) That we will review your eligibility if:

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

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

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

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

**WAC 388-458-0016 DSHS sends you an approval letter when you can get benefits.** (1) When we finish processing your application, we send you an approval letter if you can get benefits.

(2) On this letter, we tell you:

(a) What kind of benefits you get;

(b) If you applied for cash or food assistance, the amount of benefits you get;

(c) ~~((If you applied for medical, what type of medical;~~

~~((=))~~ How long you will get the benefits; and

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

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

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

**WAC 388-458-0025 We send you a change letter if the amount of benefits you are getting is changing.** (1) We send you a change letter if the amount of benefits you are getting is changing.

(2) On the letter, we tell you:

(a) What your benefits are changing to;

(b) When the change is going to happen;

(c) The reason for the change;

(d) The rules that support our decision; and

(e) Your right to have your case reviewed or ask for a fair hearing.

(3) We send the letter to you before the change happens. If your benefits are going down, we give you at least ten days notice unless:

- (a) You ask us to reduce your benefits;
- (b) We have to change benefits for a lot of people at once because of a law change;
- (c) For cash and food assistance:
  - (i) We told you on your approval letter that your benefits might change every month because you have fluctuating income; or
  - (ii) We already told you that the supplement would end.
- (d) For cash assistance, we told you that the AREN payment described in WAC 388-436-0002 was for one month only.

(4) The ten-day count starts on the day we mail or give you the letter and ends on the tenth day.

(5) If we don't have to give you ten days notice, we send the letter to you:

- (a) For cash (~~(and medical)~~) assistance, by the date of the action.
- (b) For food assistance, by the date you normally get your benefits.

AMENDATORY SECTION (Amending WSR 02-14-086, filed 6/28/02, effective 7/1/02)

**WAC 388-458-0030 We send you a termination letter when your benefits stop.** (1) We send you a termination letter when your benefits stop.

- (2) On the letter, we tell you:
  - (a) When your benefits are going to end;
  - (b) The reason they are ending;
  - (c) The rules that support our decision; and
  - (d) Your right to have your case reviewed or ask for a fair hearing.

(3) We tell you at least ten days before your benefits end unless:

- (a) You asked us to stop your benefits;
- (b) We have proof that everyone in your assistance unit has moved to another state or will move to another state before the next benefits are issued;
- (c) We have proof that everyone in your assistance unit has died;
- (d) We have to change benefits for a lot of people at once because of a law change;
- (e) We got returned mail from the post office that says you have moved and we do not have a forwarding address; or
- (f) For food assistance, your certification period is ending.

(4) The ten-day count starts on the day we mail or give you the letter and ends on the tenth day.

(5) If we don't have to give you ten days notice, we send the letter to you:

- (a) For cash (~~(and medical)~~) assistance, by the date of the action.
- (b) For food assistance, by the date you normally get your benefits.

AMENDATORY SECTION (Amending WSR 03-05-015 [11-24-028], filed 12/1/11, effective 1/1/12)

**WAC 388-470-0005 How do resources affect my eligibility for cash assistance(~~(, medical assistance,)) and Basic Food?~~** (1) The following definitions apply to this chapter:

- (a) "**We**" means the department of social and health services.
- (b) "**You**" means a person applying for or getting benefits from the department.
- (c) "**Fair market value (FMV)**" means the price at which you could reasonably sell the resource.
- (d) "**Equity value**" means the FMV minus any amount you owe on the resource.
- (e) "**Community property**" means a resource in the name of the husband, wife, or both.

(f) "**Separate property**" means a resource of a married person that one of the spouses:

- (i) Had possession of and paid for before they were married;
- (ii) Acquired and paid for entirely out of income from separate property; or
- (iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance(~~(, family medical programs,))~~) or Basic Food when:

- (a) It is a resource we must count under WAC 388-470-0045 and 388-470-0055;
- (b) You own the resource. We consider you to own a resource if:
  - (i) Your name is on the title to the property; or
  - (ii) You have property that doesn't have a title; and
  - (c) You have control over the resource, which means the resource is actually available to you; and
  - (d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance (~~(and family medical programs,))~~, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

- (a) There is a legal barrier; or
- (b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

- (a) The date of your interview, if you are required to have an interview; or
- (b) The date of your application, if you are not required to have an interview(~~(, or~~

~~(e) The first day of the month of application, for medical assistance)).~~

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance (~~(and applicants for family medical programs,))~~, we use the equity value as the value of your resources.

- (a) Applicants can have countable resources up to one thousand dollars.
- (b) Recipients of cash assistance can have an additional three thousand dollars in a savings account.



~~(7) ((Recipients of family medical programs do not have a resource limit.~~

~~(8) We do not count your resources for children's medical or pregnancy medical benefits.~~

~~(9) For SSI-related medical assistance, see chapter 388-475 WAC.~~

~~(10) For clients receiving institutional or waived services, see chapters 388-513 and 388-515 WAC.~~

~~(11) If your household consists of more than one medical assistance unit (MAU), as described in WAC 388-408-0055, we look at the resources for each MAU separately.~~

~~(12))~~ (12)) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

~~((13))~~ (8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for Basic Food:

(a) Three thousand two hundred fifty dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand dollars for all other AUs.

~~((14))~~ (9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For ~~((medical assistance and))~~ Basic Food, we count the entire amount unless you can prove that the entire amount is not available to you.

~~((15))~~ (10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

~~((16))~~ (11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

~~((17))~~ (12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; or

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

~~((18))~~ (13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of the resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**AMENDATORY SECTION** (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

**WAC 388-470-0012 Does the department look at the resources of people who are not getting benefits?** Yes we

do. We count the resources of certain people who live in your home, even if they are not getting assistance. Their resources count as part of your resources.

(1) For cash assistance, we count the resources of ineligible, disqualified, or financially responsible people as defined in WAC 388-450-0100.

(2) For Basic Food, we count the resources of ineligible assistance unit (AU) members as defined in WAC 388-408-0035.

~~(3) ((For family and SSI-related medical assistance, we count the resources of financially responsible people as defined in WAC 388-408-0055.~~

~~(4) For long term care services, we count the resources of financially responsible people as defined in WAC 388-506-0620.~~

~~(5))~~ For cash assistance~~((, medical assistance,))~~ and Basic Food, we also count the resources of an immigrant's sponsor as described in WAC 388-470-0060.

**AMENDATORY SECTION** (Amending WSR 11-21-025, filed 10/11/11, effective 10/29/11)

**WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance ~~((and family medical programs))~~?** (1) We count the following resources toward your assistance unit's resource limits for cash assistance ~~((and family medical programs))~~ to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits, less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts;

(vii) Lump sum payments as described in chapter 388-455 WAC; or

(viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

- (i) A household good;
- (ii) Needed for self-employment; or
- (iii) Of "great sentimental value," due to personal attachment or hobby interest.
- (i) Resources of a sponsor as described in WAC 388-470-0060.
- (j) For cash assistance only, sales contracts.
- (2) The following types of liquid resources do not count when we determine your eligibility:
  - (a) Bona fide loans, including student loans;
  - (b) Basic Food benefits;
  - (c) Income tax refunds for twelve months from the date of receipt;
  - (d) Earned income tax credit (EITC) in the month received and for up to twelve months;
  - (e) Advance earned income tax credit payments;
  - (f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
  - (g) Individual development accounts (IDAs) established under RCW 74.08A.220;
  - (h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;
  - (i) Underpayments received under chapter 388-410 WAC;
  - (j) Educational benefits that are excluded as income under WAC 388-450-0035;
  - (k) The income and resources of an SSI recipient;
  - (l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;
  - (m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;
  - (n) Adoption support payments;
  - (o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and
  - (p) Resources specifically excluded by federal law(~~and~~
  - ~~(q) For medical benefits, receipts from exercising federally protected rights or extracted exempt resources (fishing, shell fishing, timber sales, etc.) during the month of receipt for a member of a federally recognized tribe).~~
- (3) The following types of real property do not count when we determine your eligibility:
  - (a) Your home and the surrounding property that you, your spouse, or your dependents live in;
  - (b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:
    - (i) Employment;
    - (ii) Training for future employment;
    - (iii) Illness; or
    - (iv) Natural disaster or casualty.
  - (c) Property that:
    - (i) You are making a good faith effort to sell;
    - (ii) You intend to build a home on, if you do not already own a home;
    - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or
    - (iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for

one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

AMENDATORY SECTION (Amending WSR 01-21-026, filed 10/9/01, effective 11/1/01)

**WAC 388-470-0060 How does the department decide how much of my sponsor's resources affect my eligibility for cash(~~and medical~~) and food assistance benefits?** (1) If you are a sponsored immigrant as defined in WAC 388-450-0155, and you are not exempt from deeming under WAC 388-450-0156, we count part of your sponsor's resources as available to you.

(2) We decide the amount of your sponsor's resources to count by:

(a) Totaling the countable resources of the sponsor and the sponsor's spouse (if the spouse signed the affidavit of support) under chapter 388-470 WAC;

(b) Subtracting fifteen hundred dollars; and

(c) Counting the remaining amount as a resource that is available to you.

(3) If you can show that your sponsor has sponsored other people as well, we divide the result by the total number of people who they sponsored.

(4) We continue to count your sponsor's resources when we determine your eligibility for benefits until you are exempt from deeming under WAC 388-450-0156.

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-470-0070 How vehicles are counted toward the resource limit for cash assistance (~~and family medical programs~~).** (1) A vehicle is any device for carrying persons and objects by land, water, or air.

(2) The entire value of a licensed vehicle needed to transport a physically disabled assistance unit member is excluded.

(3) The equity value of one vehicle up to five thousand dollars is excluded when the vehicle is used by the assistance unit or household as a means of transportation. ~~((Each separate medical assistance unit is allowed this exclusion.))~~

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-476-0005 Social Security number requirements.** (1) With certain exceptions, each person who applies for or receives cash ~~((, medical))~~ or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued. For SSN requirements for immigrants, see WAC 388-424-0009.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

- (a) Apply for the SSN;
- (b) Provide proof that the SSN has been applied for; and
- (c) Provide the SSN when it is received.

(3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.

(4) For cash ~~((, medical))~~ and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.

(5) For food assistance programs:

(a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.

(b) If a person is unable to provide proof of application for a SSN for a newborn:

(i) The newborn can receive Basic Food with the household while effort is being made to get the SSN.

(ii) For the newborn to continue receiving Basic Food benefits; the household must provide proof of application for SSN or the SSN for the newborn, at the next recertification, or within six months following the month the baby is born, whichever is later.

~~(6) ((For medical programs, a newborn as described in WAC 388-505-0210(1) is eligible for categorically needy (CN) medical without meeting the SSN requirement until the baby's first birthday.~~

~~(7))~~ There is no SSN requirement for the following programs:

- (a) The consolidated emergency assistance program; and
- (b) The refugee cash ~~((and medical))~~ assistance program;~~(;~~
- ~~(c) The alien emergency medical program; and~~
- ~~(d) Detoxification services)).~~

AMENDATORY SECTION (Amending WSR 12-18-023, filed 8/27/12, effective 9/27/12)

**WAC 388-478-0005 Cash assistance need and payment standards and grant maximum.** (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC ~~((388-478-0040 and 388-478-0045))~~ 182-513-1300 and 182-515-1500).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on their obligation to pay for shelter.

(a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are determined using standards for assistance units with an obligation to pay shelter costs.

(b) Eligibility and benefit levels for all other persons and families are determined using standards for assistance units who have shelter provided at no cost.

(c) For recent arrivals to Washington state who apply for temporary assistance for needy families (TANF), see WAC 388-468-0005.

(4) Starting July 1, 2012, the monthly cash assistance grant for an assistance unit cannot exceed the payment standard for a family of eight listed in WAC 388-478-0020 (1).

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

**WAC 388-488-0005 Transfer of property to qualify for cash assistance.** This rule applies to cash assistance programs only ~~((and does not affect medicaid eligibility for a person who is not institutionalized. For transfer of property for institutional medical see WAC 388-513-1365)).~~

(1) An assistance unit is disqualified from receiving benefits when it transferred or transfers real or personal property for less than its market value in an attempt to qualify for benefits:

- (a) Two years prior to the date of application;
- (b) During the application process; or
- (c) Anytime while receiving benefits.

(2) When an assistance unit transferred property for less than its fair market value in an attempt to qualify for benefits, the disqualification period:

- (a) For applicants, begins the first day of the month the property was transferred.
- (b) For recipients, begins the first day of the month after the month the property was transferred.

(3) To determine the number of months an assistance unit will be disqualified, divide the uncompensated resource value of the transferred property by the state gross median income. The uncompensated resource value is the equity

value minus the amount the client received when transferring a resource.

(4) An assistance unit can provide evidence to clarify the reasons for transferring the property when the department presumes that the assistance unit transferred the property in an attempt to qualify for benefits.

(5) The benefits received by an assistance unit are not affected by the transfer of separate property of a spouse who is not a member of the assistance unit.

(6) An assistance unit's disqualification period is reduced when the client:

(a) Verifies undue hardship will exist if the benefits are denied such as an eviction;

(b) Secures a return of some or all of the transferred property or the equivalent value of the transferred property;

(c) Verifies an unforeseen change in circumstances such as extensive hospitalization; or

(d) Is responsible for and can verify medical expenses.

(7) When a disqualification period has been adjusted and the client is otherwise eligible, benefits will be authorized. Any benefits authorized because of the reason(s) in subsection (6) of this section, are not considered an overpayment.

AMENDATORY SECTION (Amending WSR 10-13-047, filed 6/9/10, effective 8/1/10)

**WAC 388-489-0020 Am I required to report changes in my household's circumstances while on transitional food assistance?** (1) If you only receive transitional food assistance, you are not required to report any changes in your household circumstances.

(2) If you receive benefits from another cash (~~or medical assistance~~) program, you must meet the reporting requirements for the other program as required by WAC 388-418-0005. Except for changes listed under WAC 388-489-0025, the changes you report for the other program will not affect your household's eligibility for transitional food assistance.

(3) If your household experiences a change in circumstances during your five-month transition period, and you think that you may be eligible for more food assistance, you may submit an application for the regular Basic Food program under WAC 388-489-0022. Examples of such changes include the loss of income by a person who gets transitional food assistance with you or adding a new person to your household.

AMENDATORY SECTION (Amending WSR 11-02-072, filed 1/5/11, effective 2/5/11)

**WAC 388-490-0005 The department requires proof before authorizing benefits for cash(~~(, medical,))~~ and Basic Food.** This rule applies to cash(~~(, medical,))~~ and Basic Food.

(1) When you first apply for benefits, the department may require you to provide proof of things that help us decide if you are eligible for benefits. This is also called "verification." The types of things that need to be proven are different for each program.

(2) After that, we will ask you to give us proof when:

(a) You report a change;

(b) We find out that your circumstances have changed; or

(c) The information we have is questionable, confusing, or outdated.

(3) Whenever we ask for proof, we will give you a notice as described in WAC 388-458-0020.

(4) You must give us the proof within the time limits described in:

(a) WAC 388-406-0030 if you are applying for benefits; and

(b) WAC 388-458-0020 if you currently receive benefits.

(5) We will accept any proof that you can easily get when it reasonably supports your statement or circumstances. The proof you give to us must:

(a) Clearly relate to what you are trying to prove;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(6) We cannot make you give us a specific type or form of proof.

(7) If the only type of proof that you can get costs money, we will pay for it.

(8) If the proof that you give to us is questionable or confusing, we may:

(a) Ask you to give us more proof, which may include providing a collateral statement. A "collateral statement" is from someone outside of your residence who knows your situation;

(b) Schedule a visit to come to your home and verify your circumstances; or

(c) Send an investigator from the Division of Fraud Investigations (DFI) to make an unannounced visit to your home to verify your circumstances.

(9) By signing the application, eligibility review, or change of circumstances form, you give us permission to contact other people, agencies, or institutions.

(10) If you do not give us all of the proof that we have asked for, and we have not granted you an extension to give us the rest of the information we need as described in WAC 388-406-0030, we will determine if you are eligible based on the information that we already have. If we cannot determine that you are eligible based on this information, we will deny or stop your benefits.

~~((11) For all Medicaid programs, you must provide proof of citizenship and identity as specified at Section 6036 of the Deficit Reduction Act of 2005 (PL 106-171 amending U.S.C. 1396b). Exempt from this requirement are recipients of:~~

~~(a) Title IV-B child welfare services, or Title IV-E adoption assistance or foster care payments;~~

~~(b) SSI benefits;~~

~~(c) Social Security benefits (based on their own disability); or~~

~~(d) Medicare.)~~

AMENDATORY SECTION (Amending WSR 12-17-087, filed 8/15/12, effective 9/15/12)

**WAC 388-492-0110 What happens if my WASHCAP food benefits end?** (1) If your WASHCAP food benefits end

because you did not have the review required under WAC 388-492-0100, you must finish the required review or apply for Basic Food benefits:

(a) By contacting the customer service center (CSC) at 1-877-501-2233;

(b) Over the internet;

(c) At any community services office (CSO);

(d) At any home and community services (HCS) office;

or

(e) At any Social Security Administration (SSA) office.

(2) If your WASHCAP benefits end because you are disqualified under WAC 388-400-0040 (12)(b) or (e), you are not eligible for Basic Food benefits and(~~(c)~~

~~(a) If you get medical assistance, we will send your medical assistance case to your local office;~~

~~(b)) if you are a HCS client, your medical case will remain at HCS.~~

(3) If your WASHCAP benefits end for any other reason:

(a) We will send you an application for Basic Food benefits along with the address of your local CSO. (~~If you are an HCS client, your case will remain at your HCS office.~~)

(b) For the local CSO to decide if you are eligible for Basic Food benefits, you must:

(i) Finish the application process for Basic Food benefits under chapter 388-406 WAC; and

(ii) Have an interview for Basic Food benefits under WAC 388-452-0005.

~~((c) If you get medical assistance, we will send your medical case to the local CSO unless you are an HCS client;~~

~~(d) If your WASHCAP benefits closed because SSA ended your SSI, you will still receive the same medical benefits until we decide what medical program you are eligible for under WAC 388-418-0025.))~~

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-416-0010 Medical certification periods for recipients of cash assistance programs.

### WSR 13-18-007

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 22, 2013, 8:38 a.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: The department is amending the following rules to remove medical language references: WAC 388-446-0001, 388-450-0005, 388-450-0030, 388-450-0035, 388-450-0045, 388-450-0055, 388-450-0065, 388-450-0070, 388-450-0080, 388-450-0085, 388-450-0105, 388-450-0106, 388-450-0116, 388-450-0155, 388-450-0160, 388-450-0200,

388-450-0215, 388-455-0005, 388-455-0010, and 388-455-0015.

Citation of Existing Rules Affected by this Order: Amending WAC 388-446-0001, 388-450-0005, 388-450-0030, 388-450-0035, 388-450-0045, 388-450-0055, 388-450-0065, 388-450-0070, 388-450-0080, 388-450-0085, 388-450-0105, 388-450-0106, 388-450-0116, 388-450-0155, 388-450-0160, 388-450-0200, 388-450-0215, 388-455-0005, 388-455-0010, and 388-455-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011.

Adopted under notice filed as WSR 13-12-073 on June 5, 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 20, 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 20, Repealed 0.

Date Adopted: August 14, 2013.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

**WAC 388-446-0001 When does the department refer a cash(~~(s)~~) or food assistance (~~(or medical)~~) case for prosecution for fraud?** (1) We consider it fraud if you misrepresent your circumstances in order to be eligible for or to receive more benefits than you would receive based on your actual circumstances. This includes misrepresenting:

(a) Who is in the household;

(b) The income of people in your assistance unit;

(c) Your living expenses; or

(d) Other circumstances that impact your eligibility and monthly benefits.

(2) We suspect fraud if it appears that you received more benefits than you should have and it appears that you:

(a) Made an intentional misstatement about your circumstances that caused the incorrect benefits; or

(b) Intentionally failed to reveal information that impacts your eligibility.

(3) If we receive a report of fraud, we actively investigate the circumstances to determine if there is substantial evidence to support a finding of fraud. This

includes referring the case for investigation by the office of fraud and accountability.

(4) If we have substantial evidence to support a finding of fraud for cash(;) or food assistance (~~(or medical)~~), we refer the case for prosecution. The prosecuting attorney's office decides which cases they will pursue for prosecution.

AMENDATORY SECTION (Amending WSR 06-07-078, filed 3/13/06, effective 5/1/06)

**WAC 388-450-0005 How does the department decide if I own a type of income and if this income is available to meet my needs?** This section applies to cash assistance(~~and medical programs for children, pregnant women and families~~) and food assistance.

(1) We count all available income owned or held by people in your assistance unit under chapter 388-408 WAC to decide if you are eligible for benefits and calculate your monthly benefits when:

(a) You get or expect to get the income in the month.

(b) We must count the income based on rules under chapter 388-450 WAC.

(c) You own the income. We use state and federal laws about who owns property to decide if you actually own the income. If you are married, we decide if income is separate or community income according to chapter 26.16 RCW.

(d) You have control over the income, which means the income is actually available to you. If you have a representative payee, protective payee, or other person who manages your income for you as described in chapter 388-460 WAC, we consider this as you having control over this income.

(e) You can use the income to meet your current needs. We count the gross amount of available income in the month your assistance unit gets it. If you normally get the income:

(i) On a specific day, we count it as available on that date.

(ii) Monthly or twice monthly and your pay date changes due to a reason beyond your control, such as a weekend or holiday, we count it in the month you would normally get it.

(iii) Weekly or every-other week and your pay date changes due to a reason beyond your control, we count it in the month you would normally get it.

(2) If income is legally yours, we consider the income as available to you even if it is paid to someone else for you. For example, the father of your child has a court order to pay you two hundred fifty dollars per month in child support. Instead of giving the money directly to you (as required in the court order), he gives the money to your landlord to pay part of your rent. We still count the two hundred fifty dollars as income even though you never actually got the money.

(3) We may also count the income of certain people who live in your home, even if they are not getting or applying for benefits. Their income counts as part of your income.

(a) For cash assistance, we count the income of ineligible, disqualified, or financially responsible people as defined in WAC 388-450-0100.

(b) For food assistance, we count the income of ineligible assistance unit members as defined in WAC 388-408-0035.

~~((e) For family and SSI-related medical assistance, we count the income of financially responsible people as defined in WAC 388-408-0055 and chapter 388-475 WAC.~~

~~(d) For long-term care services, we count the income of financially responsible people as defined in WAC 388-506-0620.)~~

(4) If you have a joint bank account with someone who is not in your AU, we count any money deposited into that account as your income unless:

(a) You can show that all or part of the funds belong **only** to the other account holder and are held or used **only** for the benefit of that holder; or

(b) Social Security Administration (SSA) used that money to determine the other account holder's eligibility for SSI benefits.

(5) Potential income is income you may be able to get that can be used to lower your need for assistance. If we determine that you have a potential source of income, you must make a reasonable effort to make the income available in order to get cash (~~(or medical)~~) assistance.

(a) We do not count that income until you actually get it; and

(b) You can choose whether to get TANF/SFA or supplemental security income (SSI) benefits.

(6) If your assistance unit includes a sponsored immigrant, we consider the income of the immigrant's sponsor as available to the immigrant under the rules of this chapter. We use this income when deciding if your assistance unit is eligible for benefits and to calculate your monthly benefits.

~~(7) ((For SSI-related medical:~~

~~(a) We consider income to be owned by someone and available to the person when the person:~~

~~(i) Gets the income; and~~

~~(ii) Can use the income to meet their needs for food, clothing and shelter, except as provided in WAC 388-511-1130.~~

~~(b) Loans and getting cash in certain other ways are not defined as income for SSI related medical purposes as described in 20 C.F.R. Sec. 416.1103.~~

~~(8) For medical programs, see WAC 388-561-0100 for more information about trusts.~~

~~(9)) You may give us proof about a type of income at anytime, including when we ask for it or if you disagree with a decision we made, about:~~

~~(a) Who owns the income;~~

~~(b) Who has legal control of the income;~~

~~(c) The amount of the income; or~~

~~(d) If the income is available.~~

AMENDATORY SECTION (Amending WSR 02-20-069, filed 9/30/02, effective 10/31/02)

**WAC 388-450-0030 What is earned income?** This section applies to cash assistance(;) and food assistance(~~and medical programs for families, children, and pregnant women~~)).

(1) Earned income money you get from working. This includes:

(a) Wages;

- (b) Tips;
  - (c) Commissions;
  - (d) Profits from self-employment activities as described in WAC 388-450-0080; and
  - (e) One-time payments for work you did over a period of time.
- (2) For cash (~~(and medical)~~) assistance, we also consider you to have earned income if you work for something other than money, such as your rent.
- (3) When we count your earned income, we count the amount you get before any taxes are taken out.

**AMENDATORY SECTION** (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-450-0035 Educational benefits.** This section applies to cash assistance(~~(, medical programs for children, pregnant women and families,))~~ and food assistance.

- (1) We do not count:
  - (a) Educational assistance in the form of grants, loans or work study, issued from Title IV of the Higher Education Amendments (Title IV - HEA) and Bureau of Indian Affairs (BIA) education assistance programs. Examples of Title IV - HEA and BIA educational assistance include but are not limited to:
    - (i) College work study (federal and state);
    - (ii) Pell grants; and
    - (iii) BIA higher education grants.
  - (b) Educational assistance in the form of grants, loans or work-study made available under any program administered by the Department of Education (DOE) to an undergraduate student. Examples of programs administered by DOE include, but are not limited to:
    - (i) Christa McAuliffe Fellowship Program;
    - (ii) Jacob K. Javits Fellowship Program; and
    - (iii) Library Career Training Program.
  - (2) For assistance in the form of grants, loans or work-study under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. (~~(401-394))~~ 101-392:
    - (a) If you are attending school half-time or more, we subtract the following expenses:
      - (i) Tuition;
      - (ii) Fees;
      - (iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;
      - (iv) Books;
      - (v) Supplies;
      - (vi) Transportation;
      - (vii) Dependent care; and
      - (viii) Miscellaneous personal expenses.
    - (b) If you are attending school less than half-time, we subtract the following expenses:
      - (i) Tuition;
      - (ii) Fees; and
      - (iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(c) For cash assistance (~~(and medical programs for children, pregnant women and families))~~, we also subtract the difference between the appropriate need standard and payment standard for your family size.

(d) Any remaining income is unearned income and budgeted using the appropriate budgeting method for the assistance unit.

(3) If you are participating in WorkFirst work study, that work study income is:

- (a) Not counted for cash (~~(and medical)~~) assistance;
- (b) Counted as earned income for food assistance.
- (4) If you are participating in a work study program that is not excluded in subsection (1), of this section, we count that work study income as earned income:
  - (a) You get any applicable earned income disregards;
  - (b) For cash assistance, (~~(and medical programs for children, pregnant women and families,))~~ we also subtract the difference between the need standard and payment standard for your family size as described in chapter 388-478 WAC; and

(c) Budgeting remaining income using the appropriate budgeting method for the assistance unit.

(5) If you get Veteran's Administration Educational Assistance:

- (a) All applicable attendance costs as subtracted; and
- (b) The remaining unearned income is budgeted using the appropriate budgeting method for the assistance unit.

**AMENDATORY SECTION** (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-450-0045 How do we count income from employment and training programs?** This section applies to cash assistance(~~(,))~~ and Basic Food(~~(, and medical programs for families, children, and pregnant women))~~).

(1) We treat payments issued under the Workforce Investment Act (WIA) as follows:

(a) For cash assistance (~~(and medical programs for families, children, and pregnant women))~~, we exclude all payments.

(b) For Basic Food:

(i) We exclude OJT earnings for children who are eighteen years of age or younger and under parental control as described in WAC 388-408-0035.

(ii) We count OJT earnings as earned income for people who are:

(A) Age nineteen and older; or

(B) Age eighteen or younger and not under parental control.

(iii) We exclude all other payments.

(2) We exclude **all** payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program.

(3) We treat payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps Vista, university year for action, and urban crime prevention program as follows:

(a) For cash assistance (~~(and medical programs for families, children, and pregnant women))~~, we exclude all payments.

(b) For Basic Food, we count most payments as earned income. We exclude the payments if you:

(i) Received Basic Food or cash assistance at the time you joined the Title I program; or

(ii) Were participating in the Title I program and received an income disregard at the time of conversion to the Food Stamp Act of 1977. We continue to exclude the payments even if you do not get Basic Food every month.

(4) We exclude **all** payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

(a) Retired senior volunteer program (RSVP);

(b) Foster grandparents program; and

(c) Senior companion program.

(5) We count training allowances from vocational and rehabilitative programs as earned income when:

(a) The program is recognized by federal, state, or local governments; and

(b) The allowance is not a reimbursement.

(6) We exclude support service payments received by or made on behalf of WorkFirst participants.

**AMENDATORY SECTION** (Amending WSR 06-04-071, filed 1/30/06, effective 3/2/06)

**WAC 388-450-0055 How does needs-based assistance from other agencies or organizations count against my benefits?** (1) For cash assistance (~~((and medical programs for children, pregnant women, and families))~~):

(a) We do not count needs-based assistance payments given to you by other agencies or organizations if the assistance is given to you for reasons other than ongoing living expenses which do not duplicate the purpose of cash assistance programs. Ongoing living expenses include the following items:

(i) Clothing;

(ii) Food;

(iii) Household supplies;

(iv) Medical supplies (nonprescription);

(v) Personal care items;

(vi) Shelter;

(vii) Transportation; and

(viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) If the needs-based assistance given to you is supposed to be used for ongoing living expenses, then it duplicates the purpose of cash assistance programs. We count the amount remaining after we subtract the difference between the need standard and the payment standard for your family size as described in chapter 388-478 WAC.

(c) "Needs-based" means eligibility is based on an asset test of income and resources relative to the federal poverty level (FPL). This definition excludes such incomes as retirement benefits or unemployment compensation which are not needs-based.

