

**WSR 14-04-097**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed February 4, 2014, 8:33 a.m., effective March 7, 2014]

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

Purpose: The department is amending and clarifying rules to revise the assessment process for allocating personal care hours, initiated as a result of the Washington state supreme court decision in *Samantha A. v. Department of Social and Health Services*.

The following changes are being made to WAC 388-106-0130:

- To make changes to how personal care services are calculated for children and to clarify the role that responsible adults are expected to play in the lives of children with disabilities.
- To replace irrebuttable presumptions regarding age and informal supports with individual determinations of those facts guided by rebuttable presumptions.
- To incorporate changes in what the department considers to be age appropriate functioning for normally developing children, and to clarify language around those developmental milestones.
- To provide better notice to the public regarding the definition of informal supports by separately addressing the situation where the benefit of a personal care task is shared among members of a household, which is not a change in practice but previously had been subsumed within the broader concept of informal supports.
- To make changes to how living environment factors are considered in determining personal care services.
- To update outdated WAC references.
- To otherwise update and clarify elements of the CARE tool.

This CR-103P supersedes the emergency rule filing as WSR 14-04-008 on January 23, 2014.

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

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 13-16-101 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

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

Date Adopted: January 29, 2014.

Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-043, filed 10/27/11, effective 11/27/11)

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood((-)); At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet((-));

(e) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"**Activities of daily living (ADL)**" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a ~~(boarding home)~~ contracted assisted living, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or get in/out of a vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

**"Age appropriate"** Proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

**"Aged person"** means a person sixty-five years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a summary of information that the department entered into the CARE assessment describing your needs.

**"Assessment or reassessment"** means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

**"Assistance available"** means the amount of ~~(informal support)~~ assistance available for a task if (the need) status is coded:

(a) Partially met due to availability of other support; or  
(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

~~((a))~~ (i) Less than one-fourth of the time;  
~~((b))~~ (ii) One-fourth to one-half of the time;  
~~((c))~~ (iii) Over one-half of the time to three-fourths of the time; or  
~~((d))~~ (iv) Over three-fourths but not all of the time.

**"Assistance with body care"** means you need assistance with:

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

**"Assistance with medication management"** means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are ~~(a person)~~ an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections. ~~(Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.)~~

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC ~~((388-511-1105))~~ 182-500-0015 by the division of disability determination services of the medical assistance administration.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social

Security Act. See WAC ((388-475-0100)) 182-512-0010 and chapter ((388-513)) 182-513 WAC.

**"Child"** means an individual less than eighteen years of age.

"Chronic care management" means programs that provide care management and coordination activities for medical assistance clients receiving long-term care services and supports determined to be at risk for high medical costs.

**"Health action plan"** means an individual plan which identifies health-related problems, interventions and goals.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

**"Decision making"** means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

(e) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Department"** means the state department of social and health services, aging and disability ((services)) administration or its designee.

**"Designee"** means area agency on aging.

**"Developmental milestones table"** is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

**"Difficulty"** means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

**"Disability"** is described under WAC 182-500-0025.

**"Disabling condition"** means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

**"Estate recovery"** means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter ((388-527)) 182-527 WAC.

**"Home health agency"** means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

**"Income"** means income as defined under WAC ((388-500-0005)) 182-509-0001.

**"Individual provider"** means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

~~(("Disability" is described under WAC 388-511-1105.))~~

**"Informal support"** means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older. Examples of informal supports include but are not limited to: family members, friends, housemates/roommates, neighbors, school, child-care, after school activities, adult day health, church or community programs.

**"Institution"** means medical facilities, nursing facilities, and institutions for the ~~((mentally retarded))~~ intellectually disabled. It does not include correctional institutions. See medical institutions in WAC ((388-500-0005)) 182-500-0050.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

**"Long-term care services"** means the services administered directly or through contract by the aging and disability services (~~(administration)~~) and identified in WAC 388-106-0015.