(2) For food assistance:

(a) We do not count money given to you if:

(i) It is given to you by a private, nonprofit, charitable agency or organization; and

(ii) The amount of money you get is no more than three hundred dollars in any one of the following calendar quarters:

(A) January - February - March,

(B) April - May - June,

(C) July - August - September,

(D) October - November - December.

(b) We count the entire amount if the requirements in (a) of this subsection are not met.

(3) For cash assistance(~~(;))~~ and food assistance, (~~((and medical programs for children, pregnant women, and families;))~~) if we do count the needs-based assistance you get, we treat it as unearned income under WAC 388-450-0025.

**AMENDATORY SECTION** (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-450-0065 Gifts—Cash and noncash.** A gift is an item furnished to a client without work or cost on his or her part.

(1) A cash gift is a gift that is furnished as money, cash, checks or any other readily negotiable form.

(a) For cash assistance (~~((and medical programs for children, pregnant women and families))~~), cash gifts totaling no more than thirty dollars per calendar quarter for each assistance unit member are disregarded as income.

(b) For food assistance programs:

(i) Cash gifts to the assistance unit are excluded if they total thirty dollars or less per quarter;

(ii) Cash gifts in excess of thirty dollars per quarter are counted in full as unearned income.

(2) For cash assistance (~~((and medical programs for children, pregnant women and families;))~~) and food assistance, a noncash gift is treated as a resource.

(a) If the gift is a countable resource, its value is added to the value of the client's existing countable resources and the client's eligibility is redetermined as specified in chapter 388-470 WAC.

(b) If the gift is an excluded or noncountable resource, it does not affect the client's eligibility or benefit level.

**AMENDATORY SECTION** (Amending WSR 02-03-020, filed 1/4/02, effective 2/1/02)

**WAC 388-450-0070 How do we count the earned income of a child?** (1) For food assistance (~~((and medical programs for families, children, and pregnant women))~~), we do not count the earnings of a child if the child is:

(a) In school;

(b) Age seventeen or younger;

(c) Not married; and

(d) Not emancipated.

(2) For cash assistance, we do not count the earnings of a child if the child is:

(a) In school; and

(b) Meets the age and attendance requirements in WAC 388-404-0005.

(3) School includes:

(a) Participating in a home-school program that is approved by the superintendent of public instruction; or

(b) On break between school terms when the child:

(i) Was enrolled during the previous school term; and

(ii) Plans to return to school when it reopens.



~~((4) For medical programs, if we count the earnings of the child, we put the child in a separate MAU as described in WAC 388-408-0055.))~~

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

**WAC 388-450-0080 What is self-employment income?** This section applies to cash assistance~~((;))~~ and Basic Food~~((; and medical programs for children, pregnant women and families))~~.

(1) Self-employment income is income you earn from running a business, performing a service, selling items you make, or reselling items to make a profit.

(2) You are self-employed if you earn income without having an employer/employee relationship with the person who pays you. This includes, but is not limited to, when:

(a) You have primary control of the way you do your work; or

(b) You report your income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) You usually have an employer/employee relationship when:

(a) The person you provide services for has primary control of how you do your work; or

(b) You get an IRS form W-2 to report your income.

(4) Your self-employment does not have to be a licensed business for your business or activity to qualify as self-employment. Some examples of self-employment include:

(a) Child care that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;

(e) Running a lodging for roomers and/or boarders. Roomer income includes money paid to you for shelter costs by someone not in your assistance unit who lives with you when:

(i) You own or are buying your residence; or

(ii) You rent all or a part of your residence and the total rent you charge all others in your home is more than your total rent.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling items you make or items that are supplied to you;

(j) Selling or donating your own biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(l) Running a business or trade either on your own or in a partnership.

~~(5) ((For medical programs, we do not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). We~~

~~count this as conversion of a resource. See WAC 388-450-0040.~~

~~((6))~~ (6) If you are an employee of a company or person who does the activities listed in subsection (2) above as a part of your job, we do not count the work you do as self-employment.

~~((7))~~ (6) Self-employment income is counted as earned income as described in WAC 388-450-0030 except as described in subsection ~~((8))~~ (7).

~~((8))~~ (7) For cash assistance and Basic Food there are special rules about renting or leasing out property or real estate that you own.

(a) We count the income you get as unearned income unless you spend at least twenty hours per week managing the property.

(b) For TANF/SFA, we count the income as unearned income unless the use of the property is a part of your approved individual responsibility plan.

AMENDATORY SECTION (Amending WSR 08-15-010, filed 7/3/08, effective 8/3/08)

**WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits?** This section applies to cash assistance~~((;))~~ and Basic Food~~((; and medical programs for children, pregnant women, and families))~~ programs.

~~((For cash, Basic Food, and family medical programs))~~:

(1) We decide how much of your self-employment income to count by:

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment;

(b) Subtracting your business expenses as described in subsection (2) below; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) We subtract one hundred dollars as a business expense even if your costs are less than this. If you want us to subtract your actual costs of more than one hundred dollars, you must list and give us proof of your expenses for us to count them. We never allow the following expenses:

(a) Federal, state, and local income taxes;

(b) Money set aside for retirement purposes;

(c) Personal work-related expenses (such as travel to and from work);

(d) Net losses from previous periods;

(e) Depreciation; or

(f) Any amount that is more than the payment you get from a boarder for lodging and meals.

(3) If you have worked at your business for less than a year, we figure your gross self-employment income by averaging:

(a) The income over the period of time the business has been in operation; and

(b) The monthly amount we estimate you will get for the coming year.

(4) For cash (~~and medical~~) assistance, if your self-employment expenses are more than your self-employment income, we do not use this "loss" to reduce income from other self-employment businesses or other sources of income to your assistance unit.

(5) For Basic Food, we use a "loss" from self-employment farming or fishing income to reduce other sources of income **only** if you meet the following three conditions:

(a) Someone in your assistance unit is a self-employed farmer or fisher;

(b) Your gross yearly income from farming or fishing is or is expected to be at least one thousand dollars; and

(c) Your allowable costs for farming or fishing are more than your income from farming or fishing.

~~(For children's and pregnancy medical programs:~~

~~(6) If you have worked long enough at the business to file a federal tax return last year and it represents your current income, we figure your gross self-employment income by:~~

~~(a) Adding together your gross self-employment income from your return and any profit you make from selling your business property or equipment;~~

~~(b) Subtracting your allowable business expenses except as described in subsection (2) above; and~~

~~(c) Averaging the income over the period the income covers.~~

~~(7) If you have worked at your business for less than a year or if you did not file a federal tax return in the last year and, the business records represent your current income, we figure your gross self-employment income by:~~

~~(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment over the period of time the business has been in operation within the last year;~~

~~(b) Subtracting your allowable business expenses except as described in subsection (2) above; and~~

~~(c) Averaging the income we estimate you will get for the coming year.)~~

**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 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-450-0105 Allocating the income of a financially responsible person included in the assistance unit.** This section applies to TANF/SFA(;) and RCA(, and RMA)). ~~((Refer to WAC 388-408-0055 for the rules concerning the treatment of income of financially responsible person for medical programs.))~~ The income of a financially responsible person included in the assistance unit is countable to meet the needs of the assistance unit after the income is reduced by the following:

(1) Any applicable earned income incentive and work expense or deduction for the financially responsible person in the assistance unit, if that person is employed;

(2) The payment standard amount for the ineligible assistance unit members living in the home; and

(3) An amount not to exceed the department's standard of need for court or administratively ordered current or back support for legal dependents.

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

**WAC 388-450-0106 How does the department count my income if someone in my family cannot get assistance because of their alien status?** This section applies to TANF/SFA(;) and RCA(, and RMA)). ~~((We count your income differently if you are applying for medical assistance only. See WAC 388-408-0055.))~~

If you are included in the assistance unit and you are financially responsible for someone, as defined in WAC 388-450-0100, who does not meet the alien requirements described in WAC 388-424-0010, we do not count all of your income. We subtract some of it so that you can use that part to help support the people who cannot get assistance. To figure out how much we count, we take the following seven steps:

(1) We start by only counting fifty percent of your earned income, as defined in WAC 388-450-0030;

(2) We add all of your unearned income, as defined in WAC 388-450-0025.

(3) We subtract the difference between the following payment standards (payment standards can be found in WAC 388-478-0020):

(a) One that includes both eligible assistance unit members and those who cannot get assistance because of their alien status; and

(b) One that includes only the eligible assistance unit members.

(4) We subtract the payment standard for the number of people who are ineligible for reasons other than alien status, as defined in WAC 388-450-0100 (4)(b) through (f).

(5) We subtract any court or administratively ordered child support you pay for legal dependents. This includes both current and back support. The amount cannot be more than the need standard in WAC 388-478-0015 for the number of dependents.

(6) We subtract any employment-related child care expenses you have.

(7) Then, we count whatever is left as unearned income.

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

**WAC 388-450-0116 How does the department count my income if I cannot get assistance because I am an alien?** This section applies to TANF/SFA(;) and RCA(, and RMA)) programs. ~~((We count your income differently if you are applying for medical assistance only. See WAC 388-408-0055.))~~

Some people cannot get assistance because they do not meet the alien requirements described in WAC 388-424-0010. If you do not meet those requirements but you are financially responsible for someone in the assistance unit, as defined in WAC 388-450-0100, we count some of your income as part of the assistance unit's income. To figure out how much we count, we take the following seven steps:

(1) We start by only counting fifty percent of your earned income, as described in WAC 388-450-0030.

(2) We add all of your unearned income, as described in WAC 388-450-0025.

(3) We subtract the difference between the following payment standards:

(a) One that includes both eligible assistance unit members and those who cannot get assistance because of their alien status; and

(b) One that includes only the eligible assistance unit members.

(4) We subtract the payment standard for the number of people who are ineligible for reasons other than alien status, as defined in WAC 388-450-0100 (4)(b) through (f).

(5) We subtract any court or administratively ordered child support you pay for legal dependents. This includes both current and back support. The amount cannot be more than the need standard in WAC 388-478-0005 for the number of dependents.

(6) We subtract any employment-related childcare expenses you have.

(7) Then, we count whatever is left as unearned income.

AMENDATORY SECTION (Amending WSR 01-21-026, filed 10/9/01, effective 11/1/01)

**WAC 388-450-0155 How does being a sponsored immigrant affect my eligibility for cash(~~and medical~~) and food assistance programs?** (1) The following definitions apply to this section:

(a) **"INS"** means the United States Immigration and Naturalization Service.

(b) **"Sponsor"** means a person who agreed to meet the needs of a sponsored immigrant by signing an INS Affidavit of Support form I-864 or I-864A. This includes a sponsor's spouse if the spouse signed the affidavit of support.

(c) **"Sponsored immigrant"** means a person who must have a sponsor under the Immigration and Nationality Act (INA) to be admitted into the United States for residence.

(d) **"Deeming"** means the department counts a part of the sponsor's income and resources as available to the sponsored immigrant.

(e) **"Exempt"** means you meet one of the conditions of WAC 388-450-0156. If you are exempt:

(i) You do not need to provide us information about your sponsor's income and resources; and

(ii) We do not deem your sponsor's income or resources to you.

(2) If you are a sponsored immigrant and you are **not** exempt, you must do the following to be eligible for benefits even if your sponsor is not supporting you:

(a) Give us the name and address of your sponsor;

(b) Get your sponsor to provide us the information we need about their income and resources; and

(c) Give us the information and proof we need to decide:

(i) If we must deem income to your assistance unit (AU); and

(ii) The amount of income we deem to your AU.

(3) If you are not eligible for benefits because we do not have the information we need about your sponsor, we do not

delay benefits to the unsponsored people in your AU who are eligible for benefits. We do not count your needs when we decide if your AU is eligible for benefits, but we count:

(a) All earned or unearned income you have that is not excluded under WAC 388-450-0015; and

(b) All deductions you would be eligible for under chapter 388-450 WAC.

(4) If you refuse to provide us with the information we need about your sponsor, the other adult members in your AU must provide the information. If the same person sponsored everyone in your AU, your AU is not eligible for benefits until someone in your AU provides us the information we need.

(5) If you are an ineligible member of your AU, but you must be the AU under chapter 388-408 WAC, we do not deem your sponsor's income or resources to the AU.

AMENDATORY SECTION (Amending WSR 10-15-043, filed 7/13/10, effective 8/1/10)

**WAC 388-450-0160 How does the department decide how much of my sponsor's income to count against my benefits?** (1) We must count some of your sponsor's income as unearned income to your assistance unit (AU) if:

(a) Your sponsor signed the INS affidavit of support form I-864 or I-864A; and

(b) You are not exempt from the deeming process under WAC 388-450-0156.

(2) We take the following steps to decide the monthly amount of your sponsor's income we deem as your income and count against your benefits:

(a) We start with your sponsor's earned and unearned income that is not excluded under WAC 388-450-0015;

(b) If your sponsor's spouse signed the affidavit of support, we add all of the spouse's earned and unearned income that is not excluded under WAC 388-450-0015;

(c) We subtract twenty percent of the above amount that is earned income under WAC 388-450-0030;

(d) For cash (~~and medical~~) assistance, we subtract the need standard under WAC 388-478-0015. We count the following people who live in your sponsor's home as a part of your sponsor's AU to decide the need standard:

(i) Your sponsor;

(ii) Your sponsor's spouse; and

(iii) Everyone else in their home that they could claim as a dependent for federal income tax purposes.

(e) For food assistance, we subtract the maximum gross monthly income under WAC 388-478-0060. We count the following people that live in your sponsor's home as a part of your sponsor's AU to decide the maximum gross monthly income:

(i) Your sponsor;

(ii) Your sponsor's spouse; and

(iii) Everyone else in their home that they could claim as a dependent for federal income tax purposes.

(f) If you can show that your sponsor has sponsored other people as well, we divide the result by the total number of people who they sponsored including any member of your household that is exempt from deeming according to WAC 388-450-0156.

(3) After we have decided how much income to deem to you, we count the greater amount of the following against your benefits:

- (a) The amount of income calculated from deeming; or
- (b) The amount of money your sponsor actually gives you for your needs.

**AMENDATORY SECTION** (Amending WSR 08-15-054, filed 7/14/08, effective 8/14/08)

**WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for Basic Food?** (1) If your basic food assistance unit (AU) includes an elderly person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for that person's out-of-pocket medical expenses. We allow the deduction for medical expenses over thirty-five dollars each month.

(2) You can use an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

- (a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;
- (b) Prescribed alternative therapy such as massage or acupuncture;
- (c) Prescription drugs;
- (d) Over the counter drugs;
- (e) Eye glasses;
- (f) Medical supplies other than special diets;
- (g) Medical equipment or medically needed changes to your home;
- (h) Shipping and handling charges for an allowable medical item. This includes shipping and handling charges for items purchased through mail order or the internet;
  - (i) Long distance calls to a medical provider;
  - (j) Hospital and outpatient treatment including:
    - (i) Nursing care; or
    - (ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.
  - (k) Health insurance premiums paid by the person including:
    - (i) Medicare premiums; and
    - (ii) Insurance deductibles and copayments.
  - (l) Out-of-pocket expenses used to meet a spenddown as defined in WAC (~~(388-519-0010)~~) 182-519-0010. We do not allow your entire spenddown obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;
    - (m) Dentures, hearing aids, and prosthetics;
    - (n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;

(o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and

(p) Attendant care necessary due to age, infirmity, or illness. If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions for out-of-pocket expenses:

(a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:

(i) Allow the one-time expense as a deduction when it is billed or due;

(ii) Average the expense through the remainder of your certification period; or

(iii) If your AU has a twenty-four-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first twelve months of your certification period, or average it for the remainder of our certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) We do not allow a medical expense as an income deduction if:

(a) The expense was paid before you applied for benefits or in a previous certification period;

(b) The expense was paid or will be paid by someone else;

(c) The expense was paid or will be paid by the department or another agency;

(d) The expense is covered by (~~medical~~) health care insurance;

(e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;

(f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or

(g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria.

**AMENDATORY SECTION** (Amending WSR 11-11-089, filed 5/18/11, effective 6/18/11)

**WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?** (1) We decide if your assistance unit (AU) is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's gross monthly income and expenses. This is known as prospective budgeting.

(2) We use your current, past, and future circumstances for a representative estimate of your monthly income.

(3) We may need proof of your circumstances to ensure our estimate is reasonable. This may include documents, statements from other people, or other proof as explained in WAC 388-490-0005.

(4) We use one of two methods to estimate income:

(a) **Anticipating monthly income (AM):** With this method, we base the estimate on the actual income we expect your AU to receive in the month (see subsection (6)); and

(b) **Averaging income (CA):** With this method, we add the total income we expect your AU to receive for a period of time and divide by the number of months in the period (see subsection ~~((7))~~ (6)).

~~(5) ((When determining eligibility for apple health for kids programs as listed in WAC 388-505-0210 or pregnancy medical as listed in WAC 388-462-0015, we can use the method most beneficial to your AU.~~

~~(6))~~ Anticipating monthly income: We must use the anticipating monthly method:

(a) When we estimate income for anyone in your AU, if you or anyone in your AU receive SSI-related medical benefits under chapter ~~((388-475))~~ 182-512 WAC.

(b) When we must allocate income to someone who is receiving SSI-related medical benefits under chapter ~~((388-475))~~ 182-512 WAC.

(c) In the month of application, when you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021. In this situation, we must use anticipating monthly (AM) for all your AU's income.

(d) To budget SSI or Social Security benefits even if we average other sources of income your AU receives.

~~((7))~~ (6) Averaging income: When we average your income, we consider changes we expect for your AU's income. We determine a monthly amount of your income based on how often you are paid:

(a) If you are paid weekly, we multiply your expected income by 4.3;

(b) If you are paid every other week, we multiply your expected income by 2.15;

(c) In most cases if you receive your income other than weekly or every other week, we estimate your income over your certification period by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the time frame; and

(iii) Using the result as a monthly average.

(d) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

~~((8))~~ (7) We use the same method for each month in your certification period, including the month of application, unless:

(a) A full month's income is not anticipated in the month of application. In this situation, we budget your income in the month of application using the anticipated monthly (AM) method and average your income (CA) for the rest of the months in your certification.

(b) You are a destitute migrant or destitute seasonal farmworker. We must budget your income in the month of application using the anticipated monthly method, as

required by subsection (6). We may average your income for the rest of the months in your certification period.

~~((9))~~ (8) If you report a change in your AU's income, and we expect the change to last through the end of the next month after you reported it, we update the estimate of your AU's income based on this change.

~~((10))~~ (9) If your actual income is different than the income we estimated, we don't make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless you meet one of the following conditions:

(a) You provided incomplete or false information; or

(b) We made an error in calculating your benefits.

AMENDATORY SECTION (Amending WSR 11-21-025, filed 10/11/11, effective 10/29/11)

**WAC 388-455-0005 How do lump sum payments affect benefits?** (1) A lump sum payment is money that someone receives but does not expect to receive on a continuing basis.

(2) For cash assistance ~~((and family medical programs))~~, we count a lump sum payment:

(a) As a resource, under WAC 388-455-0010, if it was awarded for wrongful death, personal injury, damage, or loss of property.

(b) As income, under WAC 388-455-0015, if it was received for any other reason, with the exception of subsection (3) and (4) of this section.

~~(3) ((For medical programs, receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt. Any amounts remaining on the first of the next month will be counted if they remain in the form of a countable resource. Any amounts remaining the first of the month after conversion will remain exempt if they are in the form of an exempt resource.~~

~~(4))~~ For cash ~~((and family medical))~~ assistance programs, tax refunds and earned income tax lump sums are excluded as income and excluded as a resource for twelve months from the date of receipt.

~~((5))~~ (4) For Basic Food, we count lump sum payments for a previous period as a resource under WAC 388-470-0055. We count any amount for current or future months as income to your assistance unit.

AMENDATORY SECTION (Amending WSR 08-11-105, filed 5/20/08, effective 7/1/08)

**WAC 388-455-0010 When and how does the department treat lump sum payments as a resource for cash assistance ~~((and family medical))~~ programs?** (1) If you receive a lump sum payment, we count it as a resource if it was awarded for:

(a) Wrongful death;

(b) Personal injury;

(c) Damage; or

(d) Loss of property.

(2) If some of your lump sum payment is designated for medical bills or to repair or replace damaged property, we do not count the designated amount as a resource for sixty days

starting the month after you received the payment. After the sixty day period, we count all of the lump sum payment that remains as a resource.

~~((3) For family medical programs, we do not count an increase in your resources if you are continuously eligible as described under WAC 388-470-0026 (1) and (2).))~~

**AMENDATORY SECTION** (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

**WAC 388-455-0015 When and how does the department treat lump sum payments as income for cash assistance ((and family medical)) programs?** This section applies to cash ((and family medical)) assistance programs.

(1) If you receive a lump sum payment that is not awarded for wrongful death, personal injury, damage, or loss of property, we count this payment as income to your assistance unit. We budget this income according to effective date rules under WAC 388-418-0020.

(2) For cash assistance, if you cannot access some or all of your lump sum payment for reasons beyond your control, we will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

(3) To decide the amount of your lump sum we count as income, we take the following steps:

(a) First, we subtract the value of your current resources from the resource limit under WAC 388-470-0005;

(b) Then, we subtract the difference in (3)(a) from the total amount of the lump sum; and

(c) The amount left over is what we count as income, as specified in WAC 388-450-0025 and 388-450-0030.

(4) When the countable amount of the lump sum payment is:

(a) Less than your payment standard plus additional requirements, we count it as income in the month it is received.

(b) More than one month's payment standard plus additional requirements but less than two months:

(i) We count the portion equal to one month's payment standard plus additional requirements as income in the month it is received; and

(ii) We count the remainder as income the following month.

(c) Equal to or greater than the total of the payment standard plus additional requirements for the month of receipt and the following month, we count the payment as income for those months.

(5) If you receive a one-time lump sum payment, and you are ineligible or disqualified from receiving cash benefits:

(a) We allocate the payment to meet your needs as described under WAC 388-450-0105; and

(b) Count the remainder as a lump sum payment available to eligible members of your assistance unit according to the rules of this section.

~~((6) For family medical programs:~~

~~(a) We count lump sum payments as income in the month you receive the payment.~~

~~(b) We count lump sums received by a member of a federally recognized tribe for exercising federally protected~~

~~rights or extraction of exempt resources as an exempt resource in the month of receipt. Any amount remaining the first of the next month in the form of an exempt resource will remain exempt. Any amount remaining the first of the month will be countable if in the form of a countable resource.~~

~~(e) If you cannot access some or all of your lump sum payment for reasons beyond your control, will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.~~

~~(d) We count any money that remains on the first of the next month as a resource except for recipients as described in WAC 388-470-0026 (1) and (2).)~~

## WSR 13-18-017

### PERMANENT RULES

### CHARTER SCHOOL COMMISSION

[Filed August 23, 2013, 5:28 p.m., effective September 23, 2013]

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

Purpose: The purpose of the rules is to establish the charter school application process, outline the content required for charter school applications, define the charter school application approval criteria, and develop the performance framework for charter school oversight and evaluation.

Statutory Authority for Adoption: RCW 28A.710.070.

Adopted under notice filed as WSR 13-13-086 on June 19, 2013.

Changes Other than Editing from Proposed to Adopted Version: Definitions, the definition of "At risk of dropping out of high school" was deleted, "business days" was revised to exclude state holidays, and a definition of "cultural responsiveness" was added.

Criteria used for application evaluation, added a detailed plan for engaging families in the school, revised the facilities plan that allows for a plan on how to acquire the school's facility, and provided more detail regarding conditional approvals. The term "guardian" was added when referring to parents.

Performance framework, rewrote comparative performance, student progress, post secondary readiness for better alignment with Washington's practices.

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 16, Amended 0, Repealed 0.

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

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

Date Adopted: Thursday, August 22, 2013.

RaShelle Davis  
Policy Advisor

## Title 108 WAC

### CHARTER SCHOOL COMMISSION

#### Chapter 108-10 WAC

#### INTRODUCTION

##### NEW SECTION

**WAC 108-10-010 Purpose.** The purpose of this title is to establish the charter school application process, outline the content required for charter school applications, define the charter school application approval criteria, and develop the performance framework for charter school oversight and evaluation.

##### NEW SECTION

**WAC 108-10-020 Authority.** Authority for this title is RCW 28A.710.070, which establishes the Washington charter school commission as an independent state agency whose mission is to authorize high-quality public charter schools throughout the state and to ensure the highest standards of accountability and oversight for these schools.

##### NEW SECTION

**WAC 108-10-030 Definitions.** The definitions in this section apply throughout this title unless the context clearly requires otherwise.

"Applicant" means a nonprofit corporation that has submitted an application to an authorizer. The nonprofit corporation must be either a public benefit nonprofit corporation as defined in RCW 24.03.490, or a nonprofit corporation as defined in RCW 24.03.005 that has applied for tax exempt status under section 501 (c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)). The nonprofit corporation may not be a sectarian or religious organization and must meet all of the requirements for a public benefit nonprofit corporation before receiving any funding under RCW 28A.710.220.

"At-risk student" means a student who has an academic or economic disadvantage that requires assistance or special services to succeed in educational programs. The term includes, but is not limited to, students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families, and students who are identified as having special educational needs.

"Business days" means the days of the week, Monday through Friday, excluding state holidays.

"Commission" means the Washington state charter school commission, its staff, or its delegee(s).

"Cultural responsiveness" means the desire and ability to allow for diverse ways of thinking and doing that take into account the cultures of all involved.

"Economic disadvantage" means demonstrating financial hardship such as receiving free or reduced lunch, or below two hundred percent of the federal poverty level.

"Online platform" means the online process as explained in Part I of this title that applicants use to complete and submit the application electronically.

#### Chapter 108-20 WAC

### APPLICATION

#### PART I

### CHARTER SCHOOL APPLICATION PROCESS

##### NEW SECTION

**WAC 108-20-010 Charter school application process information.** (1) Information regarding the charter school application process shall be made available on the commission's web page. The information made available on the web page will include at a minimum: A timeline for the application process, a list of required application materials, the request for proposals (RFP), the scoring rubric used by evaluators, and the contact information for the commission's staff. General questions regarding the application process may be directed to the commission's staff.

(2) The commission may make available an in-person or online orientation session to provide an overview of the charter school application process, content required in the application, and the online platform.

##### NEW SECTION

**WAC 108-20-020 Notice of intent.** (1) An applicant seeking approval must submit an electronic or hard copy nonbinding notice of intent to submit a charter school application not less than thirty days before the last date for submission of an application to the commission.

(2) The electronic copy of the notice of intent must be received via e-mail by 5:00 p.m. Pacific time not less than thirty calendar days before the last date for submission of an application to the commission.

(3) The hard copy must be:

(a) Postmarked not less than thirty days before the last date for submission of an application to the commission; or

(b) Hand delivered before the close of business not less than thirty days before the last date for submission of an application to the commission.

(4) Within two business days of receipt of the notice of intent, the commission will send e-mail confirmation that the notice of intent has been received.

##### NEW SECTION

**WAC 108-20-030 Application submission.** (1) All applications, whether for an original charter, a modification

of a charter, or the renewal of a charter shall be made on forms approved by the commission or through the online platform.

(2) An electronic version of the application through the online platform must be received by the commission by the application dead-line in order for the application to be considered.

(3) After receipt of the electronic application, the commission or its designee will review the application for completeness. If the review reveals that information is missing, the applicant will be contacted and granted twenty-four hours to provide the missing information.

(4)(a) Once an application is deemed complete, the applicant will be notified via e-mail and will be required to submit ten hard copies of the application. The hard copies of the application shall be identical in all respects to the content found in the application submitted through the online platform.

(b) The hard copies of the application must be submitted in person or through the U.S. Postal Service within five days of the application being deemed complete. In-person delivery will be due by 5:00 p.m. Pacific time on the fifth business day. Mailed applications must be postmarked by the fifth business day.

(5) In order for an application to be eligible for review, it must be received by the commission by the stated deadline and pass the completeness check or timely satisfy any completeness requests. Applications that are not received by the deadline or do not pass the completeness check or do not satisfy completeness requests will not be evaluated.

#### NEW SECTION

**WAC 108-20-040 Applicant interview.** Applicants are required to participate in an interview following submission of a complete, timely application. The interview is used as an evaluative tool for the evaluators to ask questions, seek clarification, and gain additional information regarding the application. The interview is taken into consideration with the application and will be used to inform the final recommendations made by the evaluators. Applicants will be given a notice of at least five business days before the scheduled interview date.

#### NEW SECTION

**WAC 108-20-050 Public forum.** Applicants are required to participate in a public forum with the commission. The public forum will provide an opportunity for the applicant to engage directly with the commission and for the public to learn more about and to provide input on each application. The public forum is independent of the application process and may be used to evaluate the applicant. Applicants will be given a notice of at least five business days before the scheduled public forum date.

#### NEW SECTION

**WAC 108-20-060 Application evaluators.** The commission, its designee(s), or a combination thereof will participate in the evaluation process. Should the commission

designate external evaluators, the designees must be qualified and independent, and disclose any conflict(s) of interest. The application evaluators will make a recommendation to the commission regarding the applications reviewed. The commission will consider the recommendations of the evaluators and comments from the public forum when making its final decision to authorize. The commission reserves its right to make final decisions regarding the approval and denial of charter school applications.

## PART II APPLICATION CONTENT AND APPROVAL CRITERIA

### NEW SECTION

**WAC 108-20-070 Criteria used for application evaluation.** The commission will grant approval only to charter school applicants that are able to demonstrate the capacity to successfully execute all elements of the educational, operational, financial, and governance plan. The charter school applications must demonstrate the applicants' competence in each of the components listed in RCW 28A.710.130 as well as any other requirements in chapter 28A.710 RCW and those outlined below in this section. The approval criteria include:

(1) An executive summary that outlines the school's mission and vision, target student population and community, location or geographic area for the proposed school and the school district where it will be located, the educational need and anticipated student population, leadership and governance, enrollment summary, a brief description of the plan for the school, and an explanation of how the applicant will successfully open and operate a high-quality school; community engagement, evidence of need, and parent and/or guardian and community support for the proposed charter school.

(2) A high-quality educational program design and capacity that addresses the following elements:

(a) A curriculum and instructional design framework, must present a clear and coherent framework for teaching and learning, that reflects the needs of the anticipated population and ensures all students will meet or exceed the state standard. This includes:

(i) A description of the basic learning environment (e.g., classroom-based, independent study), class size, classroom management, and structure.

(ii) An overview of the planned curriculum including a sample course scope and sequence for one subject for each division (elementary, middle, high school) the school would serve. In addition, identified course outcomes and demonstrated alignment with applicable state standards.

(iii) Evidence that the educational program or key elements of the program are based on proven methods; evidence that the proposed educational program has a sound base in research, theory, and/or experience, and has been or is likely to be rigorous, engaging, and effective for the anticipated student population.

(iv) If the curricular content is developed, a summarized description of content choices such as text book selection, by



subject, and rationale. The applicant must provide evidence that this curricular content will be appropriate and effective for the targeted students as well as adhere to the federal and state standards.

(v) If the curricular content is not developed, a plan for how the content will be developed between approval of the application and the opening of the school, including who will be responsible and when key stages will be completed.

(vi) A description of the primary teaching methods and instructional strategies that the school will expect teachers to use and why the strategies are well-suited for the anticipated student population.

(b) A description of student performance expectations for the school as a whole. If the applicant plans to adopt or develop additional academic expectations beyond the state and authorizer standards, an explanation of the types of expectations (content areas, grade levels). The applicant must also explain the policies, standards, and expectations for promoting students from one grade to the next.

(c) For applications that include high school, a detailed explanation of high school graduation requirements including, but not limited to: A description of the process of earning credit hours, calculating grade point averages, and what information will be available on transcripts, and elective courses offered; explanations of additional requirements that exceed state and authorizer standards; explanations of how these requirements ensure student readiness for college or post secondary opportunities; and an explanation of the systems and structures used for students at risk of dropping out and/or not meeting graduation requirements.

(d) An outline of the school calendar and schedule including, but not limited to: An explanation of how the calendar meets the needs of the school's educational program; the structure of the school day including the number of instructional hours/minutes in a day for core subjects; the length of the school day (start/dismissal times); and the minimum number of hours/minutes devoted to instruction in each grade.

(e) A description of the school culture including, but not limited to: A description of the culture or ethos of the proposed school; an explanation of how it will promote a positive academic environment and reinforce student intellectual and social development; the process of implementation of this culture among students and staff; and an explanation of how the school culture will serve students with special needs.

(f) If they are to be offered, an overview of supplemental programming including, but not limited to: Summer school offerings including the schedule, length, and anticipated participants; resource and staffing needs; extra-curricular or cocurricular activities offerings and how they will be funded. As anticipated for your target student population, an overview of programs addressing student mental, emotional, and social development and health, and how these programs will be funded; and other student-focused activities and programs integral to the educational and student development plans.

(g) Special populations and at-risk students includes, but is not limited to: A description of the overall plan to serve students with special needs; a description of more specific

plans identifying how the school will meet the students' learning needs in the least restrictive environment possible as defined by state and federal special education guidelines and law; how the school will meet the needs of students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families; how the school will meet the needs of highly capable students; and how the school will comply with applicable laws and regulations governing services to these student populations.

(h) A culturally inclusive student recruitment and enrollment plan that includes, but is not limited to: An enrollment policy; plans for student recruitment and marketing that will provide equal access; and plans for outreach to families of targeted at-risk students, if applicable.

(i) Evidence that the proposed discipline plan has a sound base in, and some combination of, research, theory, experience, and best practice; and has an explanation of how it is likely to be effective for the anticipated student population. The discipline policy must be culturally responsive and comply with applicable state laws and authorizer policies which includes, but is not limited to: Equitable and fair practices with incentives to promote positive behavior and school climate; penalties for infractions; types of offenses; rights of students with disabilities in disciplinary actions and proceedings; procedures for due process when a student is suspended or expelled; and how students and parents and/or guardians will be informed of the discipline policy.

(j) Conversion schools. Proposed conversion schools must provide a detailed plan for how they intend to engage the school community and any information regarding steps already taken; additionally a detailed plan that demonstrates that the conversion school will have sufficient capacity to enroll all students who wish to remain enrolled in the school after conversion; demonstrated support for the proposed conversion by a petition signed by a majority of teachers assigned to the school or a petition signed by a majority of parents and/or guardians of students in the school; if applicable, a description of the organization's prior experience in taking over or turning around an under-performing school; and specific ways it will engage and transform the existing school culture.

(k) Education program capacity includes, but is not limited to: The identification of key members of the school's leadership team who will play a substantial role in school development and its success; the key members' qualifications to implement school design; identification and descriptions of organizations, agencies, or consultants that are partners in planning and establishing the school; the identification of the principal/head of school candidate and why this individual is well qualified to lead the school in achieving its mission (if no candidate identified, a description of the job and its qualifications, timeline, criteria, recruiting and selection process); a description of the responsibilities and qualifications of the school's leadership/management team beyond the

principal/head of school; and who will be working full time, or nearly full time, to lead development of the school, and the plan to compensate them.

(1) The school's plan for using internal and external assessments to measure and report student progress, including those required by the state.

(3) Operations plan and capacity. A detailed plan and supporting information addressing the school's operations plan and capacity including the following elements:

(a) A detailed description of the school's governance includes, but is not limited to: Legal status and governing documents; organization charts that show the school governance, management, and staffing structure in the school's first year and for the term of the charter, and the roles and responsibilities of the governing board, staff, any related bodies, and any external organizations playing a role in the school's management; an explanation of the governance philosophy guiding the board; a description of the governance structure; a list of current and identified board members and their intended roles and responsibilities, including their interests in and qualification for serving the school's board as well as background information on the identified or proposed governing board members and proposed school leadership and management team; if there is no initial governing board, an explanation of how and when the transition to the formal governing board will take place; the procedure by which board members have been and will be selected and how frequently they will meet; a description of the board's ethical standards and procedures for identifying and addressing conflicts of interests; plans for increasing the capacity of the governing board; advisory bodies and the roles and duties of those bodies; and a description of the school's grievance process should a student or parent have an objection to the governing board policy or decision, administrative procedure, or practice at the school.

(b) An explanation of any proposed partnership agreement between a charter school and the school district or educational service district (ESD) in which it resides and a description of the terms of that agreement.

(c) Explanations of any other partnerships or contractual relationships central to the school's operations or mission; in the case of an application where the proposed charter school intends to contract with a nonprofit education service provider (ESP) for substantial educational services, management services, or both, the applicant must:

(i) Provide evidence of the nonprofit ESP's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions if applicable;

(ii) Provide a term sheet setting forth the proposed duration of the service contract; roles and responsibilities of the governing board, the school staff, and the ESP; scope of services and resources to be provided by the service provider; performance evaluation measures and timelines; compensation structure, including clear identification of all fees to be paid to the service provider; methods of contract oversight and enforcement; investment disclosure; and conditions for renewal and termination of the contract; and

(iii) Disclose and explain any existing or potential conflicts of interest between the charter school board and proposed service provider or any affiliated business entities.

(d) A detailed description of the school's staffing includes, but is not limited to: Staff structure; staffing plans for the first year and for the term of the charter, hiring, management, and evaluation; professional development; and performance management.

(e) A detailed plan for engaging families in the school before it opens and once students are enrolled. The plan should include specifics on proposed events or activities to engage families.

(f) A detailed plan for acquiring a suitable facility including budget, facilities start up including backup or contingency plans, and a letter of intent. For a conversion school, the applicant must supply evidence that it has notified the encompassing school district of the conversion. A more detailed facilities plan will be required as part of the preopening requirements.

(g) Start-up and ongoing operations include, but are not limited to: A detailed start-up plan for the school specifying tasks, timelines, and responsible individuals; transportation plan; food service plan; plans for all other significant operational or ancillary services; plan for safety and security for students, the facility, and property; description of types and levels of insurance coverage.

(h) A detailed description of the school's operations capacity includes, but is not limited to: Individual and collective qualifications for successfully implementing operations plan with specific emphasis on staffing, performance management, professional development, general operations, and facilities management; organization's capacity and experience in facilities acquisition and management.

(4) Financial plan. A detailed description of the school's financial plan and capacity includes, but is not limited to:

(a) A description of the systems, policies, and procedures the school will use for financial planning, accounting, purchasing, and payroll, including a description of internal controls and methods for ensuring compliance with all financial reporting requirements; roles and responsibilities of administration and governing board for school finances; plans and procedures for annual audit of financial and administrative operations; methods for ensuring financial transparency; liability insurance plans with ability to indemnify the school, its board, staff, and teachers against tort claims; completion of a budget form and financial plan workbook; a detailed description of assumptions, estimates, and bases for revenue projections, staffing levels, and costs. This includes start-up and five-year cash flow projections and budgets with clearly stated assumptions.

(b) Financial management capacity. A detailed description of the school's financial management capacity includes, but is not limited to: Individual and collective qualifications for successfully implementing the financial plan which includes, at a minimum, financial management, fund-raising and development, and accounting and internal controls.

(5) School specific performance measures. A detailed description of the school's specific performance measures

includes, but is not limited to, the following mission-specific items: Educational goals and targets; organizational goals and targets; nonmandatory assessments or measures for evaluating student learning needs and progression within the school year; training and support school leadership and teachers will receive in analyzing, interpreting, and using performance data to improve student learning.

(6) For existing charter school operators, charter management organizations or educational management organizations, a detailed description of the organization's growth plans and capacity to successfully support and execute that plan.

(7) Conflict of interest. Conflict of interest includes, but is not limited to: Full disclosure of all real or apparent conflicts of interest between reviewers, decision makers, applicants, and any affiliates of these entities.

(8) Background checks. The safety and welfare of the students in Washington's charter schools is of the utmost importance, as is the protection of scarce state resources being entrusted to charter schools. Therefore, application evaluation will include the following background check components:

(a) Each identified or proposed governing board member, and identified or proposed school leadership and management, must complete a background check disclosure form, waiver, and certification which will include disclosure of, at a minimum, criminal background information in accordance with enumerated questions and as aligned with RCW 28A.400.303 and the statutes cited therein. This will also require specific disclosure of financial mismanagement or malfeasance.

(b) The commission may also complete an independent background and/or records check on each identified or proposed governing board member, and identified or proposed school leadership and management.

(c) Individuals will not be permitted to serve on the governing board, administration, or leadership of a charter school if the results of their records check would legally preclude them from working in a school.

(d) Individuals may not be permitted to serve on the governing board, administration, or leadership of a charter school if they have a history of financial malfeasance or mismanagement.

(9) All of the above criteria will be subject to review for cultural responsiveness.

#### NEW SECTION

**WAC 108-20-080 Ratings.** The application and all associated documents and evidence will be rated using the following criteria: Exceeds the standard; meets the standard; partially meets the standard; or does not meet the standard. The application will also be evaluated to determine whether the school is designed to serve at-risk students, and whether each component aligns with the overall mission, budget, and goals stated throughout the application and supporting documents.

#### NEW SECTION

**WAC 108-20-090 Approval or denial of an application.** (1) After evaluation of the application and supporting documents, interview, and other documented evidence received through the application review process, including public input received by the commission, the commission will determine whether to approve, approve with conditions, or deny an application. Preference will be given to applications for charter schools designed to serve at-risk student populations.

(2) When an application is approved with conditions, those conditions will be enumerated and placed into two categories: (a) Precontract conditions; and (b) preopening conditions.

Precontract conditions must be fully satisfied by deadlines identified by the commission. Failure to fully satisfy the precontract conditions before the ninety day contract execution deadline will negate approval.

Preopening conditions and associated deadlines will be identified in the charter contract. Failure to satisfy the preopening conditions may be considered a material breach of the charter contract.

(3) Misrepresentations on application. In the event that an applicant makes material misrepresentations in the information and documentation submitted as part of this application process, the application may be denied.

(4) Reasons for denial of an application will be clearly stated in writing.

### Chapter 108-30 WAC

#### PERFORMANCE FRAMEWORK

#### CHARTER SCHOOL PERFORMANCE FRAMEWORK

#### NEW SECTION

**WAC 108-30-010 Performance framework policy statement.** The commission will evaluate charter school performance using a performance framework designed to ensure that charter schools are held to the highest standards of accountability and oversight.

#### NEW SECTION

**WAC 108-30-020 Performance framework.** (1) "Performance framework" means the standards that will be used by the commission to evaluate the performance of each charter school. The performance framework will be a source of information used by the commission to make decisions involving corrective action, renewal, modification, revocation, and/or termination of a charter school.

(2) The performance framework evaluates charter school performance and compliance in the areas of academic, financial, organizational, legal and mission specific performance and compliance. The commission will develop and post performance framework guidance for charter schools on the commission web site.

(3) Academic performance and compliance. Academic performance and compliance measures whether the charter school meets or is making sufficient progress towards academic performance expectations. Academic performance and compliance includes, but is not limited to:

(a) Student achievement. Evaluation of student achievement includes evaluation of student academic proficiency in English language arts and literacy in history/social studies/civic education, science and technical subjects, and mathematics; advanced proficiency measurements in English language arts and literacy in history/social studies/civic education, science and technical subjects, and mathematics; evaluation of student achievement gaps in both proficiency and growth. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(b) Comparative performance. Comparative performance is evaluated by comparing charter school students' performance on required state and federal assessments to performance of students in traditional public schools and charter schools with similar demographics. This is a comparison of overall student performance in English language arts (reading and writing), math, and science, as well as any other subjects that will in the future be tested. To the extent data is available comparison schools may include, but are not limited to, district-of-residence schools and peer or comparable schools whether charter or noncharter. As additional data for comparisons become available, the comparative performance evaluation will be adjusted. In addition to aggregate data, when available, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(c) Student progress. Student progress is evaluated using the school's median student growth percentile in reading and mathematics. As additional growth-related data become available, this evaluation will be adjusted. In addition to aggregate data, when available, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(d) Post secondary readiness (high school evaluation). Evaluation of post secondary readiness includes evaluation of students' performance and participation on American College Testing (ACT) or Scholastic Assessment Test (SAT); overall graduation rates in accordance with the state of Washington reporting requirements; comparison of charter school to district-of-residence graduation rates; comparison of charter school to peer or similar school graduation rates; and enrollment in post secondary institutions. As additional comparison data such as dual credit accrual, industry certification, 11th grade assessments, or others, become available, this evaluation will be adjusted. In addition to aggregate data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(e) State and federal accountability. Evaluation of the charter school's compliance with state and federal accountability rules, regulations, and laws and whether the school has met the targets set forth by the state accountability system including, but not limited to, provision of basic education, instruction in the essential academic learning requirements, statewide student assessments, performance improvement goals. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(f) Mission specific accountability. Evaluation of whether the charter school has met mission specific goals identified in its contract.

(4) Financial performance and compliance. Financial performance and compliance measures the financial health and viability of a charter school. Financial performance and compliance includes, but is not limited to:

(a) Near term indicators. Evaluation of financial performance and compliance includes evaluation of charter school's assets and liabilities, available cash; actual enrollment as compared to enrollment projection and associated budget; loan and grant status.

(b) Sustainability indicators. Evaluation of sustainability indicators includes evaluation of net income and revenue; debt to asset ratio; cash flow; debt service ratio.

(c) Audit and accounting indicators. Evaluation of audit and accounting indicators includes evaluation of the charter school's compliance with generally accepted accounting principles; audit results and findings, if any.

(5) Organizational performance and compliance. Organizational performance and compliance measures compliance with specific terms and provisions of the charter contract and state and federal legal requirements. Organizational performance and compliance includes, but is not limited to:

(a) Education program. Evaluation of the education program includes evaluation of the charter school's education program in terms of compliance with specific performance expectations set forth in the charter contract; compliance with requirements of local education agencies and public schools under those federal laws and regulations including, but not limited to, compliance with the Individuals With Disabilities Education Act, the Rehabilitation Act, the Federal Educational Rights Privacy Act, the Elementary And Secondary Education Act, McKinney-Vento Act, and any other applicable education laws or regulations.

(b) Charter school law compliance. Evaluation of charter school law compliance includes evaluation of the charter school's compliance with chapter 28A.710 RCW. This includes review of policies and practices related to admissions, waiting lists, recruitment, security and privacy.

(c) Safety and welfare compliance. Evaluation of student and employee compliance includes evaluation of the charter school's compliance with laws concerning employment of faculty and staff including, but not limited to, certification requirements and background checks; evaluation of student and employee disciplinary policies and procedures and application of associated legal and constitutional protections;

evaluation of compliance with health and safety laws and regulations.

(d) Board performance and stewardship. Evaluation of board performance and stewardship will include evaluation of compliance with all applicable laws, rules, and terms of the charter contract as well as willingness and skill in identifying issues with management of the school and taking corrective action and in implementing any corrective actions imposed by the commission.

(e) Student involvement and retention. Evaluation of student involvement and retention will include evaluation of attendance and recurrent enrollment.

(f) Mission specific accountability. Evaluation of whether the charter school has met mission specific goals identified in its contract including, but not limited to, proactive public engagement in student recruitment and demonstrated execution of a mission appropriate enrollment plan.

(6) Other. The commission may also include additional rigorous, valid, and reliable indicators to augment evaluations of the charter school's performance.

#### NEW SECTION

**WAC 108-30-030 Rating categories.** Unless otherwise deemed appropriate, academic measures will be rated using the following categories: Exceeds standard; meets standard; does not meet standard; falls far below standard. Financial and organizational measures will be rated using the following categories: Meets standard or does not meet standard. Each of these ratings will be defined in relation to the measure being evaluated.

#### NEW SECTION

**WAC 108-30-040 Review process.** (1) Charter school responsibilities. Charter schools shall submit data, documentation, or other evidence to establish compliance with the performance framework and terms of the charter contract. The charter school shall also submit additional data, documentation, or other evidence necessary to facilitate oversight and monitoring by the commission. This includes, at a minimum:

(a) Submission of the data, documentation, or evidence to the commission in accordance with the format and time frames established by the commission prior to the beginning of each school year. This will include submission of an annual report but may also require submission of other reports at more frequent intervals.

(b) Submission of additional data, documentation, or evidence that the commission determines to be relevant to evaluation of compliance with the performance framework within ten business days of the commission's request, unless otherwise indicated in the request.

(c) Charter schools shall submit independent audit reports and any associated findings to the commission within ten business days of receipt by the charter school.

(d) Charter schools shall respond, within reasonable time frames, to any notice of concerns about unsatisfactory performance or legal compliance provided by the commission.

The charter school will work with the commission to remedy the problem.

(e) Charter schools shall comply with any corrective action plan required by the commission.

(f) Multiple schools operating under a single charter contract or overseen by a single charter school board must report their performance as separate schools, and each school shall be held independently accountable for its performance.

(g) Charter schools may submit a written response to any findings or recommendations contained in the compliance review report within ten business days of issuance of the report.

(2) Commission responsibilities. The commission will continually monitor the performance and legal compliance of the charter schools it oversees, at a minimum, this will include:

(a) Collecting and analyzing data to support ongoing evaluation according to the performance framework.

(b) Annual evaluation of compliance with the performance framework in accordance with established rating categories and associated rubric(s).

(c) Annual issuance of a compliance review report that documents the results of the annual evaluation, along with any additional relevant information, including necessary corrective action.

(d) By September 1st of each school year, establish format and time frames governing the submission of data, documentation, or evidence to be submitted to the commission by the charter schools.

(e) Post time frames on the commission's web site.

(f) Notification to the charter school of perceived problems about unsatisfactory performance or legal compliance, perceived or otherwise, will be given within reasonable time frames considering the scope and severity of the concern. The charter school will be given a reasonable opportunity to remedy the problem, unless revocation is warranted by the law.

(i) A perceived problem exists when the commission has conducted an inquiry and it is reasonable to believe that the issue exists (anytime a complaint is brought or information is brought forward).

(ii) The commission will respond to any general reporting of issues within a reasonable amount of time depending upon the scope and severity of the concern. When the health or safety of children are at risk a response will be made within forty-eight hours.

(g) Taking corrective action, or exercising sanctions including, but not limited to, successful completion of a corrective action plan within a specified time frame to address apparent deficiencies in charter school performance or legal compliance.

(h) Imposition of sanctions if the commission determines that it is necessary to address noncompliance.

(i) Consideration of any written response that a charter school submits in response to the commission's findings or recommendations.

(3) Nothing in this provision will preclude the commission from requesting additional information outside established time frames when the commission determines

that the information is necessary to satisfy its monitoring and oversight responsibilities under the law.

(4) Nothing in this provision precludes the commission from conducting inquiries or investigations into charter school performance on an as needed basis. If the commission determines that notice may compromise an investigation or inquiry, notice will be provided upon completion of the investigation or inquiry.

(5) Failure to submit data, documentation, or evidence as requested by the commission could result in a finding of "does not meet standard" for the performance framework or corrective action.

**WSR 13-18-039  
PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)  
[Filed August 29, 2013, 11:53 a.m., effective October 1, 2013]

Effective Date of Rule: October 1, 2013.

Purpose: The department is amending chapter 388-106 WAC, Long-term care services, specifically the New Freedom directed services, in order to make program revisions. The department filed a permanent rule on August 21, 2013, as WSR 13-17-125 but the text did not include the changes made as a result of public comment. This filing supersedes the permanent filing WSR 13-17-125.

The following changes are being made to chapter 388-106 WAC, the New Freedom consumer directed services (NFCDS):

**WAC 388-106-0050(3)**

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits.

You will also receive a new service summary **and assessment details, if requested.**

<ul style="list-style-type: none"> <li>• Instead of deleting the words <i>and assessment details</i>, add the words <i>if requested</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed with comment and changed language.</li> </ul>
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**WAC 388-106-1400 (4)(a)(i)**

(i) Direct personal care services defined as assistance with activities of daily living, as defined in WAC 388-106-0010(=:). **These must be provided by a qualified individual provider or AAA-contracted homecare agency as described in WAC 388-106-0040 (1) and (2):**

<ul style="list-style-type: none"> <li>• Reword requirements for providers to enhance consistency with WAC 388-106-0040.</li> </ul>	<ul style="list-style-type: none"> <li>• Language in this section only refers to personal service providers. It does not refer to other provider types, which have different requirements for licensure and certification mentioned in WAC 388-106-0040. Added reference to WAC 388-106-0040 (1) and (2) for clarity.</li> </ul>
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**WAC 388-106-1405(8)**

(8) Entertainment-related items such as televisions, cable, or DVD players, stereos, radios, computers and other electronics **that are** nonadaptive in nature.

<ul style="list-style-type: none"> <li>• Add words to enhance comprehension.</li> </ul>	<ul style="list-style-type: none"> <li>• Agreed with comment and changed language.</li> </ul>
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**WAC 388-106-1420(1)**

<ul style="list-style-type: none"> <li>• Add pronoun and punctuation.</li> </ul>	<ul style="list-style-type: none"> <li>• Added punctuation and did not add pronoun.</li> </ul>
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**WAC 388-106-1425**

**(2) You are responsible to pay for your goods and services received up to your participation amount determined by the department. Any approved budget expenditures for goods and services you receive which exceed your participation amount will be paid by the department once your participation, if any, is accounted for.**

<ul style="list-style-type: none"> <li>• Language limits the ability of participants to spend the budget funds allotted to them.</li> </ul>	<ul style="list-style-type: none"> <li>• This addition of subsection (2) makes this WAC consistent with statewide rules that require clients to pay participation before state or federal funds will pay for services.</li> </ul>
<ul style="list-style-type: none"> <li>• Current system of notification of participation amount penalizes the client as they have to put out the money in advance of a participation reduction.</li> </ul>	<ul style="list-style-type: none"> <li>• Participation notification will change when the new ProviderOne billing system is implemented. Participation changes will update nightly into the billing system and reduce the lag time of the current notification process.</li> </ul>

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-106-0040, 388-106-0050, 388-106-1315, 388-106-1400, 388-106-1405, 388-106-1410, 388-106-1415, 388-106-1420, 388-106-1422, 388-106-1425, 388-106-1430, 388-106-1445, 388-106-1450, 388-106-1455, 388-106-1458, 388-106-1460, 388-106-1465, 388-106-1475, and 388-106-1480.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 13-13-083 on June 19, 2013.

Changes Other than Editing from Proposed to Adopted Version: See Purpose above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 18, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 18, Repealed 0.

Date Adopted: August 27, 2013.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-0040 Who can provide long-term care services?** The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05909.

(2) Home care agencies, who provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-336 WAC and contracted with area agency on aging.

(3) Residential providers, which include licensed adult family homes and boarding homes, who contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

(5) In the case of New Freedom consumer directed services (NFCDS), additional providers meeting NFCDS HCBS waiver requirements contracting with a department approved provider of fiscal management services.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-106-0050 What is an assessment?** (1) An assessment is an in-person interview in your home or your place of residence that is conducted by the department to inventory and evaluate your ability to care for yourself. The department will assess you at least annually or more often when there are significant changes to your ability to care for yourself.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

AMENDATORY SECTION (Amending WSR 07-01-046, filed 12/14/06, effective 1/14/07)

**WAC 388-106-1315 Do I have a right to an administrative hearing if my total in-home personal care hours or New Freedom budget approved as an exception to rule are reduced or terminated or if my increased residential payment rate approved as an exception to rule is reduced or terminated?** Notwithstanding WAC 388-440-0001(3), you have a right to an administrative hearing regarding the department's exception to rule decision if:

(1) You receive services in your own home, and:

(a) The total number of in-home personal care hours you are currently receiving includes in-home personal care hours approved as an exception to rule in addition to the number of in-home care hours determined to be available to you by CARE; and

(b) The total number of in-home personal care hours or New Freedom budget you are currently receiving is reduced because of a reduction or termination in the number of in-home personal care hours approved as an exception to rule.

(2) You receive services in a residential facility, and:

(a) You currently have an increased residential payment rate approved as an exception to rule; and

(b) Your increased residential payment rate that was approved as an exception to rule is reduced or terminated.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

**WAC 388-106-1400 What services may I receive under New Freedom consumer directed services (NFCDS)?** (1) In order for services, supports, and/or items to be purchased under New Freedom, they must:

(a) Be for your sole benefit;

(b) Be at a reasonable cost;

(c) Meet your identified needs and outcomes in the CARE assessment and address your health, safety, and welfare; and

(d) Be documented on your New Freedom spending plan defined in WAC 388-106-0010. The spending plan, which is established with the Care Consultant, documents how you will spend your service budget dollars.

(2) Your consultant may require a physician or other licensed professional, such as an occupational or physical therapist to recommend a specific purchase in writing. This recommendation is needed to ensure the service, support and/or item will increase, maintain, or delay decline of functional abilities, and to ensure the purchase supports your health and welfare.

(3) Medicare or medicaid state plan benefits must be used prior to using New Freedom funds if the goods or services are covered under these programs.

(4) You may use your individual budget to purchase services, supports, and/or items that fall into the following service categories:

(a) **Personal assistance services**, defined as supports involving the labor of another person to assist you to carry out activities you are unable to perform independently. Services may be provided in your home or in the community and may include:

(i) Direct personal care services defined as assistance with activities of daily living, as defined in WAC 388-106-0010(=). These must be provided by a qualified individual provider or AAA-contracted homecare agency as described in WAC 388-106-0040 (1) and (2):

(ii) Delegated nursing tasks, per WAC 246-841-405 and 388-71-05830. Providers of direct personal care services may be delegated by a registered nurse to provide nurse delegated tasks according to RCW 18.79.260 and WAC 246-840-910 through 246-840-970;

(iii) ~~((Homemaking, or assistance with instrumental activities of daily living (essential shopping, housework and meal preparation);~~

~~((+)))~~ Other tasks or assistance with activities that support independent functioning, and are necessary due to your functional disability;

~~((+))~~(iv) Personal assistance with transportation(=) or assistance with instrumental activities of daily living (essential shopping, housework, and meal preparation).

(b) **Treatment and health maintenance**, defined as treatments or activities that are beyond the scope of the medicaid state plan that are necessary to promote your health and ability to live independently in the community and:

(i) Are provided for the purpose of preventing further deterioration of your level of functioning, or improving or maintaining your current level of functioning; and

(ii) Are performed or provided by people with specialized skill, registration, certification or licenses as required by state law.

(c) **Individual directed goods, services and supports**, defined as services, equipment or supplies not otherwise provided through this waiver or through the medicaid state plan; and

(i) Will allow you to function more independently; or

(ii) Increase your safety and welfare; or

(iii) Allow you to perceive, control, or communicate with your environment; or

(iv) Assist you to transition from an institutional setting to your home. Transition services may include safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings and basic items essential for basic living outside the institution. Transition services do not include rent, recreational or diverting items such as TV, cable or VCR/DVDs.

(d) **Environmental or vehicle modifications**, defined as alterations to your residence or vehicle that are necessary to accommodate your disability and promote your functional independence, health, safety, and/or welfare.

(i) Environmental modifications cannot be adaptations or improvements that are of general utility or merely add to the total square footage of the home.

(ii) Vehicles subject to modification must be owned by you or a member of your family who resides with you; must be in good working condition, licensed, and insured according to Washington state law; and be cost effective when compared to available alternative transportation.

(e) **Training and educational supports**, defined as supports beyond the scope of medicaid state plan services

that are necessary to promote your health and ability to live and participate in the community and maintains, slows decline, or improves functioning and adaptive skills. Examples include:

(i) Training or education on your health issues, or personal skill development;

(ii) Training or education to paid or unpaid caregivers related to your needs.

(5) You may receive comprehensive adult dental services as defined in WAC 388-106-0300(15) through December 31, 2013. The cost of the dental services will not be deducted from your individual budget.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

**WAC 388-106-1405 What services are not covered under New Freedom consumer directed services (NFCDS)?** Services, supports and/or items that cannot be purchased within New Freedom budgets, including, but not limited to:

(1) Services, supports and/or items covered by the state plan, medicare, or other programs or services.