**"Medicaid"** is defined under WAC (~~(388-500-0005)~~) 182-500-0070.

**"Medically necessary"** is defined under WAC (~~(388-500-0005)~~) 182-500-0070.

**"Medically needy (MN)"** means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

**"New Freedom consumer directed services (NFCDS)"** means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

**"Own home"** means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is

addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC (~~(388-500-0005)~~) 182-500-0085.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

**"Reasonable cost"** means a cost for a service or item that is consistent with the market standards for comparable services or items.

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

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

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

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

- (ii) No provider was available to assist; or
- (iii) You declined assistance with the task.

**"Self performance for IADLs"** means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

- (a) Independent if you received no help, set-up help, or supervision;
- (b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;
- (c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;
- (d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;
- (e) Total dependence if you needed the activity fully performed by others; or
- (f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

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

**"Shared benefit"** means:

- (a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or
- (b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

**"SSI-related"** is defined under WAC (~~388-475-0050~~) 182-512-0050.

**"Status"** means the (~~amount~~) level of (informal support) assistance available for a task from informal supports: the shared benefit that a care provider may derive from doing a task for a client or that two or more clients derive from the same IADL being performed and the determination of whether a child's need for assistance is due primarily to his or her age. The department determines (~~whether~~) the status of each ADL or IADL (is) and codes the status as follows:

- (a) Met, which means the ADL or IADL will be fully provided by an informal support;
- (b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;
- (c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; (~~or~~)
- (d) Shared benefit, which means:

- (i) A client and their paid caregiver both share in the benefit of an IADL task being performed; or
- (ii) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

(e) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department pre-

sumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(f) Client declines, which means you do not want assistance with the task.

**"Supplemental Security Income (SSI)"** means the federal program as described under WAC (~~388-500-0005~~) 182-500-0100.

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

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

**"You/your"** means the client.

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

**WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care?** (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will (~~deduct from the~~) adjust base hours to account for informal supports, shared benefit, and age appropriate functioning (as those terms are defined in WAC 388-106-0010), (~~or~~) and other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for status and assistance available of informal supports (~~by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:~~), shared benefit, and age appropriate functioning. A numeric value is assigned to the status and/or assistance available coding for ADLs and IADLS based on the table below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) below.

<b>Meds</b>	<b>((Self Performance))</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Numeric Value ((Percentage))</b>
<p>((Self administration of medications)) <u>Medication Management</u></p> <p>The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying ADL</p>	<p>((Rules for all codes apply except independent is not counted))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			
<b>Unscheduled ADLs</b>	<b>((Self Performance))</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
<p>Bed mobility, transfer, walk in room, eating, toilet use</p> <p>The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider= 1; Did not occur/client declined and independent are not counted as qualifying ADLs</p>	<p>((Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider= 1; Did not occur/client declined and independent are not counted-))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			
<b>Scheduled ADLs</b>	<b>((Self Performance))</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
<p>Dressing, personal hygiene, bathing</p> <p>The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider= 1; Did not occur/client declined and independent which are not counted as qualifying ADLs</p>	<p>((Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider= 1; Did not occur/client declined and independent are not counted-))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.75
1/4 to 1/2 time	.55			
1/2 to 3/4 time	.35			
>3/4 time	.15			
<b>IADLs</b>	<b>((Self Performance))</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value ((Percentage))</b>
<p>Meal preparation, Ordinary housework, Essential shopping</p> <p>The rules to the right apply for all Self Performance codes except independent is not counted as a qualifying IADL</p>	<p>((Rules for all codes apply except independent is not counted-))</p>	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Child under (age) (see subsection (7))</u>	<u>N/A</u>	<u>0</u>
		Partially met <u>or Shared benefit</u>	<1/4 time	.3
1/4 to 1/2 time	.2			
1/2 to 3/4 time	.1			
>3/4 time	.05			

IADLs	((Self Performance))	Status	Assistance Available	Value ((Percentage))
Travel to medical <u>The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying IADL</u>	((Rules for all codes apply except independent is not counted.))	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Child under (age) (see subsection (7))	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
	>3/4 time	.3		

Key:  
 > means greater than  
 < means less than

(b) To determine the amount ~~((of reduction))~~ adjusted for informal support, shared benefit and/or age appropriate functioning, the ~~((value percentages))~~ numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours ~~((reduced for informal supports))~~. Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).