(2) Any fees related to health or long-term care incurred by you, including co-pays, waiver cost of care (participation), or insurance.

(3) Home modifications that merely add square footage to your home.

(4) Vacation expenses other than the direct cost of provision of personal care services while on vacation (but you may not use New Freedom funds to pay travel expenses for your provider).

(5) Rent or room and board.

(6) Tobacco or alcohol products;

(7) Lottery tickets.

(8) Entertainment-related items such as televisions, cable, ((=)) DVD players, stereos, radios, computers and other electronics, that are nonadaptive in nature.

(9) Vehicle purchases, maintenance or upgrades that do not include maintenance to modifications related to disability.

(10) Tickets and related costs to attend sporting or other recreational events.

(11) ~~((Routine))~~ Standard household supplies, furnishings, equipment, and maintenance, ((basic food, clothing,)) such as cleaning supplies, beds/mattresses, chairs, vacuum cleaners, outside window cleaning, and major household appliances, such as washing machines or refrigerators (unless purchased while transitioning from an institution to home).

(12) Pets, therapy animals and their related costs (including food and veterinary services).

(13) Postage outside of shipping costs related to approved spending plan items.

(14) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-500-0070.



(15) Gym equipment or exercise equipment over one hundred dollars per year.

(16) Monthly service fees for utilities.

(17) Warranties (for equipment, furnishings or installations).

(18) Cosmetic services and treatments (i.e. manicures, pedicures, hair services, face lifts, etc).

(19) Basic groceries, clothing and footwear.

(20) Travel-related expenses.

(21) Any item previously purchased through medicaid funding that is within the health care authority replacement period.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1410 Am I eligible for New Freedom consumer directed services (NFCDS)-funded services?** You are eligible for NFCDS-funded services if you reside in your own home and meet all of the following criteria. The department must assess your needs using CARE and determine that:

(1) You are in NFCDS HCBS waiver specified target groups of:

(a) Eighteen or older and blind or have a physical disability; or

(b) Sixty-five or older; and

(c) You reside in a county where New Freedom is offered.

(2) You meet financial eligibility requirements described in WAC 182-513-1315. This means the department will assess your finances, determine if your income and resources fall within the limits, and determine the amount you may be required to contribute, if any, toward the cost of your care as described in WAC ~~((388-515-1505))~~ 182-515-1505; and

(3) You:

(a) Are not eligible for medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide; and

(4) Your CARE assessment shows you need the level of care provided in a nursing facility as defined in WAC 388-106-0355; and

(5) You live in your own home, or will be living in your own home by the time NFCDS start.

**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 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1415 When do New Freedom consumer directed services (NFCDS) start?** ~~((Your eligibility for NFCDS begins the date the department authorizes services.))~~ Your New Freedom services begin the date personal care provider(s) are authorized to begin providing services or the spending plan is approved.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1420 How do I remain eligible for New Freedom consumer directed services (NFCDS)?** (1) In order to remain eligible for NFCDS, you must be in need of services in accordance with WAC 388-106-1410, as determined through a CARE assessment, and continue to meet the financial eligibility requirements in WAC 182-513-1315.

(a) The CARE assessment must be performed at least annually or more often when there are significant changes in your functional or financial circumstances.

(b) Your continued financial eligibility is reviewed annually.

(2) When eligibility statutes, regulations, and/or rules for NFCDS change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your NFCDS services.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

**WAC 388-106-1422 What happens to my New Freedom service dollar budget if I am temporarily hospitalized, placed in a nursing facility or intermediate care facilities for the mentally retarded (ICF/MR)?** If you are admitted to a hospital, nursing home or ICF/MR, you cannot access or accumulate funds to your New Freedom service budget during your stay.

If you are institutionalized for forty-five days or less and you intend to return to New Freedom when discharged, your service budget will be temporarily suspended. Upon discharge home, your service budget will be reinstated if you are still eligible for New Freedom services.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1425 How do I pay for New Freedom consumer directed services (NFCDS)?** (1) Depending on your income ~~((and resources))~~, you may be required to pay participation toward the cost of your care, as described in WAC ~~((388-515-1505))~~ 182-515-1505. If you have nonexempt income that exceeds the cost of NFCDS services, you may keep the difference. Since you are receiving services in your own home, you are allowed to keep some of your income for a maintenance allowance.

(2) You are responsible to pay for your goods and services received up to your participation amount determined by the department. Any approved budget expenditures for goods and services you receive, which exceed your participation amount, will be paid by the department once your participation, if any, is accounted for.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1430 Can I be employed and receive New Freedom consumer directed services (NFCDS)?** You

can be employed and receive NFCDS, if eligible, per WAC ((388-515-1505)) 182-515-1505.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

**WAC 388-106-1445 How is the amount of the individual budget determined?** The department will calculate your individual budget amount after you are assigned a ~~((classification))~~ number of monthly hours resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on((-

(a)) ~~the ((hourly))~~ average wage, including a mileage allowance, as determined by the collective bargaining agreement for individual provider personal care paid by the department multiplied by the number of ~~((hours))~~ units generated by the assessment, multiplied by a factor of ~~((.95))~~ .93, plus an amount equal to the average per participant expenditures for nonpersonal care supports purchased in the COPEs waiver. ~~((The average will be recalculated in July of each year.))~~

~~((b)) If you select a home care agency, an adjustment will be made for each hour of personal care identified in the NFSP for an amount equal to the difference between the published individual provider rate and home care agency rate.))~~

**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 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1450 Is the individual budget intended to fully meet all of my needs?** The program provides funds in an amount proportionate to the amount of resources you would receive through COPEs, and gives you flexibility to self-direct the purchase of goods and services to ~~((meet))~~ address your long-term care needs. The degree to which the budget meets your needs depends on the supports you identify and prioritize in your spending plan. Depending on your decisions, after your budget is exhausted, some of your needs may be unmet, or you may find other resources to address them.

AMENDATORY SECTION (Amending WSR 10-08-074, filed 4/6/10, effective 5/7/10)

**WAC 388-106-1455 What happens to ~~((unused))~~ individual budget funds ~~((from my individual budget))~~ when I don't use them?** (1) ~~((Unused funds, up to three thousand dollars, may be held in reserve for future purchases documented in the NFSP.))~~ The balance of individual budget funds that were not allocated for purchase of personal care may be used to purchase other goods and services in accordance with the approved New Freedom spending plan or saved for future purchase as described in (2) below.

(2) ~~((Reserves in excess of-))~~ Up to three thousand five hundred dollars may be ~~((maintained))~~ held in savings for ~~((planned))~~ future purchases ~~((with approval from the~~

~~department))~~ documented in the New Freedom spending plan.

~~((2)) Unused funds, up to five hundred dollars, may be held in reserve for future purchases not yet identified as planned purchases in their NFSP.))~~

(3) Reserves in excess of three thousand five hundred dollars may only be maintained for exceptional, planned purchases with pre-approval from the department.

(4) Unused funds will revert back to the department under the following circumstances:

(a) You have savings funds ~~((over five hundred dollars))~~ in excess of three thousand five hundred dollars that are not identified for ~~((planned))~~ exceptional, pre-approved purchases in your ~~((NFSP))~~ spending plan;

(b) You dis-enroll from New Freedom;

(c) You lose eligibility for New Freedom;

(d) You are hospitalized and/or placed in a nursing home or ICM/FR for over forty-five days; or

(e) You have ~~((reserved funds in excess of three thousand dollars held in reserve for future purchases not approved by the department))~~ personal care funds not used in the month for which you allocated them.

**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.

#### NEW SECTION

**WAC 388-106-1458 How do I create and use my spending plan?** (1) You create your spending plan with the assistance of the Care Consultant using the New Freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the Care Consultant.

(3) You and your Care Consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month). The value of those units is deducted from your New Freedom budget. The rest of funds can be used for other covered goods and services or saved.

(a) Once a service month begins, the number of personal care units may not be altered during that month.

(b) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

(c) Prior to the service month, you may elect to use savings funds to buy additional personal care.

(d) You can choose to have your personal care provided by an individual provider (IP) or a home care agency. Each unit will be deducted from your New Freedom budget at the average IP wage rate including mileage.

(e) The balance of your individual New Freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

(f) If you have a change of condition or situation and your New Freedom budget increases due to a new assessment or Exception to Rule, you may purchase additional personal

care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

(g) You may assign your pre-determined personal care units to a different provider during the month of service.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1460 When can my New Freedom spending plan (NFSP) be denied?** Your NFSP may be denied when the plan you develop includes noncovered items from WAC 388-106-1405 and/or does not:

(a) Include only services in the New Freedom service definition found in WAC 388-106-1400;

(b) Address your needs as it relates to performance of activities of daily living and instrumental activities of daily living;

(c) Include strategies and steps to address known critical risks;

(d) Identify ~~((the))~~ a reasonable payment rate; or

(e) Adequately describe the service.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1465 Who can deny my New Freedom spending plan (NFSP)?** Your plan can be denied by your New Freedom consultant, who assists NFCDS participants to develop and use a New Freedom spending plan to:

(a) ~~((Meet))~~ Address identified personal care, health and safety needs;

(b) ~~((Address health and safety needs;~~

~~((e)))~~ Develop options to meet those needs;

~~((c)))~~ (c) Make informed decisions about their individual budget; and

~~((e)))~~ (d) Obtain identified supports and services.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1475 How do I end enrollment in New Freedom consumer directed services (NFCDS)?** (1) You may choose to voluntarily end your enrollment from NFCDS without cause at any time. To do so, you must give notice to the department. If you give notice:

(a) Before the fifteenth of the month, the department will end your enrollment at the end of the month; or

(b) After the fifteenth, the department will end your enrollment the end of the following month.

(2) Your enrollment may also end involuntarily if you:

(a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless you have documented the purpose of the longer absence in the NFSP; or

(b) Do not meet the terms for consumer direction of services outlined in the NFCDS enrollment agreement when:

(i) Even with help from a representative, you are unable to develop a NFSP or self-direct services or manage your individual budget or NFSP;

(ii) Any one factor or several factors of such a magnitude jeopardize the health, welfare, and safety of you and others, requiring termination of services under WAC 388-106-0047;

(iii) You become financially ineligible for medicaid services; ~~((e))~~

(iv) You no longer meet the nursing facility level of care requirement as defined in WAC 388-106-0355; or

(v) You misuse program funds and services as determined by the department.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1480 What are my hearing rights to appeal New Freedom consumer directed services (NFCDS) assessment and eligibility actions?** You have a right to a hearing under WAC 388-106-1300 through ~~((388-106-1310))~~ 388-106-1315, and under chapter ~~((388-02))~~ 182-526 WAC.

### WSR 13-19-007

#### PERMANENT RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 13-221—Filed September 5, 2013, 11:58 a.m., effective October 6, 2013]

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

Purpose: Amends the following sportfishing rules: WAC 220-56-235 Possession limits—Bottomfish, 220-56-310 Shellfish—Daily limits, and 220-56-390 Squid, octopus.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-235, 220-56-310, and 220-56-390.

Statutory Authority for Adoption: RCW 77.04.012 and 77.12.047.

Adopted under notice filed as WSR 13-10-083 on May 1, 2013.

Changes Other than Editing from Proposed to Adopted Version: In response to public feedback, the Washington fish and wildlife commission made the following changes from the proposed to the adopted version of these rules:

**1. WAC 220-16-881 through 220-16-887:** These proposed new rules were withdrawn as part of WSR 13-19-006, filed on September 5, 2013. These rules were not adopted.

**2. WAC 220-20-100 General provisions—Marine protected areas:** Proposed amendments to this section were withdrawn on September 5, 2013, as part of WSR 13-19-006. The new marine protected areas that were proposed in this WAC were moved to WAC 220-56-390.

**3. WAC 220-56-235 Possession limits—Bottomfish:**  
a. Reduced fishing limit for cabezon to one fish per day for Marine Areas 4, 5, 6, 7, 8, 9, 10, 11, and 13.

b. Implemented an 18-inch minimum length for cabezon in Marine Areas 4, 5, 6, 7, 8, 9, 10, 11, and 13.

c. Removed proposal for rockfish species retention.

d. Removed proposal for cabezon season change.

**4. WAC 220-56-310 Shellfish—Daily limits:**

a. Removed proposal for two new marine areas.

b. Removed squid and octopus sections and moved them to WAC 220-56-390.

**5. WAC 220-56-390 Squid, octopus:**

a. Added seven new areas in which it is unlawful to take octopus.

b. Moved squid and octopus sections to this document; they were originally in WAC 220-56-310.

c. Added new subsection (3) to differentiate between a violation that is an infraction and one that is a crime.

d. Added new subsection (2)(a) to establish a daily limit of one octopus.

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 0, Repealed 0.

Date Adopted: August 2, 2013.

Miranda Wecker, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 12-05-082, filed 2/16/12, effective 3/18/12)

**WAC 220-56-235 Possession limits—Bottomfish.** It is unlawful to fish for, retain, or possess sixgill, sevend Gill, or thresher sharks. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time (~~shall~~) may not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided, bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4)~~(--)~~; Limit 12 fish ((in the aggregate)) total, except limit 10 fish total east of the Bonilla-Tatoosh line((—10 fish in the aggregate)), of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod~~(--)~~; 2 fish(~~(=~~ ~~(+))~~); Minimum length is 22 inches in Catch Record Card Areas 1 through ~~(3)~~ 4.

~~((ii) Minimum length 24 inches in Catch Record Card Area 4.)~~

(b) Rockfish~~(--)~~; 10 fish. Release all canary and yelloweye rockfish. In Marine Area 4 east of the Bonilla-Tatoosh line: 6 fish. Only black or blue rockfish may be retained.

(c) Wolfeel~~(--)~~; 0 fish from Catch Record Card Area 4.

(d) Cabezon~~(--2)~~;

(i) Marine Areas 1 through 3: 2 fish.

(ii) Marine Area 4: 1 fish; the minimum size limit is 18 inches.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6~~(--)~~; 15 fish ~~((in the aggregate of))~~ total for all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except	1 fish May 1 through September 30. <u>Only</u> black or blue rockfish may be retained.
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in Marine Area 5 west of Slip Point	3 fish. <u>Only</u> black or blue rockfish may be retained.
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in Marine Area 6.	0 fish
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Surfperch	10 fish
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Pacific cod	2 fish
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Pollock	2 fish
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Flatfish (except halibut)	15 fish
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Lingcod	1 fish
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Wolf-eel	0 fish
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Cabezon	<del>((2))</del> <u>1</u> fish
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Pacific hake	2 fish
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(b) Catch Record Card Area 7~~(--)~~; 15 fish ~~((in the aggregate of))~~ total for all species of bottomfish, which may include no more than:

Rockfish	0 fish
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Surfperch	10 fish
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Pacific cod	2 fish
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Flatfish (except halibut)	15 fish
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Lingcod	1 fish
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Wolf-eel	0 fish
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Cabezon	<del>((2))</del> <u>1</u> fish
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Pollock	2 fish
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Pacific hake	2 fish
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(c) Catch Record Card Areas 8-1 through 11 and 13~~(--)~~; 15 fish ~~((in the aggregate of))~~ total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
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Surfperch	10 fish
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Pacific cod	0 fish
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Pollock	0 fish
---------	--------

Flatfish (except halibut)	15 fish
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Lingcod	1 fish
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Wolf-eel	0 fish
Cabezon	<del>((2))</del> 1 fish
Pacific hake	0 fish

(d) Catch Area 12: Closed.

(e) It is unlawful to possess lingcod taken by angling ~~((less than))~~ that are under 26 inches in length or ((greater than)) over 36 inches in length. It is unlawful to possess lingcod taken by spear fishing ~~((greater than))~~ that are over 36 inches in length.

~~((f))~~ ~~((It is unlawful to retain cabezon taken from Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.~~

~~((g))~~ ~~((It is unlawful to retain six-gill shark taken from Catch Record Card Areas 5 through 13.~~

~~((h))~~ In Marine Areas 5 through 11 and 13, the minimum size limit for cabezon is 18 inches. All cabezon must be released in Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

~~((g))~~ In Catch Record Card Area 5, the daily limit for rockfish is the first legal rockfish caught, except that west of Slip Point, the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

~~((i))~~ ~~((h))~~ In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

AMENDATORY SECTION (Amending WSR 10-07-105, filed 3/19/10, effective 5/1/10)

**WAC 220-56-310 Shellfish—Daily limits.** It is unlawful for any one person to take ~~((in any one day for personal use))~~ more than the following quantities and sizes of shellfish for personal use in any one day:

(1) Cockles, borers and clams in the shell, other than razor clams, geoduck clams and horse clams, 40 clams ~~((in the aggregate))~~ total, or 10 pounds, whichever is achieved first except:

(a) In Skagit Bay, east of a line projected from Browns Point to Swinomish Slough entrance~~((—))~~; Diggers may additionally retain up to 20 pounds of eastern softshell clams in the shell.

(b) In Willapa Bay~~((—))~~; Diggers may additionally retain up to ~~((twenty-four))~~ 24 cockles.

(2) Razor clams: 15 clams.

(3) Geoduck clams: 3 clams.

(4) Horse clams: 7 clams.

(5) Oysters: 18 oysters, shucked and the shells left on the beach. Minimum size before shucking two and one-half inches along the longest dimension of the shell.

(6) Rock scallops: 6 scallops.

(7) Weathervane scallops: 12 scallops (over 4 inches).

(8) Spiny and pink scallops: 10 pounds or 5 quarts in the shell, in the aggregate.

(9) Shrimp:

(a) In Areas 1~~((—))~~ through 3 and Area 4 west of the Bonilla-Tatoosh line~~((—))~~; Total weight ~~((40))~~ 25 pounds,

maximum ~~((80))~~ 200 spot shrimp as part of the ~~((40))~~ 25-pound limit.

(b) In Area 4 east of the Bonilla-Tatoosh line and Areas 5~~((—))~~ through 13~~((—))~~; First Saturday in May through May 31, daily limit 80 shrimp~~((—))~~; during all other open periods total weight 10 pounds, maximum 80 spot shrimp as part of the 10-pound limit.

~~((10))~~ ~~((Octopus—~~

~~1 octopus.~~

~~((11))~~ Pinto abalone: Closed statewide.

~~((12))~~ (11) Crawfish: 10 pounds in the shell. Minimum size 3 1/4 inches from tip of rostrum to tip of tail. Female crawfish with eggs or young attached to the abdomen must be released immediately.

~~((13))~~ Squid other than Humboldt squid: 10 pounds or 5 quarts. In addition a person may retain up to 5 Humboldt squid per day.

~~((14))~~ (12) Sea cucumbers: 25 sea cucumbers.

~~((15))~~ (13) Red sea urchins: 18 sea urchins.

~~((16))~~ (14) Purple sea urchins: 18 sea urchins.

~~((17))~~ (15) Green sea urchins: 36 sea urchins.

~~((18))~~ (16) Dungeness crab(s):

(a) In Area 1 except when fishing from the north jetty of the Columbia River and Areas 2, 3, and 4 west of the Bonilla-Tatoosh line - 6 male crab~~((s))~~.

(b) In Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13 - 5 male crabs.

(c) In the Columbia River upstream of a line from the outermost end of the north jetty to the exposed end of the south jetty, or when fishing from the north jetty of the Columbia River - 12 male crab~~((s))~~.

~~((19))~~ (17) Red rock crab(s): 6 crab(s).

~~((20))~~ (18) Mussels: 10 pounds in the shell, in the aggregate.

~~((21))~~ (19) Goose barnacles: 10 pounds of whole barnacles or 5 pounds of barnacle stalks.

~~((22))~~ (20) Ghost and mud shrimp: 10 dozen.

~~((23))~~ (21) King and box crab: Closed statewide.

~~((24))~~ (22) Tanner crab(s): 6 crab(s).

AMENDATORY SECTION (Amending WSR 06-09-021, filed 4/11/06, effective 5/12/06)

**WAC 220-56-390 Squid, octopus.** (1) ~~((It is lawful to take, fish for or possess squid and octopus the entire year except closed year-round in Catch Record Card Area 12.~~

~~((2))~~ (a) Squid daily limit: For squid other than Humboldt squid, the daily limit is 10 pounds or 5 quarts. For Humboldt squid, the daily limit is 5 squid.

(b) It is unlawful to take, fish for or possess squid taken for personal use with more than one line. A maximum of four squid lures may be used. If gear utilizes conventional hooks, it shall not exceed a total of nine points. Herring rakes and hand dip net gear may be used to take squid. In the field each person taking squid must use a separate container to hold their catch. ~~((Violation of this subsection is an infraction, punishable under RCW 77.15.160.~~

~~((3))~~ (c) It is permissible to take, fish for or possess squid the entire year, except closed year-round in Catch Record Card Area 12.

(2)(a) The octopus daily limit is 1.

(b) It is unlawful to take octopus except by hand or by any instrument which will not penetrate or mutilate the body, except that it is ~~((lawful))~~ permissible to retain octopus taken while angling with hook and line gear. ~~((Violation of this subsection is an infraction, punishable under RCW 77.15.160.~~

~~(4))~~ (c) It is unlawful to take octopus in the following areas:

(i) Marine Area 12:

(ii) Redondo Beach. Redondo Beach is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°19'27.69"W, 47°20'55.64"N; then northwesterly to 122°19'30.77"W, 47°20'56.82"N; then to 122°19'33.84"W, 47°20'57.31"N; then northeasterly to 122°19'29.78"W, 47°21'02.32"N; then returning to shore at 122°19'25.27"W, 47°21'00.64"N.

(iii) Three Tree Point. Three Tree Point is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°22'48.68"W, 47°27'06.46"N; then northwesterly to 122°22'58.06"W, 47°27'15.30"N; then northeasterly to 122°22'36.99"W, 47°27'25.51"N; then returning to shore at 122°22'27.63"W, 47°27'16.67"N.

(iv) Alki Beach Seacrest Coves 1, 2 and 3. Alki Beach Seacrest Coves 1, 2, and 3 are defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°22'37.34"W, 47°35'12.98"N; then northeasterly and offshore to 122°22'33.61"W, 47°35'16.10"N; then northwesterly to 122°23'51.20"W, 47°35'29.51"N; then returning to shore at 122°23'54.31"W, 47°35'28.81"N. This area does not include waters within 150 feet of the Seacrest Public Fishing Pier, as demarcated at the surface with buoys and on the sea floor by a perimeter line.

(v) Les Davis. Les Davis is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°29'07.21"W, 47°17'05.15"N; then northeasterly to 122°29'0.97"W, 47°17'10.57"N; then southeasterly to 122°31'05.91"W, 47°17'06.91"N; then returning to shore at 122°30'59.80"W, 47°17'01.48"N.

(vi) Alki Beach Junk Yard. Alki Beach Junk Yard is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°24'57.17"W, 47°34'40.64"N; then northwesterly to 122°25'03.25"W, 47°34'50.03"N; then northeasterly to 122°24'40.68"W, 47°34'56.75"N; then returning to shore at 122°24'34.48"W, 47°34'47.34"N.

(vii) Days Island. Days Island is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°33'49.16"W, 47°14'07.49"N; then west to 122°34'01.41"W, 47°14'07.58"N; then north to 122°34'0.78"W, 47°14'41.73"N; then returning to shore at 122°34'40.74"W, 47°14'41.73"N.

(viii) Deception Pass. Deception Pass is defined as the waters, bed lands, and tidelands east of a line starting at 122°39'48.07"W, 48°24'08.05"N; and north to 122°40'20.57"W, 48°25'10.16"N; then east to 122°40'09.63"W, 48°25'16.15"N proceeding to 122°39'50.68"W, 48°24'55.51"N; and west of a line starting

at 122°36'54.24"W, 48°24'29.52"N; and north to 122°36'54.73"W, 48°24'48.92"N.

(3) It is unlawful to possess squid or octopus taken with gear that violates the provisions of this section. If a person violates any provision of this section but has not yet harvested squid or octopus, the violation is an infraction punishable under RCW 77.15.160. Possession of squid or octopus while using gear in violation of the provisions of this section is a rebuttable presumption that the squid or octopus were taken with such gear. Possession of such squid or octopus is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the squid or octopus are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

**WSR 13-19-027**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-227—Filed September 9, 2013, 5:09 p.m., effective October 10, 2013]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Pursuant to RCW 34.05.340(3), notice is hereby provided that the adopted rule amending WAC 220-36-023 varies in substance from the last supplemental notice of rule making filed in WSR 13-14-123 on July 3, 2013.

The general subject matter of the rule being adopted is the same as that of the proposed rule (the adopted rule opens and regulates commercial fishing for chinook, coho and chum salmon in Grays Harbor, together with incidental harvest of white sturgeon). The adopted rule varies only in the specifications for gear, area, dates, and time when commercial salmon fisheries will occur in Grays Harbor. Daily openings in Areas 2A and 2D during October will occur 7:00 a.m. - 7:00 p.m. (12 hours), and during November, the openers are 2 consecutive 48-hour periods that open and close at 6:00 p.m. In Area 2C, daily openings will occur 7:00 a.m. - 7:00 p.m. (12 hours). The following is a side-by-side comparison of the two alternatives.

Areas 2A and 2D:	Proposed Rule	Alternative Rule Adopted
Week beginning (statistical week):		
(41) October 6	2 (tangle net)	1 (tangle net)
(42) October 13	1 (tangle net)	0
(43) October 20	2 (tangle net)	2 (gillnet gear)
(44) October 27	2 (tangle net)	1 (gillnet gear)
(45) November 3	0	2 (gillnet gear)
(46) November 10	0	2 (gillnet gear)
Total openings (hours)	7 (84 hours)	8 (144 hours)

		WDFW	
Area 2C:		Proposal	Alternative
Week beginning (statistical week):			
(44)	October 27	0	2 (gillnet gear)
(45)	November 3	0	1 (gillnet gear)
(46)	November 10	0	1 (gillnet gear)
Total openings (hours)		0 (0 hours)	4 (48 hours)

In support of the decision to make substantive changes to the proposed rule, the agency has determined that the rule being adopted will achieve conservation objectives, promote the well-being and stability of the state's fishing industry, and allow a sustainable level of harvest as described in the Grays Harbor Salmon Management Plan. The principal reason for adopting the changes is that they are responsive to comments provided by commercial industry representatives during the last comment period associated with the rule-making process, while maintaining appropriate conservation and harvest opportunity allocation objectives. The proposed change reflects a desire to provide a wider array of fishing opportunities to reduce the risk of economic loss to commercial harvesters if factors like weather or the geographic distribution of returning salmon is different than anticipated. To achieve a more diverse set of fishing options, changes to location, timing and allowable gear types were proposed. The department's proposed rule also reflected a desire to explore the use of tangle nets in Grays Harbor. While the proposed changes reduce the number of tangle net harvest periods and provides gillnet opportunity, tangle net harvesting remains in place. Upon reflection, the department concluded that a reduced level of tangle net harvesting this year would facilitate active monitoring and assessment of that newer gear type. The proposal diversifies commercial opportunity by area and time, thus spreading harvest-related impacts across the return timing of chum and coho. No negative impacts to recreational harvest opportunity were identified. Most importantly, the adopted rule, as revised, remains consistent with conservation objectives. The combined changes were found to produce slightly better conservation outcomes. A more detailed discussion of these considerations may be found in the concise explanatory statement prepared for this rule.

Purpose: Amends rules for commercial salmon fishing in Grays Harbor. Includes WAC 220-36-023 Salmon—Grays Harbor fall fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-36-023.

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

Adopted under notice filed as WSR 13-06-073 on March 6, 2013, and WSR 13-14-123 on July 3, 2013.

Changes Other than Editing from Proposed to Adopted Version: The adopted version of this rule includes changes from the rule as proposed in WSR 13-14-123, filed on July 3, 2013. These changes and the rationale behind them are described above.

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: September 9, 2013.

Philip Anderson  
Director

AMENDATORY SECTION (Amending WSR 12-11-093, filed 5/18/12, effective 6/18/12)

**WAC 220-36-023 Salmon—Grays Harbor fall fishery.** From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

**Fishing periods:**

(1) Gillnet gear may be used to fish for Chinook, coho, chum salmon, and white sturgeon as provided for in ~~((subsections (6) and (7) of))~~ this section and in the times and area identified in the chart below.

Time:	Areas:
<del>((6:00 p.m. August 19 through 6:00 p.m. August 20, 2012;</del>	Area 2C
6:00 p.m. August 23 through 6:00 p.m. August 24, 2012;	
6:00 p.m. August 27 through 6:00 p.m. August 28, 2012;	
6:00 p.m. August 29 through 6:00 p.m. August 30, 2012;	
6:00 p.m. September 5 through 6:00 p.m. September 6, 2012;	
and	
6:00 p.m. September 28 through 6:00 p.m. September 29, 2012.	
6:00 a.m. October 1 through 6:00 p.m. October 1, 2012;	<b>Area 2A</b>
6:00 a.m. October 2 through 6:00 p.m. October 2, 2012;	and
6:00 a.m. October 12 through 6:00 p.m. October 12, 2012;	
AND	
6:00 a.m. October 14 through 6:00 p.m. October 14, 2012.	

That portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam and Chehalis rivers to Renney Island, then easterly to "Range Marker G," located on

Time:	Areas:	
	the south shore of Grays Harbor, then to the eastern boundary of Area 2D at the Highway 101 Bridge.	(b) From August 16 through September 30, 2012: In Area 2C, mesh size must not exceed eight and one-half inch maximum.
6:00 a.m. October 19 through 6:00 p.m. October 19, 2012;	<b>Area 2A and Area 2D.))</b>	(e) From October 1 through October 31, 2012: In Areas 2A and 2D, mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.)) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.
6:00 a.m. October 20 through 6:00 p.m. October 20, 2012;		
and		
6:00 p.m. October 21 through 6:00 p.m. October 22, 2012.		
7:00 a.m. October 10 through 7:00 p.m. October 10, 2013;	Area 2A and that portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam (N 46.96978, W 123.88022) and Chehalis rivers to Renney Island, then easterly to "Range Marker G," located on the south shore of Grays Harbor, then to the eastern boundary of Area 2D at the Highway 101 Bridge.	(b) Areas 2A and 2D from October 1 through October 15, 2013, tangle net gear only. Single-wall nets are required. Maximum mesh size must not exceed four and one-quarter inches. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Strings/slackers are required, and nets may hang no more than 28 feet from cork line to lead line. It is unlawful to use set net gear. Net construction must include sufficient floatation to ensure the cork line remains at the surface when in the act of fishing.
7:00 a.m. October 24 through 7:00 p.m. October 24, 2013;	Area 2A and Area 2D.	(c) Areas 2A and 2D from October 16 through November 30, 2013. Gillnet gear ONLY. It is unlawful to use set net gear. Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep. It is unlawful to use a gillnet to fish for salmon or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.
7:00 a.m. October 25 through 7:00 p.m. October 25, 2013;		
7:00 a.m. October 29 through 7:00 p.m. October 29, 2013;		
6:00 p.m. November 7 through 6:00 p.m. November 9, 2013; and		
6:00 p.m. November 10 through 6:00 p.m. November 12, 2013.		
7:00 a.m. November 1 through 7:00 p.m. November 1, 2013;	Area 2C	(d) Area 2C August 16 through November 30, 2013, gillnet gear ONLY. It is unlawful to use set net gear. Mesh size must not exceed eight and one-half inch maximum. It is unlawful to use a gillnet to fish for salmon or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.
7:00 a.m. November 2 through 7:00 p.m. November 2, 2013;		
7:00 a.m. November 6 through 7:00 p.m. November 6, 2013; and		
7:00 a.m. November 14 through 7:00 p.m. November 14, 2013.		

**Gear:**

(2) ((Gillnet)) Gear restrictions: ((All areas:))

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

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a gillnet to fish for salmon or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

**Other:**

(3) Recovery boxes and soak times:

(a) For Areas 2A and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(b) Any steelhead or salmon that is required to be released and is bleeding or lethargic must be placed in a recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (d) of this subsection.

(c) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.



(d) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A and 2D. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(~~((12))~~) (14), reports must be made by 10:00 a.m. the day following landing.

(5) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. (~~Notice of intent must be given prior to 12:00 p.m. on August 15, 2012, for openings in Area 2C.~~) Notice of intent must be given prior to 12:00 p.m. on (~~September 26, 2012~~) October 4, 2013, for openings in Areas 2A and 2D.

(6) (~~Retention of any species other than Chinook, coho, and chum, and white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, is prohibited in Area 2C.~~

(7) ~~Retention of any species other than coho salmon, white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited in Areas 2A and 2D from October 1 through October 20, 2012.~~) Retention of any species other than coho(~~;~~) or chum, or white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, (~~and~~) or hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited in Areas 2A and 2D from October (~~21~~) 1 through (~~October 24, 2012~~) November 30, 2013.

(7) Retention of any species other than Chinook, coho, and chum, and white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, is prohibited in Area 2C.

(8) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-

mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

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

(10) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size, and all green sturgeon, obtain available information from tags without removing the tags.

(11) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

#### WSR 13-19-037

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

#### (Medicaid Program)

[Filed September 11, 2013, 1:49 p.m., effective October 12, 2013]

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

Purpose: These rules are necessary to establish the medicaid agency's authority to designate willing providers as nonbilling providers and to establish rules applicable to those providers who may apply for this new designation. Nonbilling providers are health care professionals enrolled with the agency only as an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency. Also adding definitions of the terms "nursing facility long-term care services" and "nursing facility rehabilitative services" to support implementation of the Affordable Care Act (ACA).

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0075, 182-500-0080, 182-500-0085, 182-502-0005, and 182-530-1000.

Statutory Authority for Adoption: 42 C.F.R. 455.410, RCW 41.05.021.

Adopted under notice filed as WSR 13-16-035 on July 29, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 5, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 5, Repealed 0.

Date Adopted: September 11, 2013.

Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0075 Medical assistance definitions—**  
**N. "National correct coding initiative (NCCI)"** is a national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The Centers for Medicare and Medicaid Services (CMS) maintain NCCI policy. Information can be found at: <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.

**"National provider indicator (NPI)"** is a federal system for uniquely identifying all providers of health care services, supplies, and equipment.

**"NCCI edit"** is a software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, agency or the agency's designee's fee schedules, billing instructions, and other publications. The agency or the agency's designee has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards or agency or agency's designee policy.

**"Nonapplying spouse"** see "spouse" in WAC ((388-500-0100)) 182-500-0100.

**"Nonbilling provider"** is a health care professional enrolled with the agency only as an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency.

**"Noncovered service"** see "covered service" in WAC ((388-500-0020)) 182-500-0020.

**"Nursing facility"** see "institution" in WAC ((388-500-0050)) 182-500-0050.

**"Nursing facility long-term care services"** are services in a nursing facility when a person does not meet the criteria for rehabilitation. Most long-term care assists people with support services. (Also called custodial care.)

**"Nursing facility rehabilitative services"** are the planned interventions and procedures which constitute a continuing and comprehensive effort to restore a person to the person's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0080 Medical assistance definitions—**  
**O. "Ordering and referring provider"** means any physician or other health care professional who orders or refers items or services for clients eligible for Washington's health care programs administered by the agency.

**"Outpatient"** means a patient receiving care in a hospital outpatient setting or a hospital emergency department, or away from a hospital such as in a physician's office or clinic, the patient's own home, or a nursing facility.

**"Overhead costs"** means those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Overhead costs that are allocated must be clearly distinguished from other functions and identified as a benefit to a direct service.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0085 Medical assistance definitions—**  
**P. "Patient transportation"** means client transportation to and/or from covered health care services under federal and state health care programs.

**"Physician"** means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

**"Prescribing provider"** means any physician or other health care professional authorized by law or rule to prescribe drugs for current clients of Washington's health care programs administered by the agency.

**"Prior authorization"** is the requirement that a provider must request, on behalf of a client and when required by rule, the agency's or the agency's designee's approval to render a health care service or write a prescription in advance of the client receiving the health care service or prescribed drug, device, or drug-related supply. The agency's or the agency's designee's approval is based on medical necessity. Receipt of prior authorization does not guarantee payment. Expedited prior authorization and limitation extension are types of prior authorization.

**"Prosthetic devices"** means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

- Artificially replace a missing portion of the body;
- Prevent or correct physical deformity or malfunction; or
- Support a weak or deformed portion of the body.

**"Provider"** means an institution, agency, or person that is licensed, certified, accredited, or registered according to Washington state laws and rules, and:

(1) Has signed a core provider agreement or signed a contract with the agency or the agency's designee, and is authorized to provide health care, goods, and/or services to medical assistance clients; or

(2) Has authorization from a managed care organization (MCO) that contracts with the agency or the agency's designee to provide health care, goods, and/or services to eligible medical assistance clients enrolled in the MCO plan.

**"Public institution"** see "institution" in WAC (~~388-500-0050~~) 182-500-0050.

AMENDATORY SECTION (Amending WSR 12-12-032, filed 5/29/12, effective 7/1/12)

**WAC 182-502-0005 Core provider agreement (CPA).** (1) The agency only pays claims submitted by or on behalf of a health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency (~~((CPA))~~, is a performing provider on an approved CPA with the agency, or has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.

(2) Performing providers of services to a medical assistance client must be enrolled under the billing providers' CPA.

(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.

(4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.

(5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the (~~CPA~~) application, except as provided in subsection (6) of this section or WAC 182-502-0006(5).

(6) Enrollment of a provider applicant is effective on the date the agency approves the provider application.

(a) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(c) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.

(d) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

NEW SECTION

**WAC 182-502-0006 Enrollment for nonbilling individual providers.** (1) The agency pays for health care services, drugs, supplies or equipment prescribed, ordered, or referred by a health care professional only when the health care professional has one of the following approved agreements with the agency and all other conditions of payment have been met (see WAC 182-501-0050):

(a) Core provider agreement, in accordance with WAC 182-502-0005; or

(b) Nonbilling provider agreement, in accordance with subsection (4) of this section.

(2) Only a licensed health care professional whose scope of practice under their licensure includes ordering, prescribing, or referring may enroll as a nonbilling provider.

(3) Nothing in this chapter obligates the agency to enroll any health care professional who requests enrollment as a nonbilling provider.

**(4) Enrollment.**

(a) To enroll as a nonbilling provider with the medicaid agency, a health care professional must, on the date of application:

(i) Not already be enrolled with the medicaid agency as a billing or servicing provider;

(ii) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules;

(iii) Be enrolled with medicare, when required in specific program rules;

(iv) Have current professional liability coverage, individually or as a member of a group;

(v) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(vi) Pass the agency's screening process, including license verifications, data base checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare;

(vii) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;

(viii) Sign, without modification, a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002). The medicaid agency and each provider signing a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) will hold each other harmless from a legal

action based on the negligent actions or omissions of either party under the terms of this agreement.

(b) The medicaid agency does not enroll a nonbilling provider for reasons which include, but are not limited to, the following:

(i) The agency determines that:

(A) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC 182-502-0030 (1)(a)); or

(B) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).

(ii) The health care professional:

(A) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(B) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(C) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(D) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(E) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(F) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(G) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014, except that subsection (2) of this section does not apply to nonbilling providers;

(H) Does not have sufficient liability insurance according to (a)(i) of this subsection for the scope of practice; or

(I) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.

(5) **Effective date of enrollment of nonbilling provider.** Enrollment of a nonbilling provider applicant is effective on the date the agency approves the nonbilling provider application.

(a) A nonbilling provider applicant may ask for an effective date earlier than the agency's approval of the nonbilling provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the nonbilling provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(6) **Continuing requirements.** To continue eligibility, a nonbilling provider must:

(a) Only order, refer, or prescribe for clients consistent with the scope of their department of health (DOH) licensure and agency program rules;

(b) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(c) Document that the client was informed that the provider:

(i) May bill the client for any billable item or service. The rules in WAC 182-502-0160 do not apply; and

(ii) Is enrolled with the agency for the sole purpose of ordering, prescribing, or referring items or services for clients.

(d) Inform the agency of any changes to the provider's Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) including, but not limited to, changes in:

(i) Address or telephone number;

(ii) Business name.

(e) Retain a current professional state license, registration, certification and applicable business license for the service being provided, and update the agency of all changes;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Maintain professional liability coverage requirements;

(h) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(i) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(j) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information;

(ii) Submitting forms as required by the agency including, but not limited to, a new Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002); and

(iii) Passing the agency's screening process as specified in subsection (4)(a)(vi) of this section.

(k) Follow the laws and rules that govern the agency's programs. A nonbilling provider may contact the agency with questions regarding the agency's programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a nonbilling provider from this requirement.

**(7) Audit or investigation.**

(a) Audits or investigations may be conducted to determine compliance with the rule and regulations of the program.

(b) If an audit or investigation is initiated, the provider must retain all original records and supportive materials until the audit is completed and all issues are resolved even if the period of retention extends beyond the required six year period.

**(8) Inspection; maintenance of records.** For six years from the date of services, or longer if required specifically by law, the nonbilling provider must:

(a) Keep complete and accurate medical records that fully justify and disclose the extent of the services or items ordered, referred or prescribed.

(b) Make available upon request appropriate documentation, including client records, supporting material for review by the professional staff within the agency or the U.S. Department of Health and Human Services. The nonbilling provider understands that failure to submit or failure to retain adequate documentation may result in the termination of the nonbilling provider's enrollment.

**(9) Terminations.**

(a) The agency may immediately terminate a nonbilling provider's agreement, and refer the nonbilling provider to the appropriate state health professions quality assurance commission for:

(i) Any of the reasons in WAC 182-502-0030 termination for cause (except that subsection (1)(a)(ix) and (b)(i) do not apply); and

(ii) Failure to comply with the requirements of subsections (4), (6), and (8) of this section.

(b) Either the agency or the provider may terminate this agreement for convenience at any time with thirty calendar days' written notification to the other.

(c) If this agreement is terminated for any reason, the agency will pay for services ordered, referred, or prescribed by the provider only through the date of termination.

**(10) Termination disputes.**

(a) To dispute terminations of a nonbilling provider agreement under subsection (9)(a) of this section, the dispute process in WAC 182-502-0050 applies.

(b) Nonbilling providers cannot dispute terminations under subsection (9)(b) of this section.

AMENDATORY SECTION (Amending WSR 13-04-095, filed 2/6/13, effective 3/9/13)

**WAC 182-530-1000 Outpatient drug program—General.** (1) The purpose of the outpatient drug program is to reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to medicaid agency rules and subject to the limitations and requirements in this chapter.

(2) The agency reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 182-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 182-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 182-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 182-530-2000 (1)(g));

(c) Prescribed by:

(i) A provider with an approved core provider agreement; ~~((or))~~

(ii) A provider who is enrolled as a performing provider on an approved core provider agreement; or

(iii) A provider who is enrolled as a nonbilling provider.

(d) Within the scope of an eligible client's medical assistance program;

(e) Medically necessary as defined in WAC 182-500-0070 and determined according to the process found in WAC 182-501-0165;

(f) Authorized, as required within this chapter;

(g) Billed according to WAC 182-502-0150 and 182-502-0160; and

(h) Billed according to the requirements of this chapter.

(3) Coverage determinations for the agency are made by the agency's pharmacists or medical consultants in accordance with applicable federal law. The agency's determination may include consultation with the drug use review (DUR) board.

**WSR 13-19-038**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

**(Medicaid Program)**

[Filed September 11, 2013, 2:01 p.m., effective October 12, 2013]

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

Purpose: The agency is making the following housekeeping changes:

- WAC 182-502-0022: Correcting the incorrect hyperlink to the agency form in the section.
- Chapter 182-527 WAC: In WAC 182-527-2810(2), replacing obsolete hyperlink; in WAC 182-527-2870, updating the office of financial recovery's mailing

address; changing obsolete references to "the department" to "the agency" and "388" to "182" as appropriate.

Citation of Existing Rules Affected by this Order: Amending WAC 182-502-0022 and chapter 182-527 WAC.

Statutory Authority for Adoption: RCW 41.05.021.

Adopted under notice filed as WSR 13-16-098 on August 7, 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 17, 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 17, Repealed 0.

Date Adopted: September 11, 2013.

Kevin M. Sullivan  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 13-11-051, filed 5/14/13, effective 7/1/13)

**WAC 182-502-0022 Provider preventable conditions (PPCs)—Payment policy.** (1) This section establishes the agency's payment policy for services provided to medicaid clients on a fee-for-service basis or to a client enrolled in a managed care organization (defined in WAC 182-538-050) by health care professionals and inpatient hospitals that result in provider preventable conditions (PPCs).

(2) The rules in this section apply to:

(a) All health care professionals who bill the agency directly; and

(b) Inpatient hospitals.

(3) Definitions. The following definitions and those found in chapter 182-500 WAC apply to this section:

(a) **Agency** - See WAC 182-500-0010.

(b) **Health care-acquired conditions (HCAC)** - A condition occurring in any inpatient hospital setting (identified as a hospital acquired condition by medicare other than deep vein thrombosis/pulmonary embolism as related to a total knee replacement or hip replacement surgery in pediatric and obstetric patients.) Medicare's list of hospital acquired conditions is also available at: [http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalAcqCond/Hospital-Acquired\\_Conditions.html](http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalAcqCond/Hospital-Acquired_Conditions.html).

(c) **Other provider preventable conditions (OPPC)** - The list of serious reportable events in health care as identified by the department of health in WAC 246-302-030 and published by the National Quality Forum.

(d) **Present on admission (POA) indicator** - A status code the hospital uses on an inpatient claim that indicates if a

condition was present at the time the order for inpatient admission occurs.

(e) **Provider preventable condition (PPC)** - An umbrella term for hospital and nonhospital acquired conditions identified by the agency for nonpayment to ensure the high quality of medicaid services. PPCs include two distinct categories: Health care-acquired conditions (HCACs) and other provider-preventable conditions (OPPCs).

(4) **Health care-acquired condition (HCAC)** - The agency will deny or recover payment to health care professionals and inpatient hospitals for care related only to the treatment of the consequences of a HCAC.

(a) HCAC conditions include:

(i) Foreign object retained after surgery;

(ii) Air embolism;

(iii) Blood incompatibility;

(iv) Stage III and IV pressure ulcers;

(v) Falls and trauma:

(A) Fractures;

(B) Dislocations;

(C) Intracranial injuries;

(D) Crushing injuries;

(E) Burns;

(F) Other injuries.

(vi) Manifestations of poor glycemic control:

(A) Diabetic ketoacidosis;

(B) Nonketotic hyperosmolar coma;

(C) Hypoglycemic coma;

(D) Secondary diabetes with ketoacidosis;

(E) Secondary diabetes with hyperosmolarity.

(vii) Catheter-associated urinary tract infection (UTI);

(viii) Vascular catheter-associated infection;

(ix) Surgical site infection, mediastinitis, following coronary artery bypass graft (CABG);

(x) Surgical site infection following bariatric surgery for obesity:

(A) Laparoscopic gastric bypass;

(B) Gastroenterostomy; or

(C) Laparoscopic gastric restrictive surgery.

(xi) Surgical site infection following certain orthopedic procedures:

(A) Spine;

(B) Neck;

(C) Shoulder;

(D) Elbow.

(xii) Surgical site infection following cardiac implantable electronic device (CIED).

(xiii) Deep vein thrombosis/pulmonary embolism (DVT/PE) following certain orthopedic procedures:

(A) Total knee replacement; or

(B) Hip replacement.

(xiv) Latrogenic pneumothorax with venous catheterization.

(b) Hospitals must include the present on admission (POA) indicator when submitting inpatient claims for payment. The POA indicator is to be used according to the official coding guidelines for coding and reporting and the CMS guidelines. The POA indicator may prompt a review, by the agency or the agency's designee, of inpatient hospital

claims with an HCAC diagnosis code when appropriate according to the CMS guidelines. The agency will identify professional claims using the information provided on the hospital claims.

(c) HCACs are based on current medicare inpatient prospective payment system rules with the inclusion of POA indicators. Health care professionals and inpatient hospitals must report HCACs on claims submitted to the agency for consideration of payment.

**(5) Other provider preventable condition (OPPC) -** The agency will deny or recoup payment to health care professionals and inpatient hospitals for care related only to the treatment of consequences of an OPPC when the condition:

(a) Could have reasonably been prevented through the application of nationally recognized evidence based guidelines;

(b) Is within the control of the hospital;

(c) Occurred during an inpatient hospital admission;

(d) Has a negative consequence for the beneficiary;

(e) Is auditable; and

(f) Is included on the list of serious reportable events in health care as identified by the department of health in WAC 246-302-030 effective on the date the incident occurred. The list of serious reportable events in health care, as of the publishing of this rule, includes:

(i) Surgical or invasive procedure events:

(A) Surgical or other invasive procedure performed on the wrong site;

(B) Surgical or other invasive procedure performed on the wrong patient;

(C) Wrong surgical or other invasive procedure performed on a patient;

(D) Unintended retention of a foreign object in a patient after surgery or other invasive procedure;

(E) Intraoperative or immediately postoperative/postprocedure death in an ASA Class I patient.

(ii) Product or device events:

(A) Patient death or serious injury associated with the use of contaminated drugs, devices, or biologics provided by the hospital;

(B) Patient death or serious injury associated with the use or function of a device in patient care, in which the device is used or functions other than as intended;

(C) Patient death or serious injury associated with intravascular air embolism that occurs while being cared for in a hospital.

(iii) Patient protection events:

(A) Discharge or release of a patient/resident of any age, who is unable to make decisions, to other than an authorized person;

(B) Patient death or serious injury associated with patient elopement;

(C) Patient suicide, attempted suicide, or self-harm that results in serious injury, while being cared for in a hospital.

(iv) Care management events:

(A) Patient death or serious injury associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration);

(B) Patient death or serious injury associated with unsafe administration of blood products;

(C) Maternal death or serious injury associated with labor or delivery in a low-risk pregnancy while being cared for in a hospital;

(D) Death or serious injury of a neonate associated with labor or delivery in a low-risk pregnancy;

(E) Patient death or serious injury associated with a fall while being cared for in a hospital;

(F) Any stage 3, stage 4, or unstageable pressure ulcers acquired after admission/presentation to a hospital (not present on admission);

(G) Patient death or serious injury resulting from the irretrievable loss of an irreplaceable biological specimen;

(H) Patient death or serious injury resulting from failure to follow-up or communicate laboratory, pathology, or radiology test results.

(v) Environmental events:

(A) Patient death or serious injury associated with an electric shock in the course of a patient care process in a hospital;

(B) Any incident in which systems designated for oxygen or other gas to be delivered to a patient contains no gas, the wrong gas, or is contaminated by toxic substances;

(C) Patient death or serious injury associated with a burn incurred from any source in the course of a patient care process in a hospital;

(D) Patient death or serious injury associated with the use of physical restraints or bedrails while being cared for in a hospital.

(vi) Radiologic events: Death or serious injury of a patient associated with the introduction of a metallic object into the magnetic resonance imaging (MRI) area.

(vii) Potential criminal event:

(A) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider;

(B) Abduction of a patient of any age;

(C) Sexual abuse/assault on a patient within or on the grounds of a health care setting;

(D) Death or serious injury of a patient resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care setting.

(6) Reporting PPCs.

(a) The agency requires inpatient hospitals to report PPCs (as appropriate according to (d) and (e) of this subsection) to the agency by using designated present on admission (POA) indicator codes and appropriate HCPCs modifiers that are associated:

(i) With claims for medical assistance payment; or

(ii) With courses of treatment furnished to clients for which medical assistance payment would otherwise be available.

(b) Health care professionals and inpatient hospitals must report PPCs associated with medicaid clients to the agency even if the provider does not intend to bill the agency.

(c) Use of the appropriate POA indicator codes informs the agency of the following:

(i) A condition was present at the time of inpatient hospital admission or at the time the client was first seen by the health care professional or hospital; or

(ii) A condition occurred during admission or encounter with a health care professional either inpatient or outpatient.

(d) Hospitals must notify the agency of an OPPC associated with an established medicaid client within forty-five calendar days of the confirmed OPPC in accordance with RCW 70.56.020. If the client's medicaid eligibility status is not known or established at the time the OPPC is confirmed, the agency allows hospitals thirty days to notify the agency once the client's eligibility is established or known.

(i) Notification must be in writing, addressed to the agency's chief medical officer, and include the OPPC, date of service, client identifier, and the claim number if the facility submits a claim to the agency.

(ii) Hospitals must complete the appropriate portion of the HCA 12-200 form to notify the agency of the OPPC. Agency forms are available for download at: (<http://maa.dshs.wa.gov/forms/>) <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>.

(e) Health care professionals or designees responsible for or may have been associated with the occurrence of a PPC involving a medicaid client must notify the agency within forty-five calendar days of the confirmed PPC in accordance with chapter 70.56 RCW. Notifications must be in writing, addressed to the agency's chief medical officer, and include the PPC, date of service, and client identifier. Providers must complete the appropriate portion of the HCA 12-200 form to notify the agency of the PPC. Agency forms are available for download at (<http://maa.dshs.wa.gov/forms/>) <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>.

(f) Failure to report, code, bill or claim PPCs according to the requirements in this section will result in loss or denial of payments.

(7) Identifying PPCs. The agency may identify PPCs as follows:

(a) Through the department of health (DOH); or

(b) Through the agency's program integrity efforts, including:

(i) The agency's claims payment system;

(ii) Retrospective hospital utilization review process (see WAC 182-550-1700);

(iii) The agency's provider payment review process (see WAC 182-502-0230);

(iv) The agency's provider audit process (see chapter 182-502A WAC); and

(v) A provider or client complaint.

(8) Payment adjustment for PPCs. The agency or its designee conducts a review of the PPC prior to reducing or denying payment.

(a) The agency does not reduce, recoup, or deny payment to a provider for a PPC when the condition:

(i) Existed prior to the initiation of treatment for that client by that provider. Documentation must be kept in the client's clinical record to clearly support that the PPC existed prior to initiation of treatment; or

(ii) Is directly attributable to a comorbid condition(s).

(b) The agency reduces payment to a provider when the following applies:

(i) The identified PPC would otherwise result in an increase in payment; and

(ii) The portion of the professional services payment directly related to the PPC, or treatment of the PPC, can be reasonably isolated for nonpayment.

(c) The agency does not make additional payments for services on claims for covered health care services that are attributable to HCACs and/or are coded with POA indicator codes "N" or "U."

(d) Medicare crossover claims. The agency applies the following rules for these claims:

(i) If medicare denies payment for a claim at a higher rate for the increased costs of care under its PPC policies:

(A) The agency limits payment to the maximum allowed by medicare;

(B) The agency does not pay for care considered nonallowable by medicare; and

(C) The client cannot be held liable for payment.

(ii) If medicare denies payment for a claim under its national coverage determination agency from Section 1862 (a)(1)(A) of the Social Security Act (42 U.S.C. 1395) for an adverse health event:

(A) The agency does not pay the claim, any medicare deductible or any coinsurance related to the inpatient hospital and health care professional services; and

(B) The client cannot be held liable for payment.

(9) The agency will calculate its reduction, denial or recoupment of payment based on the facts of each OPPC or HCAC. Any overpayment applies only to the health care professional or hospital where the OPPC or HCAC occurred and does not apply to care provided by other health care professionals and inpatient hospitals, should the client subsequently be transferred or admitted to another hospital for needed care.

(10) Medicaid clients are not liable for payment of an item or service related to an OPPC or HCAC or the treatment of consequences of an OPPC or HCAC that would have been otherwise payable by the agency, and must not be billed for any item or service related to a PPC.

(11) Provider dispute process for PPCs.

(a) A health care professional or inpatient hospital may dispute the agency's reduction, denial or recoupment of payment related to a PPC as described in chapter 182-502A WAC.

(b) The disputing health care professional or inpatient hospital must provide the agency with the following information:

(i) The health care professional or inpatient hospital's assessment of the PPC; and

(ii) A complete copy of the client's medical record and all associated billing records, to include itemized statement or explanation of charges.

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2700 Purpose.** This chapter describes the requirements, limitations, and procedures that apply when the (~~department~~) medicaid agency or its designee recovers the cost of medical care from the estate of a deceased client



and when the (~~department~~) agency or its designee files liens prior to the client's death.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2730 Definitions.** The following definitions apply to this chapter:

**"Contract health service delivery area (CHSDA)"** means the geographic area within which contract health services will be made available by the Indian health service to members of an identified Indian community who reside in the area as identified in 42 C.F.R. Sec. 136.21(d) and 136.22.

**"Domestic partner"** (~~means an adult who meets the requirements for a valid registered domestic partnership as established by RCW 26.60.030 and who has been issued a certificate of state registered domestic partnership by the Washington secretary of state~~) See WAC 182-500-0025. When the terms "domestic partner" or "domestic partnership" are used in this chapter, they mean "state registered domestic partner" or "state registered domestic partnership."

**"Estate"** means all property and any other assets that pass upon the client's death under the client's will or by intestate succession pursuant to chapter 11.04 RCW or under chapter 11.62 RCW. The value of the estate will be reduced by any valid liability against the decedent's property at the time of death. An estate also includes:

(1) For a client who died after June 30, 1995 and before July 27, 1997, nonprobate assets as defined by RCW 11.02.-005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997 and before September 14, 2006, nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after September 14, 2006, nonprobate assets as defined by RCW 11.02.005 and any life estate interest held by the recipient immediately before death.

**"Heir"** means the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.

**"Joint tenancy"** means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship.

**"Life estate"** means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

**"Lis pendens"** means a notice filed in public records warning that title to certain real property is in litigation and the outcome of the litigation may affect the title.

**"Long-term care services"** means, for the purposes of this chapter only, the services administered directly or

through contract by the department of social and health services for clients of the home and community services division of the department of social and health services (DSHS) and (~~division of~~) the developmental disabilities administration of DSHS including, but not limited to, nursing facility care and home and community services.

**"Medicaid"** (~~means the state and federally funded program that provides medical services under Title XIX of the Federal Social Security Act~~) see WAC 182-500-0070.

**"Medical assistance"** (~~means medicaid services funded under Title XIX or state funded medical services~~) see WAC 182-500-0070.

**"Medicare savings programs"** means the programs described in WAC (~~388-517-0300~~) 182-517-0300 that help a client pay some of the costs that medicare does not cover.

**"Property":** Examples include, but are not limited to, personal property, real property, title property, and trust property as described below:

(1) **"Personal property"** means any property that is not classified as real, title, or trust property in the definitions provided here;

(2) **"Real property"** means land and anything growing on, attached to, or erected thereon;

(3) **"Title property"** means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motorcycles, and vehicles.

(4) **"Trust property"** means any type of property interest titled in, or held by, a trustee for the benefit of another person or entity.

**"State-only funded long-term care"** means the long-term care services that are financed with state funds only.

**"Qualified long-term care insurance partnership"** means an agreement between the Centers for Medicare and Medicaid services (CMS), the Washington state insurance commission which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(C)(iii) of the act.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2733 Estate liability.** (1) The client's estate is not liable for services provided before July 26, 1987.

(2) The client's estate is not liable when the client died before July 1, 1994 and on the date of death there was:

(a) A surviving spouse; or

(b) A surviving child who was either:

(i) Under twenty-one years of age; or

(ii) Blind or disabled as defined under chapter (~~388-511~~) 182-512 WAC.

(3) The estate of a frail elder or vulnerable adult under RCW 74.34.005 is not liable for the cost of adult protective services (APS) financed with state funds only.

(4) On or before December 31, 2009, the client's estate is not liable for amounts paid for medicare premiums and other cost-sharing expenses incurred on behalf of a client who is

eligible only for the medicare savings programs (MSP), and not otherwise medicaid eligible.

(5) On or after January 1, 2010, the client's estate is not liable for amounts paid for medical assistance cost-sharing for benefits for clients who received coverage under a MSP only or for clients who receive coverage under a medicare savings program and medicaid as described in 42 U.S.C. 1396a (a)(10)(E).