~~(3) ((Also, the department will adjust in home base hours when:~~

~~(a) There is more than one client receiving ADSA paid personal care services living in the same household, the status~~

~~under subsection (2)(a) of this section must be met or partially met for the following IADLs:-~~

- ~~(i) Meal preparation;~~
- ~~(ii) Housekeeping;~~
- ~~(iii) Shopping; and~~
- ~~(iv) Wood supply.~~

~~(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.~~

~~(4)) Effective July 1, 2012, after ((deductions)) adjustments are made to your base hours, as described in ((subsections (2) and (3))) subsection (2), the department may add on hours based on ((your living environment)) offsite laundry, living more than forty-five minutes from essential services, and wood supply:~~

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. <u>The status used for the rules to the right is for housekeeping.</u>	<del>((N/A))</del> <u>Unmet</u>	N/A	8
	<u>Met</u>	<u>N/A</u>	<u>0</u>
	<u>Declines</u>	<u>N/A</u>	<u>0</u>
	<u>Child under (age) (see subsection (7))</u>	<u>N/A</u>	<u>0</u>
	<u>Partially met or Shared benefit:</u>	<1/4 time	<u>8</u>
		<u>between 1/4 to 1/2 time</u>	<u>6</u>
		<u>between 1/2 to 3/4 time</u>	<u>4</u>
<u>&gt;3/4 time</u>		<u>2</u>	
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market). <u>The status used for the rules to the right is essential shopping.</u>	Unmet	N/A	5
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	<u>Partially met or Shared benefit</u>	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	<del>((2))</del> <u>3</u>
>3/4 time		2	

Condition	Status	Assistance Available	Add On Hours	
Wood supply used as sole source of heat.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met or Shared benefit	<1/4 time		8
		between 1/4 to 1/2 time		6
between 1/2 to 3/4 time			4	
	>3/4 time		2	

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

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

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

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

(d) A home health aide ~~((if you are eligible))~~ (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300 ~~((or 388-106-0500))~~.

(e) A private duty nurse (PDN) if you are eligible per WAC ~~((388-71-0910 and 388-71-0915))~~ 388-106-1010 or WAC ~~((388-551-3000))~~ 182-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department presumes that children have legally responsible parents or other responsible adults who provide support for the child's ADLs, IADLs and other needs. The department will not provide services or supports that are within the range of activities that a legally responsible parent or other responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables below when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (e), unless the circumstances in subpart (d) below apply.

(d) The department will code status as other than age appropriate for an ADL, despite your self performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) below, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency and/or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

<b>Developmental Milestones for Activities of Daily Living (ADLS)</b>		
<b>ADL</b>	<b>Self-Performance</b>	<b>Developmental Age Range</b>
Medication Management	Independent Self-Directed Assistance Required	Child under 18 years of age
	Must Be Administered	Child under 12 years of age
Locomotion in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 13 months of age
Locomotion Outside Room	Independent Supervision	Child under 6 years of age
	Limited Extensive	Child under 4 years of age
	Total	Child under 25 months of age
Walk in Room	Independent Supervision Limited Extensive	Child under 4 years of age



<b>Developmental Milestones for Activities of Daily Living (ADLS)</b>		
<b>ADL</b>	<b>Self-Performance</b>	<b>Developmental Age Range</b>
	<u>Total</u>	<u>Child under 19 months of age</u>
<u>Bed Mobility</u>	<u>Independent Supervision</u> <u>Limited</u>	<u>Child under 37 months of age</u>
	<u>Extensive</u>	<u>Child under 25 months of age</u>
	<u>Total</u>	<u>Child under 19 months of age</u>
<u>Transfers</u>	<u>Independent Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Child under 3 years of age</u>
	<u>Total</u>	<u>Child under 19 months of age</u>
<u>Toilet Use</u>	<u>Independent Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Child under 7 years of age</u>
	<u>Total</u>	<u>Child under 37 months of age</u>
<u>Eating</u>	<u>Independent Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Child under 3 years of age</u>
	<u>Total</u>	<u>Child under 13 months of age</u>
<u>Bathing</u>	<u>Independent Supervision</u>	<u>Child under 12 years of age</u>
	<u>Physical help/ Transfer only</u>	<u>Child under 5 years of age</u>
	<u>Physical help/part of bathing</u>	<u>Child under 6 years of age</u>
	<u>Total</u>	<u>Child under 37 months of age</u>
<u>Dressing</u>	<u>Independent Supervision</u>	<u>Child under 12 years of age</u>
	<u>Limited</u>	<u>Child under 8 years of age</u>
	<u>Extensive</u>	<u>Child under 7 years of age</u>
	<u>Total</u>	<u>Child under 25 months of age</u>
<u>Personal Hygiene</u>	<u>Independent Supervision</u>	<u>Child under 12 years of age</u>

<b>Developmental Milestones for Activities of Daily Living (ADLS)</b>		
<b>ADL</b>	<b>Self-Performance</b>	<b>Developmental Age Range</b>
	<u>Limited</u> <u>Extensive</u>	<u>Child under 7 years of age</u>
	<u>Total</u>	<u>Child under 37 months of age</u>

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) unless the circumstances in subpart (g) below apply. (For example, a sixteen year old child coded as supervision in self-performance for telephone would be coded "child under eighteen.")

(g) If the department determines during your assessment that the frequency and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department will code status as other than described in subpart (h) for an IADL.

(h)

<b>Developmental Milestones for Instrumental Activities of Daily Living</b>		
<b>IADL</b>	<b>Self-Performance</b>	<b>Developmental Age Range</b>
<u>Finances</u> <u>Telephone</u> <u>Wood Supply</u>	<u>Independent Supervision</u>	<u>Child under 18</u>
	<u>Limited</u>	
	<u>Extensive</u>	
	<u>Total</u>	
<u>Transportation</u>	<u>Independent Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Child under 18</u>
	<u>Total</u>	
	<u>Essential Shopping</u> <u>Housework</u> <u>Meal Prep</u>	<u>Independent Supervision</u>
<u>Limited</u>		
<u>Extensive</u>		
<u>Total</u>		<u>Child under 12</u>

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

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision-making, memory and continence issues is substantially greater than is typical for a person of your age, the department will code status as other than described in subpart (k) below.

(k)

<b>Additional Developmental Milestones coding within CARE</b>			
<b><u>Name of CARE panel</u></b>	<b><u>Question in CARE Panel</u></b>	<b><u>Developmental Milestone coding selection</u></b>	<b><u>Developmental Age Range</u></b>
<u>Speech/Hearing: Comprehension</u>	<u>"By others client is"</u>	<u>Child under 3</u>	<u>Child under 3</u>
<u>Psych Social: MMSE</u>	<u>"Can MMSE be administered?"</u>	<u>=No</u>	<u>Child under 18</u>
<u>Psych Social: Memory/ Short Term</u>	<u>"Recent memory"</u>	<u>Child under 12</u>	<u>Child under 12</u>
<u>Psych Social: Memory/ Long Term</u>	<u>"Long Term memory"</u>	<u>Child under 12</u>	<u>Child under 12</u>
<u>Psych Social: Depression</u>	<u>"Interview"</u>	<u>Unable to obtain</u>	<u>Child under 12</u>
<u>Psych Social: Decision Making</u>	<u>"Rate how client makes decision"</u>	<u>Child under 12</u>	<u>Child under 12</u>
<u>Bladder/Bowel:</u>	<u>"Bladder/Bowel Control" is which of the following:</u>		
	<u>Continent Usually Continent Occasionally Incontinent</u>	<u>Age appropriate</u>	<u>Child under 12</u>
	<u>Frequently Incontinent</u>	<u>Age appropriate</u>	<u>Child under 9</u>
	<u>Incontinent all or most of the time</u>	<u>Age appropriate</u>	<u>Child under 6</u>
<u>Bladder/Bowel:</u>	<u>"Appliance and programs"</u>	<u>Potty Training</u>	<u>Child under 4</u>

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

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

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

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

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

avoided and which prevent a legally responsible parent from providing for your personal care needs when determining the amount of informal support available to you.