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2737 Deferring recovery.** ~~((+))~~ For a client who died after June 30, 1994, the ~~((department))~~ medicaid agency or its designee defers recovery from the estate until:

~~((a))~~ (1) The death of the surviving spouse, if any; and  
~~((b))~~ (2) There is no surviving child who is:  
~~((i))~~ (a) Twenty years of age or younger; or  
~~((ii))~~ (b) Blind or disabled at the time of the client's death, as defined under WAC ~~((388-475-0050))~~ 182-512-0050.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2740 Age when recovery applies.** The client's age and the date when services were received determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services and subsection (2) covers liability for state-only funded long-term care services. An estate may be liable under both subsections.

(1) For a client who on July 1, 1994 was:

(a) Age sixty-five or older, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age sixty-five or after July 26, 1987, whichever is later;

(b) Age fifty-five through sixty-four years of age, the client's estate is liable for medicaid services that were subject to recovery and provided on and after July 1, 1994; or

(c) Under age fifty-five, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age fifty-five.

(2) Regardless of the client's age when the services were provided, the client's estate is liable for state-only funded long-term care services provided to:

(a) Clients of the home and community ~~((services' clients))~~ services division of the department of social and health services (DSHS) on and after July 1, 1995; and

(b) ~~((Division of))~~ Clients of the developmental ~~((disabilities' clients))~~ disabilities administration of DSHS on and after June 1, 2004.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2742 Services subject to recovery.** The ~~((department))~~ medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, in order to determine

whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state-only funded long-term care services, and subsection (3) of this section covers liability for all other state-funded services. An estate can be liable under any of these subsections.

(1) The client's estate is liable for:

(a) All medicaid services provided from July 26, 1987, through June 30, 1994;

(b) The following medicaid services provided after June 30, 1994 and before July 1, 1995:

(i) Nursing facility services;

(ii) Home and community-based services; and

(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services.

(c) The following medicaid services provided after June 30, 1995, and before June 1, 2004:

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and ~~((disability services))~~ long-term support administration of the department of social and health services (DSHS); and

(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection.

(d) The following services provided on and after June 1, 2004, through December 31, 2009:

(i) All medicaid services, including those services described in subsection (c) of this section;

(ii) Medicare savings programs services for individuals also receiving medicaid;

(iii) Medicare premiums only for individuals also receiving medicaid; and

(iv) Premium payments to managed care organizations.

(e) The following services provided on or after January 1, 2010:

(i) All medicaid services except those defined under ~~((subsection))~~ (d)(ii) and ~~((d))~~(iii) of this ~~((section))~~ subsection;

(ii) All institutional medicaid services described in subsection (c) of this section;

(iii) Premium payments to managed care organizations; and

(iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid.

(2) The client's estate is liable for all state-only funded long-term care services and related hospital and prescription drug services provided to:

(a) Clients of the home and community ~~((services' clients))~~ services division of DSHS on and after July 1, 1995; and

(b) ~~((Division))~~ Clients of the developmental ((disabilities' clients)) disabilities administration of DSHS on and after June 1, 2004.

(3) The client's estate is liable for all state-funded services provided regardless of the age of the client at the time the services were provided.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2750 Delay of recovery for undue hardship.** The ~~((department))~~ medicaid agency or its designee delays recovery under this section when the ~~((department))~~ agency or its designee determines that recovery would cause an undue hardship for an heir. This delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery.

(1) Undue hardship exists when:

(a) The estate subject to adjustment or recovery is the sole income-producing asset of one or more heirs and income is limited;

(b) Recovery would deprive an heir of shelter and the heir lacks the financial means to obtain and maintain alternative shelter; or

(c) The client is survived by a domestic partner.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the decedent's cost of assistance would merely cause the heir inconvenience or restrict his or her lifestyle; or

(b) The undue hardship was created as a result of estate planning methods by which the heir or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.

(3) When a delay in recovery is not granted, the ~~((department))~~ agency or its designee provides notice to the person who requested the delay of recovery. The ~~((department's))~~ agency's or its designee's notice includes information on how to request an administrative hearing to contest the ~~((department's))~~ agency's or its designee's denial.

(4) When a delay of recovery is granted under subsection (1)(a) or ~~((1))~~(b) of this section, the ~~((department))~~ agency or its designee may revoke the delay of recovery if the heir(s):

(a) Fails to supply timely information and resource declaration when requested by the ~~((department))~~ agency or its designee;

(b) Sells, transfers, or encumbers title to the property;

(c) Fails to reside full-time on the premises;

(d) Fails to pay property taxes and utilities when due;

(e) Fails to identify the state of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the ~~((department))~~ agency or its designee with documentation of the coverage status on an annual basis(-);

(f) Have a change in circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or

(g) Dies.

(5) When a delay of recovery is granted due to undue hardship, the ~~((department))~~ agency or its designee has the option to:

(a) Apply a lien; and/or

(b) Accept a payment plan.

(6) A person may request an administrative hearing to contest the ~~((department's))~~ agency's or its designee's denial of delay of recovery due to undue hardship when that person suffered a loss because the delay was not granted.

(7) A request for an administrative hearing under this section must:

(a) Be in writing;

(b) State the basis for contesting the ~~((department's))~~ agency's or its designee's denial of the request for a delay of recovery due to an undue hardship;

(c) Include a copy of the ~~((department's))~~ agency's or its designee's denial;

(d) Be signed by the requester and include the requester's address and telephone number; and

(e) Be served, as described in WAC ~~((388-527-2870))~~ 182-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the ~~((department))~~ agency or its designee sent the decision denying the request for a delay of recovery.

(8) Upon receiving a request for an administrative hearing, the ~~((department))~~ agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(9) An adjudicative proceeding held under this section is governed by chapters 34.05 RCW and ~~((388-02))~~ 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2754 Assets not subject to recovery and other limits on recovery.** (1) Recovery does not apply to the first fifty thousand dollars of the estate value at the time of death and is limited to thirty-five percent of the remaining value of the estate for services the client:

(a) Received through July 24, 1993; and

(b) When the client died with:

(i) No surviving spouse;

(ii) No surviving child who is:

(A) Under twenty-one years of age;

(B) Blind; or

(C) Disabled.

(iii) A surviving child who is twenty-one years of age or older.

(2) For services received on and after July 25, 1993, all services recoverable under WAC ~~((388-527-2742))~~ 182-527-2742 will be recovered, even from the first fifty thousand dollars of estate value that is exempt above, except as set forth in subsections (3) through (8) of this section.

(3) For a client who received services on and after July 25, 1993 through June 30, 1994, the following property, up to a combined fair market value of two thousand dollars, is not recovered from the estate of the client:

- (a) Family heirlooms;
- (b) Collectibles;
- (c) Antiques;
- (d) Papers;
- (e) Jewelry;
- (f) Photos; and
- (g) Other personal effects of the deceased client and to which a surviving child is entitled.

(4) Certain properties belonging to American Indians/Alaska natives (AI/AN) are exempt from estate recovery if at the time of death:

(a) The deceased client was enrolled in a federally recognized tribe; and

(b) The estate or heir documents the deceased client's ownership interest in trust or nontrust real property and improvements located on a reservation, near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior, or located:

(i) Within the most recent boundaries of a prior federal reservation; or

(ii) Within the contract health service delivery area boundary for social services provided by the deceased client's tribe to its enrolled members.

(5) Protection of trust and nontrust property under subsection (4) is limited to circumstances when the real property and improvements pass from an Indian (as defined in 25 U.S.C. Chapter 17, Sec. 1452(b)) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and step-children, that their culture would nonetheless protect as family members, to a tribe or tribal organization and/or to one or more Indians.

(6) Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) are exempt from estate recovery by other laws and regulations.

(7) Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(8) Government reparation payments specifically excluded by federal law in determining eligibility are exempt from estate recovery as long as such funds have been kept segregated and not commingled with other countable resources and remain identifiable.

(9) Assets designated as protected by a qualified long-term care partnership (QLTC) policy issued on or after December 1, 2011, may be disregarded for estate recovery purposes if:

(a) The insured individual's estate is the recipient of the estate recovery exemption; or

(b) The insured individual holds title to property which is potentially subject to a predeath lien and that individual asserts the property is protected under the long term care (LTC) partnership policy.

(10) An individual must provide clear and convincing evidence that the asset in question was designated as protected to the office of financial recovery including:

(a) Proof of a valid QLTC partnership policy; and  
(b) Verification from the LTC insurance company of the dollar amount paid out by the policy; and

(c) A current DSHS LTCP asset designation form when the LTC partnership policy paid out more than was previously designated.

(11) The insured individual's estate must provide evidence proving an asset is protected prior to the final recovery settlement.

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2790 Filing liens.** (1) The ~~((department))~~ medicaid agency or its designee may file liens to recover the cost of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of a client consistent with 42 U.S.C. 1396p and chapters 43.20B RCW and ~~((388-527))~~ 182-527 WAC.

(2) Prior to the ~~((department))~~ agency or its designee filing a lien under this section, the ~~((department))~~ agency or its designee sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The probate estate's personal representative, if any;

(c) Any other person known to have title to the affected property and/or to the decedent's heir(s) as defined by WAC ~~((388-527-2730))~~ 182-527-2730; and

(d) The decedent's last known address or the address listed on the title, if any.

(3) The notice in subsection (2) of this section includes:

(a) The decedent's name, identification number, date of birth, and date of death;

(b) The amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client that the ~~((department))~~ agency or its designee seeks to recover;

(c) The ~~((department's))~~ agency's or its designee's intent to file a lien against the deceased client's property and other assets to recover the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client;

(d) The county in which the property and other assets are located; and

(e) The procedures to contest the ~~((department's))~~ agency's or its designee's decision to file a lien by applying for an administrative hearing.

(4) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the decedent alleged by the ~~((department's))~~ agency's or its designee's notice is correct;

(b) Whether the decedent had legal title to the property; and

(c) Whether a lien is allowed under the provisions of Title 42 U.S.C. Section 1396p (a) and (b).

(5) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC ((388-527-2870)) 182-527-2870, within twenty-eight calendar days of the date the ((department)) agency or its designee mailed the notice.

(6) Upon receiving a request for an administrative hearing, the ((department)) agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(7) Disputed assets must not be distributed while in litigation.

(8) An administrative hearing under this section is governed by chapters 34.05 RCW and ((388-02)) 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter ((388-02)) 182-526 WAC, the provision in this section governs.

(9) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the ((department)) agency or its designee only files a lien against the decedent's property and other assets only if upheld by the final agency decision.

(10) If no known title holder requests an administrative hearing, the ((department)) agency or its designee files a lien twenty-eight calendar days after the date the ((department)) agency or its designee mailed the notice described in subsection (2) of this section.

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2810 Life estates and joint tenancy.**

(1) The ((department)) medicaid agency or its designee may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death until the lien is satisfied. The ((department)) agency or its designee will not apply a lien against a decedent's life estate interest providing the decedent had not previously transferred an interest in the property while retaining a life estate.

(a) The value of the life estate subject to the lien is the fair market value of the decedent's interest in the property subject to the life estate immediately prior to death.

(b) The value of the joint tenancy interest subject to the lien is the value of the decedent's fractional interest he or she would have owned in the jointly held interest in the property had the decedent and the surviving joint tenants held title to the property as tenants in common immediately prior to death.

(2) The ((department's)) agency's or its designee's methodology for calculating the value of the life estate is determined using fair market value of the property. To determine the value of the life estate, the ((department)) agency or its designee multiplies the current fair market value of the property by the life estate factor in the life estate table. (The Centers for Medicare and Medicaid Services based table is found in the ((department's)) department of social and health service's Eligibility A-Z Manual, Long Term Care, Appendix II and is available online at: ([<http://www1.dshs-wa.gov/esa/cazmanual/>\) <http://www.dshs.wa.gov/manuals/caz/sections/longtermcare/LTCAppendix2.shtml>.\)](http://www1.dshs-</a></p>
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**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2820 Liens prior to death.** (1) Subject to the requirements of 42 U.S.C. Section 1396p and the conditions of this section, the ((department)) agency or its designee is authorized to file a lien against the property of a medical assistance client prior to his or her death, and to seek adjustment and recovery from the client's estate or sale of the property subject to the lien if:

(a) The client is permanently an inpatient in a nursing facility, intermediate care facility for individuals with mental retardation, or other medical institution as described in WAC ((388-500-0005)) 182-500-0050;

(b) The ((department)) agency or its designee determines, after notice and opportunity for a hearing, that the client cannot reasonably be expected to be discharged from the medical institution and return home; and

(c) None of the following are lawfully residing, in the client's home:

(i) The client's spouse or domestic partner;

(ii) The client's child who at the time of the client's death is twenty years of age or younger, or is blind or permanently and totally disabled as defined in Title 42 U.S.C. Section 1382c; or

(iii) A sibling of the client (who has an equity interest in such home and who was residing in the client's home for a period of at least one year immediately before the date of the client's admission to the medical institution).

(2) If the client is discharged from the medical facility and returns home, the ((department)) agency or its designee dissolves the lien.

(3) Prior to the ((department)) agency or its designee filing a lien under this section, the ((department)) agency or its designee sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The client's known address;

(c) Any other person known to have title to the affected property and the client's authorized representative, if any.

(4) The notice in subsection (3) of this section includes:

(a) The client's name, and the date the client began to receive services;

(b) The ((department's)) agency's or its designee's intent to file a lien against the client's property to recover the amount of medical assistance or state-only funded long-term care services, or both correctly paid on behalf of the client;

(c) The county in which the property and other assets are located; and

(d) The procedures to contest the ((department's)) agency's or its designee's decision to file a lien by applying for an administrative hearing.

(5) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, on behalf of the decedent alleged by the ((department's)) agency's or its designee's notice is correct; and

(b) Whether the decedent had legal title to the identified property.

(6) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC ~~((388-527-2870))~~ 182-527-2870, within twenty-eight calendar days of the date the ~~((department))~~ agency or its designee mailed the notice.

(7) Upon receiving a request for an administrative hearing, the ~~((department))~~ agency or its designee notifies persons known to have title to the property of the time and place of the administrative hearing.

(8) Disputed assets must not be distributed while in litigation.

(9) An administrative hearing under this subsection is governed by chapters 34.05 RCW and ~~((388-02))~~ 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision in this section governs.

(10) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the ~~((department))~~ agency or its designee only files a lien against the client's property and other assets only if upheld by the final agency decision.

(11) If no known title holder requests an administrative hearing, the ~~((department))~~ agency or its designee files a lien twenty-eight calendar days after the date the ~~((department))~~ agency or its designee mailed the notice described in subsection (3) of this section.

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2830 Request for notice of transfer or encumbrance.** (1) When a client receives medical assistance subject to recovery under this chapter and the client is the holder of record title to real property or the purchaser under a land sale contract, the ~~((department))~~ medicaid agency or its designee files a request for notice of transfer or encumbrance ~~((F))~~(DSHS form 18-664 Notice of Possible Debt~~((H)))~~) with the county auditor for recording in the deed and mortgage records.

(2) The request for notice of transfer or encumbrance ~~((F))~~(DSHS 18-664~~((H)))~~) complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

(a) Client's name and case identifier;

(b) Legal description of the real property, including parcel number; and

(c) Mailing address for the ~~((department))~~ agency or its designee to receive the notice of transfer or encumbrance.

(3) The request for notice of transfer or encumbrance ~~((F))~~(18-664~~((H)))~~) described in subsection (1) of this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property.

(4) When filing a request for notice of transfer or encumbrance ~~((F))~~(DSHS 18-664~~((H)))~~) with the county

auditor, the ~~((department))~~ agency or its designee gives the opportunity to request an administrative hearing as follows:

(a) Any person known to have title to the property is served with a copy of the notice. The notice states:

(i) The ~~((department's))~~ agency's or its designee's intent to recover from the client's estate the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client;

(ii) The county in which the property is located; and

(iii) The right of the person known to have title in the property to contest the ~~((department's))~~ agency's or its designee's decision to file the notice by applying for an administrative hearing with the office of financial recovery (OFR).

(b) An administrative hearing only determines:

(i) Whether the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client alleged by the ~~((department's))~~ agency's or its designee's notice is correct; and

(ii) Whether the client has legal title to the identified property.

(5) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the ~~((department's))~~ agency's or its designee's notice;

(c) Be signed by the requester and state the requester's address and telephone number; and

(d) Be served on OFR as described in WAC ~~((388-527-2870))~~ 182-527-2870, within twenty-eight calendar days of the date the individual received the ~~((department's))~~ agency's or its designee's notice.

(6) Upon receiving a request for an administrative hearing, the ~~((department))~~ agency or its designee notifies the persons known to have title to the property of the time and place of the administrative hearing.

(7) An administrative hearing under this section is governed by chapters ~~((388-05))~~ 34.05 RCW and ~~((388-02))~~ 182-526 WAC, and this section. If a provision of this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision of this section governs.

(8) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance ~~((F))~~(DSHS 18-664~~((H)))~~) when performing a title search on real property must disclose the presence of the request for notice or transfer or encumbrance of real property in any report preliminary to, or commitment to offer, a certificate of title insurance for the real property.

(9) If the ~~((department))~~ agency or its designee has filed a request for notice of transfer or encumbrance ~~((F))~~(DSHS 18-664~~((H)))~~), any individual who transfers or encumbers real property must provide the ~~((department))~~ agency or its designee with a notice of transfer or encumbrance ~~((F))~~(DSHS 18-663~~((H)))~~) as described in WAC ~~((388-527-2850))~~ 182-527-2850.

**AMENDATORY SECTION** (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2840 Termination of request for notice of transfer or encumbrance.** (1) The ~~((department))~~

medicaid agency or its designee files a termination of prior notice ((f))(DSHS 18-662((+))) of transfer or encumbrance, with the county auditor for recording when, in the judgment of the ((department)) agency or its designee, it is no longer necessary or appropriate for the ((department)) agency or its designee to monitor transfers or encumbrances related to the real property.

(2) The termination of prior notice ((f))(DSHS 18-662((+))) request for notice of transfer or encumbrance complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

- (a) Client's name and case identifier;
- (b) Legal description of the real property, including parcel number; and
- (c) Mailing address for the ((department)) agency or its designee to receive the notice of transfer or encumbrance.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2850 Notice of transfer or encumbrance.** (1) If the ((department)) medicaid agency or its designee has filed a request for notice of transfer or encumbrance ((f))(DSHS 18-664 Notice of Possible Debt((+))), any individual who transfers or encumbers real property must provide the ((department)) agency or its designee with a notice of transfer or encumbrance ((f))(DSHS 18-663((+))) or a substantially similar notice as required by chapter 43.20B RCW.

(2) The ((department's)) agency's or its designee's notice of transfer or encumbrance ((f))(DSHS 18-663((+))) is available online at ((http://www1.dshs.wa.gov/msa/forms/eforms.html)) <http://www.dshs.wa.gov/forms/eforms.shtml> or by writing to Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504-5805.

(3) The notice of transfer or encumbrance ((f))(DSHS 18-663((+))) must comply with the requirements for recording in RCW 36.18.010, and, at a minimum, contain the:

- (a) Client's name and case identifier as listed on the ((department's)) agency's or its designee's request for notice of transfer or encumbrance;
- (b) Recording date and recording reference as listed on the ((department's)) agency's or its designee's request for notice of transfer or encumbrance;
- (c) Legal description of the real property as listed on the ((department's)) agency's or its designee's request for notice of transfer or encumbrance; ((and))
- (d) Type of instrument; and
- (e) Recording date and recording reference.

(4) The notice of transfer or encumbrance ((f))(DSHS 18-663((+))) or a similar notice and copy of the transfer or encumbrance related to the real property must be sent to the ((department)) agency or its designee as specified in WAC ((388-527-2870)) 182-527-2870.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2860 Interest assessed on past due debt.** (1) The recovery debt becomes past due and accrues

interest at a rate of one percent per month on recoverable estate assets beginning nine months after the earlier of:

(a) The filing of the ((department's)) medicaid agency's or its designee's creditor's claim in the probate of the deceased client's estate; or

(b) The recording of the ((department's)) agency's or its designee's lien against the property of the deceased client in the county where the property is located.

(2) The ((department)) agency or its designee may waive interest if:

(a) Insufficient cash, accounts, or stock exist to satisfy the ((department's)) agency's or its designee's claim and no sales of estate property has occurred despite its continuous listing or marketing for sale in a commercially reasonable manner for a reasonable fair market value; or

(b) Suit filed in the probate of the deceased client's estate resulted in the filing of a lis pendens or order prohibiting the personal representative from selling the estate property. However, this section does not apply to such suite contesting the ((department's)) agency's or its designee's assessment of interest or claim for reimbursement of medical assistance or state-only funded long-term care services debt.

AMENDATORY SECTION (Amending WSR 12-19-070, filed 9/17/12, effective 10/1/12)

**WAC 182-527-2870 Serving notices on the office of financial recovery (OFR).** Serving legal notice on the office of financial recovery (OFR) requires the notice to be served either:

(1) In person at ((the Blake Office Park, 4450 10th Ave S.E., Lacey)) DCS - Office of Financial Recovery, 712 Pear St. S.E., Olympia, Washington 98504-0001; or

(2) By certified mail, return receipt requested, to Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501.

## WSR 13-19-039

### PERMANENT RULES

### STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed September 12, 2013, 9:34 a.m., effective October 13, 2013]

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

Purpose: RCW 28B.50.912 authorizes the state board for community and technical colleges to adopt rules governing the eligibility of persons sixteen years of age and older to take the general education development (GED®) test subject to the rules adopted by the State Board of Education. SHB 1686 changed the term "general educational development" to "high school equivalency."

Citation of Existing Rules Affected by this Order: Amending WAC 131-48-010 through and including WAC 131-48-140.

Statutory Authority for Adoption: RCW 28B.10.400.

Adopted under notice filed as WSR 13-15-016 on July 8, 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 0, Repealed 0.

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

Date Adopted: September 11, 2013.

Beth Gordon  
Executive Assistant  
and Rules Coordinator

### Chapter 131-48 WAC

#### HIGH SCHOOL EQUIVALENCY CERTIFICATE ((OF EDUCATIONAL COMPETENCE))

AMENDATORY SECTION (Amending WSR 98-15-008, filed 7/2/98, effective 8/2/98)

**WAC 131-48-010 Authority.** The authority for this chapter is RCW 28B.50.912 which authorizes the state board for community and technical colleges to adopt rules governing the eligibility of persons sixteen years of age or older to take the ((general educational development (GED))) high school equivalency test subject to rules adopted by the state board of education.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

**WAC 131-48-020 Purpose.** The purpose of this chapter is to set forth policies and procedures governing the administration of the ((GED)) high school equivalency test and the issuance of high school equivalency certificates ((of educational competence)) for persons who have not graduated from high school and are not enrolled in a regular or alternative high school program.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

**WAC 131-48-030 High school equivalency certificate ((of educational competence)).** As used in this chapter, the term "high school equivalency certificate ((of educational competence))" means a certificate issued jointly by the state board for community and technical colleges and the superintendent of public instruction which indicates that the holder thereof has attained standard scores at or above the minimum proficiency level prescribed by the state board for community and technical colleges on the ((general educational development (GED))) high school equivalency test, which is a measure of high school equivalency in the

areas of writing skills, social studies, science, reading skills, and mathematics.

AMENDATORY SECTION (Amending WSR 98-15-008, filed 7/2/98, effective 8/2/98)

**WAC 131-48-040 ((General educational development)) High school equivalency test—Definition.** As used in this chapter, the term "~~((general educational development))~~ high school equivalency test" means the most recent ~~((general educational development))~~ high school equivalency test as determined by the authorizing agency.

AMENDATORY SECTION (Amending WSR 07-19-100, filed 9/18/07, effective 10/19/07)

**WAC 131-48-050 Minimum proficiency level—Definition.** Minimum proficiency level in Washington state is that set by ~~((GED Testing Service, part of the American Council on Education))~~ the state board for community and technical colleges.

AMENDATORY SECTION (Amending WSR 98-15-008, filed 7/2/98, effective 8/2/98)

**WAC 131-48-060 Official ((GED)) high school equivalency testing center—Definition.** As used in this chapter, the term "official ((GED)) high school equivalency testing center" means public or private agencies which have agreed to comply with the provisions of this chapter and with policies and regulations of the ~~((GED Testing Service))~~ test publisher, and which have been designated by the state board for community and technical colleges, administrator of the ((GED)) high school equivalency testing program to administer the ~~((general educational development))~~ high school equivalency test. Additional official ((GED)) high school equivalency testing centers and local ((GED)) examiners shall be approved by the state administrator of the ((GED)) high school equivalency testing program at the state board for community and technical colleges when the following have been documented:

- (1) Need for a new testing site in a specific region or location;
- (2) Need for new or replacement examiner at a testing center;
- (3) Commitment of the governing board or, if none, the chief official of the proposed new testing center to meet all testing center requirements described ~~((in the GED Examiner's Manual published by GED Testing Service of the American Council on Education))~~ by the test publisher; and
- (4) Availability of testing center personnel who meet the qualifications specified ~~((in the GED Examiner's Manual published by the GED Testing Service))~~ by the test publisher as determined by the authorizing agency.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

**WAC 131-48-080 Compliance with rules.** Testing centers shall comply with the requirements of the testing program, and administer ((GED)) high school equivalency



tests only to those who have reached the age of nineteen unless an applicant who is sixteen, seventeen, or eighteen years of age has been adjudged by a school district official in accordance with rules of the state board of education to have a substantial and warranted reason for leaving the regular high school program.

AMENDATORY SECTION (Amending WSR 98-15-008, filed 7/2/98, effective 8/2/98)

**WAC 131-48-100 Eligibility to take the ~~((GED))~~ high school equivalency test.** The following individuals shall be eligible to take the ~~((general educational development))~~ high school equivalency test in official ~~((GED))~~ high school equivalency testing centers, provided that they are not enrolled in public, private, or home-based instruction of high school or a high school completion program at the time the test is administered:

(1) Any person age nineteen or over who has not graduated from a public or private high school.

(2) Any person between the ages of sixteen and nineteen who has not graduated from a public or private high school and who has been adjudged by a school district in accordance with rules of the state board of education to have a substantial and warranted reason for leaving the regular high school education program.

(3) Any student age sixteen or over who has completed an education center individual student program in accordance with the provisions of chapter 392-185 WAC.

(4) Any person between the ages of sixteen and nineteen who has not graduated from a public or private high school, and who has completed a program of home-based instruction in compliance with RCW 28A.225.010(4) as certified by the written and notarized statement of the parent(s) or legal guardian(s) who provided the home-based instruction.

(5) Any person who is an active member of the military, national guard, or reserves and has not received a high school diploma.

(6) Adjudicated youth under the director of prisons, jails, detention centers, parole and probation offices, and other corrections facilities while enrolled in school if so ordered by a court or officer of the court.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

**WAC 131-48-110 Eligibility for award of high school equivalency certificate ~~((of educational competence))~~.** The high school equivalency certificate ~~((of educational competence))~~ shall be awarded jointly by the state board for community and technical colleges and the superintendent of public instruction to persons who achieve the minimum proficiency level on the ~~((general educational development))~~ high school equivalency test and who meet the following:

(1) Are residents of Washington state; and

(2) Are nineteen years of age or older on the date of issuance; or

(3) Have been adjudged by a district as possessing a substantial and warranted reason for leaving the regular high school education program.

(4) Have completed a program of home-based instruction in compliance with RCW 28A.225.010(4) and chapter 28A.220 RCW.

(5) Are active members of the military, national guard, or reserves.

(6) Are adjudicated youth under the director of prisons, jails, detention centers, parole and probation offices, and other corrections facilities and so ordered by a court or officer of the court.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

**WAC 131-48-120 Identification necessary to take the ~~((GED))~~ high school equivalency test.** All persons taking the ~~((GED))~~ high school equivalency test must provide picture identification utilizing one of the following:

(1) State-issued driver's license or a state-issued identification card with a photograph.

(2) United States passport.

(3) Certificate of United States citizenship.

(4) Certificate of naturalization.

(5) Unexpired foreign passport.

(6) Alien registration card with photograph.

(7) Armed forces identification card.

(8) Other forms of comparable identification which the ~~((GED))~~ examiner judges to be credible including, but not limited to, one or more of the following:

(a) Other forms of picture identification;

(b) Birth certificates in combination with other sources that confirm identity; and

(c) Confirmation of identity by a law enforcement, social service, or penal agency.

AMENDATORY SECTION (Amending WSR 93-22-006, filed 10/21/93, effective 11/21/93)

**WAC 131-48-140 Effect of high school equivalency certificate ~~((of educational competence))~~.** The award by the state board for community and technical colleges and superintendent of public instruction of a high school equivalency certificate ~~((of educational competence))~~ shall not preclude such persons from returning to high school to obtain a regular high school diploma if changes in the person's personal situation allow completion of a regular high school education program. ~~((However, the GED certificate or test scores may not be used as a means of awarding academic credit (e.g., Carnegie units) or as part or all of the requirements for completing the regular high school diploma.))~~

Receipt of a high school equivalency certificate ~~((of educational competence))~~ also shall not preclude such persons from enrolling in an adult high school completion program at one of the state's community or technical colleges. ~~((However, the GED certificate or test scores may not be used as a means of awarding academic credit or as part or all of the requirements for completing the adult high school completion program and receiving the adult high school diploma.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 131-48-070 Restrictions on use of general educational development tests.
- WAC 131-48-090 Annual contracts.
- WAC 131-48-130 Application form for certificate of educational competence.

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 4, Amended 14, Repealed 0.  
Date Adopted: September 13, 2013.

Sandi Stewart  
Acting Assistant Director  
State Human Resources

**WSR 13-19-043**  
**PERMANENT RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed September 13, 2013, 7:39 a.m., effective October 18, 2013]

Effective Date of Rule: October 18, 2013.

Purpose: The 2013 – 2015 operating budget that was passed by the legislature provides for a longevity step to be added to the state salary schedule. It provides an approximate 2.5 percent increase. Employees who have been at the top step (step L) in the same salary range for six years will move to the new step M. These new rules and rule modifications address this new salary step.