**Reviser's note:** The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 14-05-001  
PERMANENT RULES  
UTILITIES AND TRANSPORTATION  
COMMISSION**

[Docket A-131761, General Order R-574—Filed February 5, 2014, 1:26 p.m., effective March 8, 2014]

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-06 issue of the Register.

**WSR 14-05-016  
PERMANENT RULES  
DEPARTMENT OF HEALTH  
(Occupational Therapy Practice Board)**  
[Filed February 10, 2014, 7:13 a.m., effective February 15, 2014]

Effective Date of Rule: February 15, 2014.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Beginning January 1, 2014, RCW 43.70.442 requires licensed

occupational therapists and occupational therapy assistants to complete training adopted in these rules.

Purpose: Amending WAC 246-847-010 and 246-847-065 and new WAC 246-847-066, the rules implement ESHB 2366 (chapter 181, Laws of 2012) and SHB 1376 (chapter 78, Laws of 2013), both codified as RCW 43.70.442. The rules create new continuing education requirements for occupational therapists and occupational therapy assistants in suicide assessment, including screening and referral.

Citation of Existing Rules Affected by this Order: Amending WAC 246-847-010 and 246-847-065.

Statutory Authority for Adoption: RCW 43.70.442, 18.59.130.

Adopted under notice filed as WSR 13-22-085 on November 6, 2013.

A final cost-benefit analysis is available by contacting Janette Benham, Department of Health, P.O. Box 47852, Olympia, WA 98504, phone (360) 236-4857, fax (360) 236-2901, e-mail janette.benham@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 1, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: December 16, 2013.

Karin Schulze, OT  
Chair

**AMENDATORY SECTION** (Amending WSR 07-20-076, filed 10/1/07, effective 11/1/07)

**WAC 246-847-010 Definitions.** The ~~((following terms))~~ definitions in this section apply throughout this chapter ~~((and have the following meanings:))~~ unless the context clearly requires otherwise.

(1) "Adapting environments for individuals with disabilities" includes assessing needs, identifying strategies, implementing and training in the use of strategies, and evaluating outcomes. Occupational therapy focuses on the interaction of an individual's skills and abilities, the features of the environment, and the demands and purposes of activities.

(2) "Board" means the board of occupational therapy practice.

(3) "Clients" include patients, students, and those to whom occupational therapy services are delivered.

~~((3))~~ (4) "Client-related tasks" are routine tasks during which the aide may interact with the client but does not act as a primary service provider of occupational therapy services. The following factors must be present when an occupational

therapist or occupational therapy assistant delegates a selected client-related task to the aide:

(a) The outcome anticipated for the delegated task is predictable;

(b) The situation of the client and the environment is stable and will not require that judgment, interpretations, or adaptations be made by the aide;

(c) The client has demonstrated some previous performance ability in executing the task; and

(d) The task routine and process have been clearly established.

~~((4))~~ (5) "Commonly accepted standards for the profession" in RCW 18.59.040 (5)(b) and 18.59.070 shall mean having passed the National Board for Certification in Occupational Therapy or its successor/predecessor organization, not having engaged in unprofessional conduct or gross incompetency as established by the board in WAC 246-847-160 for conduct occurring prior to June 11, 1986, and as established in RCW 18.130.180 for conduct occurring on or after June 11, 1986.

~~((5))~~ (6) "Consultation" means that practitioners are expected to function as consultants within the scope of practice appropriate to their level of competence.

~~((6))~~ (7) "Developing prevocational skills and play and avocational capabilities" also involves the scientifically based use of purposeful activity.

~~((7))~~ (8) "Direct supervision" as described in RCW 18.59.040(7) means daily, in-person contact at the site where services are provided by an occupational therapist licensed in the state of Washington.