Office of financial management amended two WACs since the emergency filing effective July 1, 2013. We added language to WAC 357-28-088 which clarifies that if a new appointment is due to an employee accepting a demotion in lieu of layoff or a layoff option to a position with a lower salary range maximum then time spent at step L in the previous position will count towards the six years to qualify for step M in the new salary range. We have added language to WAC 357-28-035 which says for the nurse special pay salary schedules if an employer wants to set base salary and progression on recruitment and retention rather than years of experience they must address it in their salary determination policy.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-205, 357-28-035, 357-28-055, 357-28-056, 357-28-060, 357-28-070, 357-28-075, 357-28-090, 357-28-110, 357-28-115, 357-28-120, 357-28-135, 357-28-165, and 357-13-090.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 13-16-094 on August 7, 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 4, Amended 14, 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 4, Amended 14, Repealed 0.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

**WAC 357-13-090 How is an employee affected when his/her position is reallocated?**

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list; and has his/her salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i>  Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed <del>((the top))</del> step <u>L</u> of the range as provided in WAC 357-28-115.	<i>If the employee meets the competencies and other position requirements:</i>  → The employer's layoff procedure applies.	<i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-205 Upon return from exempt service, how is the employee's salary set?** The employee's base salary must not be less than the employee's previous base salary in classified service, adjusted according to any changes to salary range that occurred while the employee was in exempt service.

If the employee was at step L at the time they accepted the exempt appointment and they are returned to step L of the same pay range, time spent in exempt service will count towards the six years to qualify for step M.

AMENDATORY SECTION (Amending WSR 05-21-061, filed 10/13/05, effective 11/15/05)

**WAC 357-28-035 What must be addressed in the employer's salary determination policy?** The employer's salary determination policy must minimally address the following:

- (1) Setting base salary for new employees;
- (2) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a position in a new class;
- (3) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a permanent position while in a nonpermanent appointment;
- (4) Setting base salary in accordance with WAC 357-28-140 when an employee transfers to a new position;
- (5) Setting base salary when an employee ~~((accepts a layoff option, accepts a demotion in lieu of layoff,))~~ is appointed from an internal or statewide layoff list ~~((or is reallocated to a position with a lower range and the employee's previous base salary is not within the salary range of the new position))~~;

(6) Setting base salary when an employee is reallocated to a position with a lower salary range and the employee's previous base salary is above step L of the new salary range as permitted in WAC 357-28-120. Under no circumstance should an employee's salary exceed their previous base salary:

(7) Setting base salary when an employee demotes for reasons other than accepting a demotion in lieu of layoff or accepting a demotion when a position is reallocated;

~~((7))~~ (8) Setting base salary when an employee is reverted following a voluntary demotion; ~~(and~~

~~(8))~~ (9) Authorizing premiums for recruitment and retention as provided in WAC 357-28-095 and 357-28-100; and

(10) Setting base salary and progression based on recruitment and retention rather than years of experience for the nurse special pay salary schedules, if allowed by the employer.

AMENDATORY SECTION (Amending WSR 10-17-062, filed 8/13/10, effective 9/15/10)

**WAC 357-28-055 How is the periodic increment date determined for a general government employee?** (1) For a general government employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005 is retained.

(2) For a general government employee appointed to a position on or after July 1, 2005 whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a general government employee appointed to a position on or after July 1, 2005 whose base salary is set above the minimum but below ~~((the maximum))~~ step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) A general government employee appointed to a position on or after July 1, 2005, whose base salary is set at ~~((the maximum))~~ step L of the range will not have a periodic increment date set. If the employee later receives a new appointment, the periodic increment date will be set at that time, as described in this section.

(5) Once a general government employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 and 357-28-075; or

(b) The periodic increment date is adjusted for leave without pay in accordance with WAC 357-31-345.

AMENDATORY SECTION (Amending WSR 06-11-048, filed 5/11/06, effective 6/12/06)

**WAC 357-28-056 How is the periodic increment date determined for a higher education employee?** (1) For a higher education employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005 is retained.

(2) For a higher education employee appointed to a position on or after July 1, 2005 whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a higher education employee appointed to a position on or after July 1, 2005 whose base salary is set above the minimum but below ~~((the maximum))~~ step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) Once a higher education employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 and 357-28-075; or

(b) The employee is appointed to another position with a different salary range maximum. Upon subsequent appointment, the provisions of subsection (2) and (3) of this section apply.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-060 When does an employee receive an increment increase?** Unless adjusted under the provisions of WAC 357-28-070 or 357-28-075, an employee must receive a two step increase to base salary on the periodic increment date. Increment increases continue until the employee reaches ~~((the top))~~ step L of the salary range.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

**WAC 357-28-070 Can an employer adjust the timing and amount of increment increases?** Employers may adjust the timing and/or amount of regularly scheduled increment increases stated in WAC 357-28-060 by resetting the periodic increment date based on the nature of the work or training requirements. This may apply to all employees, employees in specific positions, all employees allocated to a class, or all

employees in an organizational unit. This may happen as long as employees receive minimally an increase of two steps annually until their salary reaches ~~((the top))~~ step L of the salary range.

AMENDATORY SECTION (Amending WSR 05-21-061, filed 10/13/05, effective 11/15/05)

**WAC 357-28-075 Can an employer accelerate or defer increment increases based on performance?**

Employers who have received performance management confirmation from the director may in accordance with the employer's policy on performance-based increments:

(1) Accelerate the timing and/or amount of regularly scheduled increment increases stated in WAC 357-28-060 by advancing the periodic increment date for individual employees. This may only happen if employees receive an increase of at least two steps every twelve months from the periodic increment date until their salary reaches ~~((the top))~~ step L of the salary range. When the periodic increment date is advanced, the employee has a new periodic increment date.

(2) Defer scheduled increment increases by postponing the periodic increment date for individual employees whose performance is less than satisfactory. When the periodic increment date is postponed to a future date, the employee has a new periodic increment date.

NEW SECTION

**WAC 357-28-082 Is step M on the salary schedule different than other salary steps?** Step M is a longevity step. An employee cannot be appointed to step M upon initial hire or progress to step M upon promotion.

NEW SECTION

**WAC 357-28-084 Can an employee be appointed to step M upon demotion?** An employee cannot be appointed to step M upon demotion (voluntary or involuntary) unless the employee was at step M of the salary range from which the employee is demoting or the employee was previously at step M in the salary range of the class the employee is demoting to.

NEW SECTION

**WAC 357-28-086 When may an employee progress to step M of the salary range?** (1) If an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L. The progression to step M is regardless of what has transpired in the six years since the employee was appointed to step L, provided that the employee is at step L in the same pay range as the pay range the employee was in at the beginning of the six-year period.

(2) With director approval, higher education institutions may make all movements to step M effective:

(a) The first of the current month for actions occurring between the first and the fifteenth of the month; or

(b) The first of the following month for actions occurring between the sixteenth and the end of the month.

#### NEW SECTION

**WAC 357-28-088 If an employee accepts a new appointment will the time spent at step L count towards the six years to qualify for step M in the new position?** If an employee accepts a new appointment to a position which is the same pay range as the previous position, the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee accepts a new appointment to a position which is a different pay range as the previous position, the time at step L in the previous position will not count towards the six years to qualify for step M in the new salary range. An exception to this is if the new appointment is due to an employee accepting a demotion in lieu of layoff or a layoff option to a position with a lower salary range maximum. In that case, the time spent at step L in the previous position will count towards the six years to qualify for step M in the new salary range.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-090 Can an employer adjust an employee's base salary within the employee's current salary range for recruitment, retention, or other business related reasons?** The employer may adjust an employee's base salary up to step L within the salary range to address issues that are related to recruitment, retention or other business related reason, such as equity, alignment, or competitive market conditions.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-110 Must an employee who is promoted to a position in a class with a higher salary range receive a salary increase?** An employee who is promoted to a position in a class with a higher salary range must receive a minimum increase of two steps not to exceed ~~((the top))~~ step L of the salary range. The employer may grant higher increases not to exceed step L if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation~~((:))~~;

(2) The increase is necessary for internal salary alignment, retention of the employee, or other documented business needs~~((:))~~; or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?** An employee occupying a position that is reallocated to a class with a higher salary

range must receive at least two steps not to exceed ~~((the top))~~ step L of the salary range in accordance with WAC 357-28-110.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?** An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to his/her previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to ~~((the maximum))~~ step L of the salary range for the reallocated position. The employee's base salary may be set at step M or higher than the range maximum, but not exceeding the previous base salary, if allowed by the employer's salary determination policy.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?** The base salary of an employee appointed to a position due to a layoff action must be determined as follows:

(1) An employee who accepts a layoff option to a different position with the same salary range keeps the same base salary.

(2) An employee who accepts a demotion in lieu of layoff or accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to ~~((the new range maximum. The employee's base salary may be set higher than the range maximum, but not exceeding the previous base salary, if allowed by the employer's salary determination policy))~~ step L of the new salary range. If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range.

(3) An employee who is appointed from an internal or statewide layoff list to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

(4) An employee who is appointed from an internal or statewide layoff list to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

**WAC 357-28-165 When an exempt position is converted to classified, how is the base salary of the incumbent determined?** If an exempt position is converted

to classified status under the provisions of WAC 357-19-225, the base salary of the incumbent must not be less than the exempt salary at the time of conversion. If the employee's salary at the time of conversion exceeds the maximum of the salary range, the employee's base salary must be set outside the range in accordance with WAC 357-28-040.

If the exempt salary is equal to step L of the classified position and the employee has been at that salary level for six or more years, the employee will progress to step M upon conversion. If the employee has been at that salary level for less than six years, the employee will progress to step M when the total amount of time equals six years.

If the exempt salary is between step L and step M of the new classified salary range and the employee has been at that salary for six or more years, the employee will be placed at step M upon conversion. If the employee has been at that salary level for less than six years, the employee will progress to step M when the total amount of time equals six years.

If the exempt salary is equal to step M of the new classified salary range, the employee will be placed at step M upon conversion.

### WSR 13-19-051

#### PERMANENT RULES

#### GAMBLING COMMISSION

[Order 691—Filed September 16, 2013, 8:41 a.m., effective October 17, 2013]

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

Purpose: The adopted rule change adds language to ensure licensees know they are obligated to pay the license fee for the entire year, regardless if they go out of business halfway through the year, surrender their license, or have their license revoked during the license year. It also removed language that gross gambling receipts during the first half of the year cannot exceed fifty percent of the annual gross gambling receipts for licensees that use the two-part payment plan.

Citation of Existing Rules Affected by this Order: Amending WAC 230-05-015.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 13-15-039 on July 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 1, Repealed 0.

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

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

Date Adopted: September 16, 2013.

Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

**WAC 230-05-015 Two-part payment plan for license fees.** (1) If you are renewing an annual license or applying for an additional license, you may pay the license fee in two payments if:

(a) You elect to participate; and

(b) The license fee is at least eight hundred dollars; and

(c) You pay an administrative processing fee as set out in WAC 230-05-020 or 230-05-030, plus one-half of the annual license fee at the time of application or renewal.

(2) We issue licenses under the two-part payment plan with an expiration date of not more than one year and a second-half payment due date.

(a) If we receive your second-half payment on or before the due date, the license will remain in effect until the expiration date.

(b) If you (~~fail to~~) do not submit the second-half payment on or before the due date, the license expires and gambling activities must stop. You must pay us the second-half payment regardless if you stop operating the gambling activity, close your business, surrender your license, or your license is revoked. If you do not pay the second-half payment, we may take action against other licenses you hold or refer the debt to collections, or both.

~~((3) Your gross gambling receipts during the first half payment period must not exceed fifty percent of the authorized class limitation for annual gross gambling receipts. Licensees whose gross gambling receipts exceed fifty percent of the authorized level must apply for a license at the appropriate license class and pay the full upgrade fee, plus an administrative processing fee, as set out in WAC 230-05-020 and 230-05-030.))~~

### WSR 13-19-056

#### PERMANENT RULES

#### GAMBLING COMMISSION

[Order 692—Filed September 16, 2013, 1:24 p.m., effective October 17, 2013]

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

Purpose: The commissioners adopted rules to implement ESSB 5723, which was passed during the 2013 legislative session to allow bona fide charitable or nonprofit organizations whose primary purpose is serving individuals with intellectual disabilities to conduct "enhanced" raffles under certain conditions if the raffle is approved by the five-person gambling commission. The new law gives the commission rule-making authority to: Set fees for bona fide charitable or nonprofit organizations, call center vendors, and consultants conducting enhanced raffles; to adopt rules governing the licensing and operation of enhanced raffles; and to define independent audits that will be conducted on enhanced raffles

and associated smaller raffles. The new law authorizes up to four raffles per year with a grand prize worth up to \$5 million and allows raffle tickets to be sold for up to \$250 per ticket (the current ticket limit is \$100). The new law allows associated entries and drawings, including "refer a friend," "early bird" and "multiple ticket" drawings. The organizations would be allowed to use call centers and/or hire consultants, if licensed by the commission; currently call centers and consultants are not allowed. The new law expires June 30, 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-060, 230-03-320, 230-03-325, 230-03-335, 230-05-020, 230-05-030, 230-05-035, 230-07-155, 230-11-012, 230-11-014, 230-11-020, 230-11-030, 230-11-040, 230-11-050, 230-11-055, 230-11-065, and 230-11-070.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0209.

Adopted under notice filed as WSR 13-15-175 on July 24, 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 6, Amended 17, 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 6, Amended 17, Repealed 0.

Date Adopted: September 16, 2013.

Susan Newer  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 13-17-018, filed 8/9/13, effective 9/9/13)

**WAC 230-03-060 Fingerprinting.** (1) The following persons must submit fingerprints and undergo a national criminal history background check:

(a) Substantial interest holders of commercial businesses and charitable or nonprofit organizations who live or have lived out of the state in the last ten years; and

(b) Card room employees, commercial and nonprofit gambling managers, and manufacturer, distributor, service supplier, call centers for enhanced raffles, and linked bingo prize provider representatives; and

(c) Any other substantial interest holder when we have information they may not be qualified for licensure or to participate in a gambling activity; and

(2) Applicants or licensees for the following activities do not need to submit fingerprints: Recreational gaming activities, agricultural fair permits, and Class A commercial amusement games.

**AMENDATORY SECTION** (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

**WAC 230-03-320 Substantial interest holders not required to be licensed as representatives.** If you are a substantial interest holder in a business licensed to operate a manufacturer, distributor, gambling service supplier, call centers for enhanced raffles, or linked bingo prize provider or a spouse of the same, you do not have to have an additional license to perform representative duties connected with that licensed business.

**AMENDATORY SECTION** (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

**WAC 230-03-325 Office, clerical, or warehouse workers not required to be licensed as representatives.** Except for enhanced raffle call center representatives, if you are an office, clerical, or warehouse worker and have contact with customers or potential customers only by telephone at your employer's business premises and work under the immediate and direct supervision of a substantial interest holder or a licensed manager or supervisor, you do not have to have a representative license.

**AMENDATORY SECTION** (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

**WAC 230-03-335 Representatives must not work before receiving a license.** If you are applying for a license as a representative for a manufacturer, distributor, gambling services supplier, call centers for enhanced raffles, or linked bingo prize provider, you must not work until you receive a license from us.

**NEW SECTION**

**WAC 230-03-152 Additional requirements for enhanced raffles.** (1) The commissioners may vote to approve a bona fide charitable or nonprofit organization, whose primary purpose is serving individuals with intellectual disabilities, to conduct enhanced raffles when they meet the requirements of section 1, chapter 310, Laws of 2013 and submit a plan as designated below.

(2) The bona fide charitable or nonprofit organization must submit a plan to us for each enhanced raffle that includes at least the following information:

(a) The organization's primary purpose for conducting the enhanced raffle; and

(b) A brief overview of the licensee's mission and vision including the type of programs supported by the licensee and clients served; and

(c) Specific details of the raffle rules including:

(i) Date and location of the grand prize drawing and associated smaller raffles; and

(ii) A description of additional related entries and drawings such as early bird, refer a friend, and multiple ticket drawings; and

(iii) Cost of raffle tickets; and

(iv) Prizes available; and

(v) Security of prizes; and



- (vi) Plans for selling raffle tickets; and
- (vii) Description of how the licensee protects the integrity of the raffle; and
- (d) An explanation of how the proceeds from the raffle will be used; and
- (e) A plan to protect the licensee in the event of low ticket sales and other risks; and
- (f) An explanation of how the licensee will purchase the prize(s) for the raffle; and
- (g) A projected budget including:
- (i) Estimated gross gambling receipts, expenses, and net income for the raffle; and
- (ii) Minimum number of projected ticket sales to break even; and
- (iii) Corresponding sales and prize levels with projected revenues and expenses for each level; and
- (iv) Minimum and maximum prizes available; and
- (h) Name of the dedicated employee of the organization who will be responsible for oversight of the enhanced raffle operations; and
- (i) Name of any licensed service supplier managing the enhanced raffle; and
- (j) Name of any licensed call centers contracted to receive enhanced raffle tickets sales; and
- (k) Any other information that we request.

**LICENSING CALL CENTERS**

NEW SECTION

**WAC 230-03-232 Applying for an enhanced raffle call center license.** (1) You must apply for an enhanced raffle call center license if you receive authorized enhanced raffle ticket sales.

(2) The licensing process may include an on-site review of your call center process to ensure compliance with applicable gambling laws and rules, and your qualifications for licensure.

NEW SECTION

**WAC 230-03-317 Applying for an enhanced raffle call center representative license.** You must apply for an enhanced raffle call center representative license if you are employed by a licensed enhanced raffle call center to receive enhanced raffle ticket sales or to supervise those who do.

AMENDATORY SECTION (Amending WSR 07-23-083, filed 11/20/07, effective 1/1/08)

**WAC 230-05-020 Charitable or nonprofit organization fees.** Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

**1. Amusement games**

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	\$58

License	Annual Gross Gambling Receipts	Fee
Class B	Up to \$10,000	\$58
Class C	Up to \$25,000	\$319
Class D	Up to \$50,000	\$513
Class E	Over \$50,000	\$894

**2. Bingo**

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$25,000	\$58	\$1,000
Class B	Up to \$75,000	\$185	\$1,000
Class C	Up to \$150,000	\$380	\$2,000
Class D	Up to \$350,000	\$1,026	\$4,000
Class E	Up to \$650,000	\$1,732	\$8,000
Class F	Up to \$1,500,000	\$3,486	\$15,000
Class G	Up to \$2,000,000	\$5,028	\$23,000
Class H	Up to \$3,000,000	\$6,722	\$30,000
Class I	Up to \$4,000,000	\$8,400	\$38,000
Class J	Up to \$5,000,000	\$10,078	\$45,000
Class K	Up to \$6,000,000	\$11,306	\$53,000
Class L	Up to \$7,000,000	\$12,922	\$60,000
Class M	Up to \$8,000,000	\$14,542	\$65,000
Class N	Up to \$9,000,000	\$15,818	\$70,000
Class O	Up to \$10,000,000	\$17,454	\$75,000
Class P	Up to \$11,000,000	\$19,090	\$80,000
Class Q	Up to \$12,000,000	\$22,908	\$85,000
Class R	Up to \$13,000,000	\$26,180	\$90,000
Class S	Up to \$14,000,000	\$29,454	\$95,000

\* See chapter 230-06 WAC, Exceeding license class.

**3. Card games**

License	Description	Fee
Class A	Nonhouse-banked - fee to play	\$641
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$185
Class C	Tournament only - no more than thirty consecutive days per tournament	\$58
Class D	Nonhouse-banked - no fee to play	\$58

**4. Fund-raising event**

License	Description	Fee
Class A	One event - not more than 24 consecutive hours	
	First time applicant	\$380
	Previously licensed applicant	\$223
Class B	One event - not more than 72 consecutive hours	
	First time applicant	\$641
	Previously licensed applicant	\$393
Class C	Additional participant in joint event - not lead organization	\$185

License	Description	Fee
Class D	Limited fund-raising event - one event - not more than six consecutive hours	
	First time applicant	\$167
	Previously licensed applicant	\$111
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$253
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$641

**5. Punch boards/pull-tabs**

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$611	\$5,000
Class B	Up to \$100,000	\$1,090	\$5,000
Class C	Up to \$200,000	\$2,062	\$10,000
Class D	Up to \$300,000	\$2,998	\$10,000
Class E	Up to \$400,000	\$3,874	\$10,000
Class F	Up to \$500,000	\$4,676	\$10,000
Class G	Up to \$600,000	\$5,420	\$10,000
Class H	Up to \$700,000	\$6,100	\$10,000
Class I	Up to \$800,000	\$6,722	\$10,000
Class J	Up to \$1,000,000	\$7,620	\$20,000
Class K	Up to \$1,250,000	\$8,460	\$25,000
Class L	Up to \$1,500,000	\$9,240	\$25,000
Class M	Up to \$1,750,000	\$9,880	\$25,000
Class N	Up to \$2,000,000	\$10,466	\$25,000
Class O	Up to \$2,500,000	\$11,500	\$30,000
Class P	Up to \$3,000,000	\$12,218	\$35,000
Class Q	Up to \$4,000,000	\$14,400	\$40,000
Class R	Up to \$5,000,000	\$16,362	\$50,000
Class S	Up to \$6,000,000	\$18,544	\$60,000
Class T	Up to \$7,000,000	\$20,728	\$70,000
Class U	Up to \$8,000,000	\$22,908	\$80,000
Class V	Over \$8,000,000	\$25,090	\$80,000

\* See chapter 230-06 WAC, Exceeding license class.

**6. Raffles**

License	Annual Gross Gambling Receipts	Fee
Class A	Up to \$5,000	\$58
Class B	Up to \$10,000	\$185
Class C	Up to \$25,000	\$380
Class D	Up to \$50,000	\$641
Class E	Up to \$75,000	\$1,026
Class F	Over \$75,000	\$1,540

**7. Enhanced raffles**

License	Fee
Annual	\$6,000
Additional fee per enhanced raffle	\$7,800

**~~((7-))~~ 8. Combination license**

License	Description	Fee
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$115
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$300
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$696

**~~((8-))~~ 9. Special property bingo**

Once annually	\$27
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**~~((9-))~~ 10. Permits**

Recreational gaming activity	\$58
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**~~((10-))~~ 11. Changes**

Type	Fee
Name	\$27
Location	\$27
Fund-raising event date or time	\$27
License class	\$27
Duplicate license	\$27

**~~((11-))~~ 12. Other fees**

Type	Fee
Replacement identification stamps	\$27
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required

**~~((12-))~~ 13. Two-part payment plan participation**

Annual participation	\$27
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**AMENDATORY SECTION** (Amending WSR 09-17-077, filed 8/14/09, effective 1/1/10)

**WAC 230-05-030 Fees for other businesses.** All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

**1. Commercial amusement games**

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$327/\$150
Class B	Up to \$50,000	\$460
Class C	Up to \$100,000	\$1,184
Class D	Up to \$250,000	\$2,644
Class E	Up to \$500,000	\$4,640
Class F	Up to \$1,000,000	\$7,968
Class G	Over \$1,000,000	\$9,970

\* We reduce the license fee by \$177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

**2. Distributor**

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$659
Class B	Up to \$250,000	\$1,318
Class C	Up to \$500,000	\$1,980
Class D	Up to \$1,000,000	\$2,644
Class E	Up to \$2,500,000	\$3,446
Class F	Over \$2,500,000	\$4,242

**3. Fund-raising event equipment distributor**

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$260
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$659

**4. Gambling service supplier**

License	Fee
Annual	\$687
Financing, consulting, and management contract review	\$143

**5. Linked bingo prize provider**

License	Fee
Annual	\$4,414

**6. Call centers for enhanced raffles**

License	Fee
Annual	\$4,500

**((6-)) 7. Manufacturer**

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$659
Class B	Up to \$250,000	\$1,318
Class C	Up to \$500,000	\$1,980
Class D	Up to \$1,000,000	\$2,644
Class E	Up to \$2,500,000	\$3,446
Class F	Over \$2,500,000	\$4,242

**((7-)) 8. Permits**

Type	Description	Fee
Agricultural fair	One location and event only	\$27
Agricultural fair annual permit	Annual permit for specified different events and locations	\$189
Recreational gaming activity		\$59
Manufacturer's special sales permit		\$211
Punch board and pull-tab service business permit	Initial application fee	\$236
Punch board and pull-tab service business permit	Renewal	\$56

**((8-)) 9. Changes**

Application	Description	Fee
Name		\$27
Location		\$27
Business classification	Same owners	\$59
Exceeding license class	New class fee, less previous fee paid, plus	\$27
Duplicate license		\$27
Corporate stock/limited liability company shares/units		\$59
License transfers		\$59

**((9-)) 10. Other fees**

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$100
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$27
Review of gambling equipment, supplies, services, or games	Cost reimbursement

**((10-)) 11. Identification stamps**

Type	Fee	
<b>(a) Punch boards and pull-tabs</b>		
(i) Standard	Wagers fifty cents and below	\$0.28
	Wagers over fifty cents	\$1.11
(ii) Progressive jackpot pull-tab series	Per series	\$11.19
(iii) Pull-tab series with carry-over jackpots and cumulative prize pool pull-tab series	Per series	\$1.11
<b>(b) Pull-tab dispensing devices</b>		
(i) Mechanical and electro-mechanical		\$0.28

Type		Fee
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes	\$112.04 annually
Replacement of identification stamps		\$26
<b>(c) Disposable bingo cards</b>		
(i) Single game sets of individual cards or sheets of cards		\$ .28
(ii) Multigame card packets		\$1.22
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards	\$ .44
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards	\$8.96
<b>(d) Coin or token-activated amusement games</b>		
Annually - operated at any Class A amusement game license location		\$28.00
<b>(e) Electronic bingo card daubers</b>		
Annual		\$11.19
<b>(f) Electronic card facsimile table</b>		
Annual		\$381.50

**(+/-) 12. Two-part payment plan participation**

Annual participation	\$27
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**AMENDATORY SECTION** (Amending WSR 07-23-083, filed 11/20/07, effective 1/1/08)

**WAC 230-05-035 Individuals license fees.** Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

**1. Charitable or nonprofit gambling manager**

License	Fee
Original	\$185
Renewal	\$88
Change of employer	\$88

**2. Linked bingo prize provider representative**

License	Fee
Original	\$260
Renewal	\$158

**3. Commercial gambling manager**

License	Fee
Original	\$189
Renewal	\$90
Change of employer	\$90

**4. Distributor's or gambling services supplier's representative**

License	Fee
Original	\$260
Renewal	\$158

**5. ((~~Manufacturer's representative~~)) Representatives for manufacturers or call centers for enhanced raffles**

License	Fee
Original	\$260
Renewal	\$158

**6. Public card room employee**

License	Fee
<b>Class A - Performs card room employee duties in a Class E card room</b>	
Original	\$189
Renewal	\$90
<b>Class B - Performs card room employee duties in enhanced and house-banked card rooms</b>	
Original, in-state	\$258
Original, out-of-state	\$320
Renewal	\$158
Transfer/additional employee/conversion/emergency waiver request	\$61

**7. Other fees**

Change of name	\$27
Duplicate license	\$27

**8. Military personnel returning from service**

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.

**AMENDATORY SECTION** (Amending WSR 07-10-032, filed 4/24/07, effective 1/1/08)

**WAC 230-07-155 Reporting annual activity for raffles, enhanced raffles, amusement games, Class A, B, or C bingo, or combination licenses.** (1) Raffle, enhanced raffle, amusement game, Class A, B, or C bingo, or combination licensees must submit an annual report of all their activities in the format we require.

(2) We must receive the completed report in our office postmarked no later than thirty days following the expiration of their license(s).

(3) The highest ranking officer or his/her designee must sign the report.

(4) If the licensee has someone else prepare the report, then the preparer must include his/her name and phone number on the report.

(5) Licensees that operate retail sales activities in conjunction with bingo games must report the net income from those retail sales activities.

#### NEW SECTION

**WAC 230-11-002 The definition of raffle as used in this chapter.** "Raffle" as used in this chapter means raffle as defined in RCW 9.46.0277 and enhanced raffle as defined in section 1, chapter 310, Laws of 2013.

#### NEW SECTION

**WAC 230-11-102 Recordkeeping requirements for enhanced raffles.** Licensees conducting enhanced raffles must prepare a detailed record for each raffle they conduct. Licensees must:

- (1) Prepare detailed records in the format we require; and
- (2) Maintain the following:
  - (a) Validated deposit receipts for each deposit of raffle proceeds; and
  - (b) All winning tickets; and
  - (c) Name, address, and telephone number of all winners of a prize with a fair market value of more than fifty dollars; and
  - (d) All enhanced raffle tickets placed in the receptacle; and
  - (e) All unsold tickets; and
  - (f) Invoices and other documentation recording the purchase or receipt of prizes; and
  - (g) Invoices and other documentation recording the purchase of tickets and other expenses of the raffle; and
- (3) Complete all records no later than thirty days following the drawing.

#### NEW SECTION

**WAC 230-11-103 Independent audit required for enhanced raffles.** (1) Charitable or nonprofit licensees conducting enhanced raffles must have an independent audit conducted on each enhanced raffle and the associated smaller raffles.

(2) Licensees must hire an independent, certified public accountant or firm licensed by the Washington state board of accountancy to conduct the audit.

(3) The licensee must submit the auditor's report no later than sixty days following the date of the enhanced raffle grand prize drawing.

(4) We may grant an organization additional time to submit the information required if a written request is received before the due date. The president of the organization must sign any request for additional time and include a statement explaining the hardship causing the delay, and the expected date the required report(s) will be submitted.

(5) The independent auditor's report must include:

(a) For the enhanced raffle grand prize drawing and each associated smaller raffles:

- (i) Date of the drawing;
- (ii) Location of the drawing;
- (iii) Gross receipts; and
- (iv) Prizes awarded;
- (b) List of all expenses used to calculate net proceeds;
- (c) Itemized list of all expenses and associated amounts for conducting the enhanced raffle;
- (d) Source of funds for purchasing prizes and conducting the enhanced raffle;
- (e) The amount of funds that the charitable or nonprofit licensee used or that will be used towards their stated purpose;
- (f) Report any state or federal regulatory actions taken in relation to enhanced raffles in Washington; and
- (g) Any other information we require to ensure completeness of the information reported.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

**WAC 230-11-012 Licensees may conduct a joint raffle.** Except for enhanced raffles, raffle licensees may jointly conduct a raffle if:

(1) Licensees maintain in writing the method by which the income, expenditures for prizes, and all other expenses, received and expended in connection with the raffle will be divided among them; and

(2) One licensee sets up a separate bank account into which all of the proceeds from the raffle are deposited and from which all of the expenses in connection with the raffle, including but not limited to, all payments for prizes, are made; and

(3) Participating licensees keep records which clearly disclose the amount of money received or each licensee expends in connection with the raffle and the purpose(s) for which the money was spent; and

(4) Licensees count all gross receipts that each participating licensee received toward their gross receipts limit.

AMENDATORY SECTION (Amending WSR 09-19-052, filed 9/11/09, effective 10/12/09)

**WAC 230-11-014 Maximum raffle ticket price.** (1) Raffle tickets must not be sold for more than one hundred dollars each; and

(2) Enhanced raffle tickets must not be sold for more than two hundred fifty dollars each.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

**WAC 230-11-020 Record information on ticket stub.** If an organization sells raffle tickets to the general public or conducts raffles that do not require the winner to be present at the drawing, the organization must include a stub or other detachable section bearing a number, letter, or symbol matching the number, letter, or symbol on the ticket or object representing the participant's ticket. The organization's portion must include the participant's name, complete address, telephone number, and other information necessary

to notify the winner. Licensees operating an enhanced raffle may provide a receipt that includes ticket confirmation numbers in lieu of a ticket stub.

AMENDATORY SECTION (Amending WSR 09-09-065, filed 4/13/09, effective 7/1/09)

**WAC 230-11-030 Restrictions on ticket sales.** (1)

Only the following people, who are at least eighteen years old, may sell raffle tickets:

(a) Members of the organization, except as explained in subsection (2) of this section; and

(b) Volunteers under the supervision of a member; and

(c) Licensed enhanced raffle call center representatives.

(2) Organizations may allow members under the age of eighteen to sell tickets when the organization has:

(a) Development of youth as a primary purpose; and

(b) At least three members or advisors who are at least eighteen years old and who supervise the operation of the raffle; and

(c) An adult member or advisor designated as the manager of the raffle.

(3) Organizations must sell tickets for a particular raffle for the same price unless offering an authorized discount plan; and

(4) Organizations must not:

(a) Sell raffle tickets via the internet; or

(b) Require anyone to purchase more than one raffle ticket; or

(c) Give away raffle tickets; or

(d) Give an opportunity to participate in a raffle drawing to a person who has not purchased a ticket.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

**WAC 230-11-040 Place ticket stubs in receptacle for drawing.** Each person who sells a raffle ticket must give the organization all tickets, ticket stubs or other detachable sections of all tickets sold. The organization must place each ticket, ticket stub or other detachable section of each ticket sold into a receptacle from which the organization will draw the winning tickets unless they use one of the authorized alternative drawing formats.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

**WAC 230-11-050 Using alternative drawing formats.**

Except for enhanced raffles, licensees may use alternative drawing formats that randomly determine winners if licensees:

(1) Fully disclose to each player the random selection process used in the alternative drawing format before selling tickets; and

(2) Maintain a copy of the disclosure with the permanent raffle records; and

(3) Use controls and accounting procedures that:

(a) Provide the ability to audit gross gambling receipts from ticket sales; and

(b) Have sufficient controls to prevent manipulation of the random selection process; and

(c) Document the random selection process.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

**WAC 230-11-055 Authorized alternative drawing formats.** Except for enhanced raffles, licensees may use the following types of alternative drawing formats or similar random selection processes:

*Mock races.*

(1) The licensee sells participants consecutively numbered tickets that identify a specific corresponding numbered mock animal(s), ball(s), or other similar object(s) that can use natural elements to move the objects (water, gravity, wind) in a race. All objects must be identical in weight, size, and shape, to have an equal opportunity to win. The licensee must release all objects simultaneously at a start line. The first numbered object to cross the finish line wins.

*Poker runs.*

(2) The licensee sells participants consecutively numbered tickets or poker tally sheets to participants. Participants travel a predetermined course with predetermined drawing stations (typically five drawing stations). At each drawing station, participants draw one playing card for each ticket purchased. Station attendants must verify the card drawn and record the card value on the poker ticket tally sheet. After all participants have completed the course, the participant with the best recorded poker hand wins.

*Ball drops.*

(3) The licensee sells participants consecutively numbered tickets that identify a specific corresponding numbered ball. All balls must be equal in size, weight, and shape, to have an equal opportunity to win. The licensee suspends all purchased numbered balls in the air and simultaneously releases them over a target zone. The ball, closest or first, to hit the predetermined target wins.

*Animal plops.*

(4) The licensee sells participants consecutively numbered tickets that identify a specific corresponding square on a numbered grid. The licensee releases the animal into the grid area until the animal has completed its plop. The numbered square containing the plop wins.

*Multiple stage drawings.*

(5) The licensee sells participants consecutively numbered tickets. The licensee uses multiple drawing phases to eliminate participants until the licensee declares the remaining ticket holder(s) the winner(s). The licensee may use second element of chance plans as long as the plans meet the criteria set out in WAC 230-11-060.

*Bucket raffles.*

(6) The licensee sells participants consecutively numbered tickets. Participants place their tickets into any number of separate buckets or other receptacles for separate prizes. We consider the multiple drawings one single raffle. If licensees use different tickets for each receptacle, we consider each drawing an individual raffle.

*Calendar raffles.*

(7) The licensee sells participants consecutively numbered calendars with removable stubs. The licensee places all sold calendar stubs into the drawing receptacle. On predetermined dates identified on the calendar, the licensee conducts drawings. The licensee places all winning stubs back into the drawing receptacle for future drawings.

AMENDATORY SECTION (Amending WSR 12-05-067, filed 2/15/12, effective 3/17/12)

**WAC 230-11-065 Raffle prizes.** (1) Organizations must own the prizes offered to winners before the date of the drawing. However, if the winner has an option to receive a cash prize instead of the merchandise, the organization may enter into a contract to purchase the merchandise prize after the winner chooses his or her option. The organization must have the funds to make the purchase on account before the date of the drawing.

(2) At the time and date of any raffle drawing, the organization must have on deposit an unencumbered amount of money that is equal to or greater than all cash prizes being offered in the raffle. The organization must have these funds deposited in the gambling receipts account, if required, or in a recognized Washington state depository authorized to receive funds. The organization must not reduce the balance of funds available from this account below the required amount before awarding the prize(s).

(3) Raffle prizes must:

- (a) Be available at the time and place of the drawing; and
- (b) If cash, be United States currency or an equivalent amount of negotiable instruments; and
- (c) For licensees, not exceed forty thousand dollars per prize or three hundred thousand dollars in total raffle prizes in a license year, except as authorized in WAC 230-11-067.

(4) For enhanced raffles, a purchase contract is not necessary for smaller noncash prizes, but the bona fide charitable or nonprofit organization must be able to demonstrate that such a prize is available and sufficient funds are held in reserve in the event that the winner chooses a noncash prize.

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

**WAC 230-11-070 Defining "members-only" raffles.** A "members-only raffle" means a raffle where the organization sells tickets only to full and regular members and a limited number of guests and does not include enhanced raffles. All aspects of the raffle must take place during the same event at the same location. Winners must be determined from among those members and guests that have purchased tickets.

**WSR 13-19-087****PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed September 18, 2013, 7:32 a.m., effective October 19, 2013]

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

Purpose: Chapter 246-980 WAC, Home care aides is amended to implement ESHB 2314 (chapter 164, Laws of 2012) and SHB 1629 (chapter 259, Laws of 2013). The rules establish a scope of practice for long-term care workers; set requirements for a home care aide to accept delegation of tasks from a licensed registered nurse; and exempt other specific health care providers from obtaining a home care aide certification. WAC 246-10-501 allows the department of health to use a brief adjudicative proceeding when an applicant for or a holder of a home care aide credential is disqualified by the department of social and health services from working with vulnerable persons under chapter 74.39A RCW.

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-010 through 246-980-120, 246-10-501.

Statutory Authority for Adoption: Chapter 18.88B RCW; ESHB 2314, SHB 1629; chapter 18.130 RCW.

Adopted under notice filed as WSR 13-12-066 on June 4, 2013.

Changes Other than Editing from Proposed to Adopted Version: The proposed revisions to WAC 246-980-030 and 246-980-050 did not amend subsection (2) of each section, both of which require a long-term care worker who has not been issued a home care aide certification within one hundred fifty days of the date of hire to stop working. The adopted rule extends this time period to within two hundred days of the date of hire to be consistent with an amendment to RCW 18.88B.021 that went into effect on July 28, 2013.

The proposed revision to WAC 246-980-070 (2)(c) exempted people who are in an approved nursing assistant-certified training program from obtaining certification as a home care aide if the training program was completed within one hundred twenty days of hire and the nursing assistant-certified credential had been issued with[in] one hundred fifty days of hire. The adopted rule extends the time period for issuance of this credential to two hundred days to be consistent with an amendment to RCW 18.88B.-021 that went into effect on July 28, 2013.

Proposed WAC 246-980-140(2) made it within a long-term care worker's scope of practice to communicate his or her observations to clients, family, and supervisors. The adopted rule expands this range of communications - for reasons of patient safety, quality of care, and continuity of care - to health care providers, if appropriate.

Proposed WAC 246-980-030 (1)(b), 246-980-050(2), and 246-980-070 (2)(c) are changed to include the word "calendar" before the word "days" so that all references to periods of time in chapter 246-980 WAC are consistent. WAC 246-10-105 Computation of time, sets out how the department will compute a time period; designating all periods of time as "calendar days" does not change any of the time frames applicable to individuals regulated by chapter 246-980 WAC.

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4723, fax (360) 236-2901, e-mail [kendra.pitzler@doh.wa.gov](mailto:kendra.pitzler@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 2, Amended 4, 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 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 12, Repealed 0.

Date Adopted: September 17, 2013.

Jessica Todorovich  
Deputy Secretary  
for John Wiesman, DrPH, MPH  
Secretary

**AMENDATORY SECTION** (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

**WAC 246-10-501 Application of brief adjudicative proceedings.** (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a professional, business, or facility license meets the minimum criteria for an unrestricted license and the department proposes to deny such a license or to issue a restricted license;

(b) An application to approve a water system plan under WAC 246-290-100;

(c) An application to approve a project report under WAC 246-290-110;

(d) An application for source approval under WAC 246-290-130;

(e) An application to approve construction documents under WAC 246-290-120;

(f) An application to approve an existing Group A water system under WAC 246-290-140;

(g) An application for source approval under WAC 246-291-100 or 246-291-110;

(h) An application to approve a design report under WAC 246-291-120;

(i) An application to approve an existing Group B water system under WAC 246-291-130;

(j) An application to approve a water system plan under WAC 246-291-140;

(k) A decision under WAC 246-293-190;

(l) A decision with respect to service area conflicts under WAC 246-293-430;

(m) An application for approval as a satellite management agency under WAC 246-295-040;

(n) A civil penalty imposed under RCW 70.119A.040 when the amount of the civil penalty does not exceed two thousand five hundred dollars;

(o) A request to bank nursing home beds under RCW 70.38.111(8) and 70.38.115(13);

(p) A determination as to whether a person is in compliance with the terms and conditions of a final order previously issued by the department;

(q) Any approval of a school or curriculum when such approval by the department is required or authorized by statute or rule;

(r) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for license renewal; ((e))

(s) A decision to deny, modify, or impose conditions upon an operating permit under WAC 246-294-050; or

(t) A decision to deny or revoke certification as a home care aide when a long-term care worker is disqualified from working with vulnerable persons under chapter 74.39A RCW.

(2) If an adjudicative proceeding is requested, in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding.

**AMENDATORY SECTION** (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-010 Definitions.** The definitions in this section and in RCW 74.39A.009 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Activities of daily living" means self-care abilities related to personal care such as bathing, body care, bed mobility, eating, locomotion, use of the toilet, personal hygiene, dressing, and transfer. Activities of daily living include instrumental activities of daily living.

(2) "Date of hire" means:

(a) The date of service authorization for individual providers hired by the department of social and health services.

(b) The date the long-term care worker is hired by an employer other than the department of social and health services.

(3) "Department" means the department of health.

(4) "Direct care worker" means a paid caregiver who provides hands-on personal care services to individuals with disabilities or the elderly requiring long-term care.

(5) (~~"Individual provider" means a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the medicare personal care, community options program entry system, chore services program, or respite care program, or to~~



~~provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.~~

~~(6)) "Instrumental activities of daily living" means routine activities performed in the home or the community such as meal preparation, shopping, house cleaning, laundry, maintaining employment, travel to medical services, use of the telephone, and management of personal finances.~~

~~((7) "Long-term care worker" means all persons who are long-term care workers for the elderly or persons with disabilities, including, but not limited to, individual providers of home care services; direct care employees of home care agencies; providers of home care services to persons with developmental disabilities under Title 71A RCW; all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes; respite care providers; community residential service providers; and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities. "Long-term care worker" does not include:~~

~~(a) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW; hospitals or other acute care settings; residential habilitation centers under chapter 71A.20 RCW; facilities certified under 42 C.F.R., Part 483; hospice agencies subject to chapter 70.127 RCW; adult day care centers; and adult day health care centers; or~~

~~(b) Persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.~~

~~(8) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.~~

~~(9) "Supported living provider" means a person or entity certified as a supported living provider by the department of social and health services, including the state operated living alternative (SOLA) program, who delivers services and support to meet a client's identified needs. Supported living providers provide instruction, support, and services under chapter 388-101 WAC to clients in their own home to help them live independently.))~~

AMENDATORY SECTION (Amending WSR 12-08-043, filed 3/30/12, effective 4/4/12)

**WAC 246-980-020 Who must be certified as a home care aide?** (1) Any person who is hired on or after January 7, 2012, as a long-term care worker for the elderly or persons with disabilities, regardless of the employment title, must obtain certification as a home care aide. This includes, but is not limited to:

(a) An individual provider of home care services who is reimbursed by the state;

(b) A direct care employee of a home care agency;

(c) A provider of home care services to persons with developmental disabilities under Title 71A RCW;

(d) A direct care worker in a state licensed (~~boarding home~~) assisted living facility;

(e) A direct care worker in a state licensed adult family home;

(f) A respite care provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care services; and

~~(g) ((A community residential service provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care service; and~~

~~(h)) Any other direct care workers providing home or community-based services to the elderly or persons with developmental disabilities.~~

(2) A long-term care worker(s) who meets the ~~((above criteria))~~ requirements in subsection (1) of this section but ~~((are))~~ is exempted under WAC 246-980-070 ~~((are))~~ is not required to obtain certification.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-030 Can a nonexempt long-term care worker work before obtaining certification as a home care aide?** (1) A nonexempt long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(a) Before providing care, the long-term care worker must complete the training required by RCW ~~((74.39A.073 (4)(a) and (b)))~~ 74.39A.074 (1)(d)(i)(A) and (B).

(b) The long-term care worker must submit an application for home care aide certification to the department within ~~((three))~~ fourteen calendar days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or on-line, the date it is accepted by the department.

(2) The long-term care worker may not work for more than ~~((one))~~ two hundred ~~((fifty))~~ calendar days from their date of hire without obtaining certification.

AMENDATORY SECTION (Amending WSR 12-08-043, filed 3/30/12, effective 4/4/12)

**WAC 246-980-040 What must a nonexempt long-term care worker do to be eligible for a home care aide certification and what documentation is required?** (1) To qualify for certification as a home care aide, the applicant must:

(a) Successfully complete the entry level training required by RCW ~~((74.39A.073))~~ 74.39A.074(1) before taking the examination;

(b) Successfully pass the home care aide certification examination; and

(c) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. This is included in the basic training requirements in WAC 388-71-0906 and 388-112-0053.

(2) An applicant(s) must submit directly to the examination contractor:

(a) A completed application for examination provided by the examination contractor; and

(b) The fee required by the examination contractor ~~(; and~~  
 (e) ~~A certificate of completion signed by an instructor approved by the department of social and health services. The certificate must indicate that the applicant has successfully completed the entry level training required by RCW 74.39A.073. The certificate of completion may also be submitted directly from the approved instructor or training program).~~

(3) An applicant(s) must submit to the department:

(a) A completed application for certification on forms provided by the department;

(b) The required fee; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW ~~((74.39A.073))~~ 74.39A.074. The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.

(4) An applicant(s) must submit to a state and federal background check as required by RCW ~~((74.39A.055))~~ 74.39A.056.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-050 How long does a nonexempt long-term care worker have to complete the home care aide training and certification requirements?** (1) Training:

(a) A long-term care worker must successfully complete all training required by RCW ~~((74.39A.073))~~ 74.39A.074(1) within one hundred twenty calendar days of the date of hire as a long-term care worker.

(b) A long-term care worker who has not completed the training within one hundred twenty calendar days is no longer eligible to provide care until certification as a home care aide has been granted.

(2) Certification: A long-term care worker who has not been issued a home care aide certification within ~~((one))~~ two hundred ~~((fifty))~~ calendar days of the date of hire must stop providing care until the certification has been granted.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-060 How does a nonexempt home care aide renew a certification or reinstate an expired certification?** (1) To renew a home care aide certification:

(a) Certificates must be renewed every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2.

(b) Verification of twelve hours of continuing education as required by RCW ~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110 must accompany the certification renewal.

(2) To reinstate an expired certification:

(a) If the certification has been expired for less than three years, the applicant must submit proof of twelve continuing education hours as required by RCW ~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(b) If the certification has been expired for ~~((more than))~~ three years or more, the applicant must successfully repeat

the training and examination requirements in WAC 246-980-040 and meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 12-08-043, filed 3/30/12, effective 4/4/12)

**WAC 246-980-070 Who is exempt from obtaining a home care aide certification?** (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the entry level training required by RCW ~~((74.39A.073))~~ 74.39A.074, successfully complete the home care aide certification examination and meet all other requirements of WAC 246-980-080(1).

~~(a) ((An individual who is employed by a nursing home subject to chapter 18.51 RCW, hospital, or other acute care setting; hospice agency subject to chapter 70.127 RCW; adult day care center; or adult day health center, and who does not hold a current health care credential described under subsection (2)(a) of this section:~~

~~(b))~~ An individual provider caring only for a biological, step, or adoptive child or parent.

~~((c))~~ (b) An individual hired prior to ~~((June 30))~~ July 1, 2014, as an individual provider who provides twenty hours or less of care for one person in any calendar month. An individual provider(s) hired after ~~((June 30))~~ July 1, 2014, will be required to complete the required training and obtain certification.

~~((d))~~ (c) An individual employed by a ~~((supported living))~~ community residential service provider.

~~((e))~~ (d) An individual employed by a residential habilitation center licensed under chapter 71A.20 RCW or a facility certified under 42 C.F.R., Part 483.

~~((f))~~ (e) A direct care employee(s) who ~~((are))~~ is not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the home care aide certification examination and meet all other requirements of WAC 246-980-080(2). The training requirements under RCW ~~((74.39A.073))~~ 74.39A.074(1) are not required.

(a) An individual who holds an active credential by the department as a:

(i) Registered nurse, a licensed practical nurse, or advanced registered nurse practitioner under chapter 18.79 RCW; or

(ii) Nursing assistant-certified under chapter 18.88A RCW(~~;~~

~~(iii) Certified counselor or advisor under chapter 18.19 RCW;~~

~~(iv) Speech language pathologist assistant or audiologist under chapter 18.35 RCW;~~

~~(v) Occupational therapist under chapter 18.59 RCW; or~~

~~(vi) Physical therapist assistant under chapter 18.74 RCW).~~

(b) A home health aide who ~~((is))~~ was employed by a medicare certified home health agency within the year before

being hired as a long-term care worker and has met the requirements of 42 C.F.R., Part ((483.35)) 484.36.

(c) A person who is in an approved training program for certified nursing assistant under chapter 18.88A RCW, provided that the training program is completed within one hundred twenty calendar days of the date of hire and that the nursing assistant-certified credential has been issued within two hundred calendar days of the date of hire.

~~((e))~~ (d) An individual with special education training and an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.

~~((e))~~ (e) An individual employed as a long-term care worker on January 6, 2012, or who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, and who ~~((eompletes))~~ completed all of the training requirements in effect as of the date of hire. This exemption expires if the long-term care worker has not provided care for over three years.

~~((f))~~ The department may require the exempt long-term care worker who is employed between January 1, 2011, and January 6, 2012, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker between January 1, 2011, and January 6, 2012, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. Proof of training will also be accepted directly from the approved instructor or training program, if applicable. For an individual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the Training Partnership.

~~((ii) A long term care worker who is employed on or before January 6, 2012, but has not completed all of his or her training requirements in effect the day he or she was hired, must complete the training within one hundred twenty days of the date of hire to qualify for this exemption.)~~

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-080 How does an exempt individual apply for certification as a home care aide?** (1) An individual exempt from certification under WAC 246-980-070(1) may apply for certification as a home care aide as follows:

(a) To qualify for certification as a home care aide, the applicant must:

(i) Successfully complete entry level training as required by RCW ~~((74.39A.073))~~ 74.39A.074 before taking the examination;

(ii) Successfully pass the home care aide certification examination; and

(iii) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. This is included in the basic training requirements in WAC 388-71-0906 and 388-112-0053.

(b) An applicant((s)) must submit directly to the examination contractor:

(i) A completed application for examination provided by the examination contractor; and

(ii) The fee required by the examination contractor~~((; and~~  
(iii) ~~A certificate of completion signed by a department of social and health services approved instructor. The certificate must indicate that the applicant has successfully completed entry level training required by RCW 74.39A.073. The certificate of completion may also be submitted directly from the approved instructor or training program)).~~

(c) An applicant((s)) must submit to the department:

(i) A completed application for certification on forms provided by the department;

(ii) The required fee; and

(iii) A certificate of completion from an approved training program signed by a department of social and health services approved instructor. The certificate must indicate that the applicant has successfully completed the entry level training as required by RCW ~~((74.39A.073))~~ 74.39A.074(1). The certificate of completion may also be submitted directly from the approved instructor or training program.

(d) An applicant((s)) must submit to a state and federal background check as required by RCW ~~((74.39A.055))~~ 74.39A.056.

(2) A long-term care worker exempt from certification under WAC 246-980-070(2) may apply for certification as a home care aide as follows:

(a) To qualify for certification as a home care aide, the applicant must:

(i) Successfully complete the home care aide certification examination; and

(ii) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. This is included in the basic training requirements in WAC 388-71-0906 and 388-112-0053.

(b) An applicant((s)) must submit directly to the examination contractor a completed application for examination and the fee required by the examination contractor.

(c) An applicant((s)) must submit to the department:

(i) A completed application for certification on forms provided by the department; and

(ii) Proof the individual qualifies for exemption under WAC 246-840-070(2); and

(iii) The required fee.

(d) An applicant((s)) must submit to a state and federal background check as required by RCW ~~((74.39A.055))~~ 74.39A.056.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-090 How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification?** (1) To renew a home care aide certification:

(a) Certificates must be renewed every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2.

(b) Verification of twelve hours of continuing education as required by RCW ~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110 must accompany the certification renewal.

(2) To reinstate a certification that has been expired for less than three years, the applicant must submit proof of twelve continuing education hours as required by RCW ((74.39A.340)) 74.39A.341 and WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(3) To reinstate a certification that has been expired for three years or more (~~(than three years)~~):

(a) A long-term care worker exempt from certification under WAC 246-980-070(1) must:

(i) Submit proof that the applicant has worked at least eight hours as a long-term care worker within the last three years and submit twelve hours of continuing education per year as required by RCW ((74.39A.340)) 74.39A.341 and WAC 246-980-110; or

(ii) Successfully repeat the training and examination requirements in WAC 246-980-080(1).

(b) A long-term care worker exempt from certification under WAC 246-980-070(2) must:

(i) Submit proof that the applicant has worked at least eight hours as a long-term care worker within the past three years and submit twelve hours of continuing education per year as required by RCW ((74.39A.340)) 74.39A.341 and WAC 246-980-110; or

(ii) Successfully repeat the certification examination requirements in WAC 246-980-080(2).

**AMENDATORY SECTION** (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-100 Examination and reexamination for home care aide certification.** (1) The certification examination will consist of both a written knowledge test and a skills demonstration.

(2) The certification examination will test the core competencies, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, home care aide roles and boundaries, supporting activities of daily living, and food preparation and handling.

(3) ~~(The)~~ An applicant must apply directly to the examination contractor to take the examination.

(4) The examination contractor will notify ~~(the)~~ an applicant of the date, time, and place of the examination.

(5) The examination contractor will notify both the department and ~~(the)~~ an applicant of the examination results.

(a) An applicant who does not successfully pass any portion of the examination can follow the examination contractor's procedures for review and appeal.

(b) An applicant who does not successfully pass any portion of the examination may retake that portion of the examination two times.

(i) To retake the examination, an applicant must submit an application for reexamination, along with the required reexamination fee directly to the examination contractor.

(ii) An application for reexamination may be submitted any time after ~~(the)~~ an applicant receives notice of not

successfully completing any portion of the certification examination.

(c) An applicant who does not successfully pass both portions of the certification examination within two years of successfully completing the required training or who does not successfully pass both portions of the certification examination after completing the certification examination three times:

(i) Must retake and successfully complete the core competencies portion of the entry-level training as required by RCW ((74.39A.073)) 74.39A.074; and

(ii) Cannot continue to provide care as a long-term care worker until the certification has been issued.

**AMENDATORY SECTION** (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-110 Continuing education.** (1) A home care aide(s) must demonstrate completion of twelve hours of continuing education per year as required by RCW ((74.39A.340)) 74.39A.341. The required continuing education must be obtained during the period between renewals. Continuing education is subject to the provisions of chapter 246-12 WAC, Part 7.

(2) Verification of completion of the continuing education requirement is due upon renewal. If the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

**AMENDATORY SECTION** (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-120 Home care aide—Application—Conviction data—Criteria for denial or conditional license.** (1) An applicant(s) who ~~(have)~~ has any criminal history may be denied certification or may be granted certification with conditions pursuant to RCW 18.130.055.

(2) In determining whether to deny certification or grant certification with conditions due to ~~(the)~~ an applicant's criminal history, the department may consider the following factors:

(a) The severity of the crime as classified under law;

(b) The number of convictions and whether the applicant has exhibited a pattern of criminal conduct;

(c) The amount of time elapsed since the date of conviction or the date of offense;

(d) The amount of time the applicant has spent in the community after release from custody;

(e) Whether any conviction is listed by the department of social and health services as a disqualifying crime, including those offenses listed in RCW 43.43.830 (5), (6), or (7);

(f) Whether the applicant has complied with court-ordered conditions such as treatment, restitution, or other remedial or rehabilitative measures;

(g) Other remediation or rehabilitation by the applicant subsequent to the conviction date;

(h) Whether the applicant disclosed the conviction on the certification application; and

(i) Any other factor relating to the applicant's ability to practice as a home care aide with reasonable skill and safety.

(3) A long-term care worker disqualified from working with vulnerable persons under chapter 74.39A RCW may not be certified as a home care aide.

#### NEW SECTION

**WAC 246-980-130 Provision for delegation of certain tasks to a home care aide.** (1) A home care aide-certified may perform tasks delegated by a registered nurse for patients in community-based care settings or in-home care settings each as defined in RCW 18.79.260 (3)(e).

(2) Before performing any delegated task a home care aide-certified must show the certificate of completion of the core delegation training from the department of social and health services to the registered nurse delegator.

(3) A home care aide-certified who is performing nurse delegation tasks must comply with all applicable requirements of the nursing care quality assurance commission in WAC 246-840-910 through 246-840-970.

(4) A home care aide-certified, who may be performing insulin injections must show a certificate of completion of diabetic training from the department of social and health services to the registered nurse delegator.

(5) A home care aide-certified must meet any additional training requirements identified by the department of social and health services.

(6) For the purposes of this section, delegated nursing care tasks must be performed:

(a) Only for the specific patient for whom those tasks are delegated;

(b) Only with the patient's consent; and

(c) In compliance with all applicable requirements in WAC 246-840-910 through 246-840-970.

(7) A home care aide-certified may consent or refuse to consent to perform a delegated nursing care task. The home care aide-certified is responsible for his or her own actions with the decision to consent or refuse to consent and the performance of the delegated nursing care task.

(8) A home care aide-certified must not accept delegation of, or perform, the following nursing care tasks:

(a) Administration of medication by injection, with the exception of insulin injections;

(b) Sterile procedures;

(c) Central line maintenance;

(d) Acts that require nursing judgment.

(9) A person who is working as a long-term care worker but has not received a home care aide certification must have either a nursing assistant-certified or nursing assistant-registered credential and comply with WAC 246-841-405.

#### NEW SECTION

**WAC 246-980-140 Scope of practice for long-term care workers.** (1) A long-term care worker performs activities of daily living or activities of daily living and instrumental activities of daily living. A person performing only instrumental activities of daily living is not acting under the long-term care worker scope of practice.

(a) "Activities of daily living" means self-care abilities related to personal care such as bathing, eating, using the

toilet, dressing, and transfer. This may include fall prevention, skin and body care.

(b) "Instrumental activities of daily living" means activities in the home and community including cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) A long-term care worker documents observations and tasks completed, as well as communicates observations on the day they were performed to clients, family, supervisors, and, if appropriate, health care providers.

(3) A long-term care worker may perform medication assistance as described in chapter 246-888 WAC.

(4) A long-term care worker may perform nurse delegated tasks, to include medication administration, if he or she meets and follows the requirements in WAC 246-980-130.