~~((8))~~ (9) "Evaluation" is the process of obtaining and interpreting data necessary for treatment, which includes, but is not limited to, planning for and documenting the evaluation process and results. The evaluation data may be gathered through record review, specific observation, interview, and the administration of data collection procedures, which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities.

~~((9))~~ (10) "In association" as described in RCW 18.59.040(7) means practicing in a setting in which an occupational therapist licensed in the state of Washington is available on the premises for supervision, consultation, and assistance as needed to provide protection for the client's health, safety and welfare.

~~((10))~~ (11) "Occupational therapy aide" means a person who is trained by an occupational therapist or occupational therapy assistant to perform client and nonclient related tasks. Occupational therapy aides are not primary service providers of occupational therapy in any practice setting. Occupational therapy aides do not provide skilled occupational therapy services.

~~((11))~~ (12) "Professional supervision" of an occupational therapy aide as described in RCW 18.59.020(5) means in-person contact at the treatment site by an occupational therapist or occupational therapy assistant licensed in the state of Washington. When client related tasks are provided by an occupational therapy aide more than once a week, professional supervision must occur at least weekly. When client related tasks are provided by an occupational therapy aide

once a week or less, professional supervision must occur at least once every two weeks.

~~((12))~~ (13) "Regular consultation" as described in RCW 18.59.020(4) means in-person contact at least monthly by an occupational therapist licensed in the state of Washington with supervision available as needed by other methods which include but are not limited to phone and e-mail.

~~((13))~~ (14) "Scientifically based use of purposeful activity" is the treatment of individuals using established methodology based upon the behavioral and biological sciences and includes the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. "Occupations" are activities having unique meaning and purpose in an individual's life.

~~((14))~~ (15) "Teaching daily living skills" is the instruction in daily living skills based upon the evaluation of all the components of the individual's disability and the adaptation or treatment based on the evaluation.

~~((15))~~ (16) "Working days" in RCW 18.59.040(5) shall mean consecutive calendar days.

~~((16))~~ (17) "Work site" in RCW 18.59.080 means the primary work location.

**AMENDATORY SECTION** (Amending WSR 05-24-105, filed 12/7/05, effective 1/7/06)

**WAC 246-847-065 Continued competency.** ~~((As required in chapter 246-12 WAC, Part 7,))~~ Licensed occupational therapists and licensed occupational therapy assistants must complete thirty hours of ~~((continuing education))~~ continued competency every two years.

(1) A minimum of twenty hours must be directly related to the practice of occupational therapy as defined in RCW 18.59.020 and WAC 246-847-010.

~~((The))~~ (2) Any remaining ~~((ten))~~ hours may be in professional development activities that enhance the practice of the licensed occupational therapist or licensed occupational therapy assistant.

(3) Beginning January 1, 2014, as part of their continued competency, occupational therapists and occupational therapy assistants are required to obtain at least three hours of training every six years in suicide assessment as specified in WAC 246-847-066.

(a) Except as provided in (b) of this subsection, an occupational therapist or occupational therapy assistant must complete the first training required by this section during the first full continued competency reporting period after January 1, 2014, or the first full continued competency reporting period after initial licensure, whichever occurs later.

(b) An occupational therapist or occupational therapy assistant applying for initial licensure on or after January 1, 2014, may delay completion of the first training required by this section for six years after initial licensure if:

(i) He or she can demonstrate successful completion of a three-hour training program in suicide assessment that was completed no more than six years prior to the application for initial licensure; and

(ii) The training meets the qualifications listed in WAC 246-847-066.

~~((4))~~ (4) The thirty ~~((contact))~~ continued competency hours must be obtained through two or more of the activities listed ~~((below))~~ in this subsection. Documentation for all activities must include licensee's name, date of activity, and number of hours. Additional specific documentation is defined below:

~~((+))~~ (a) Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance.

~~((2))~~ (b) In-service training. The required documentation for this activity is a certificate or documentation of attendance.

~~((3))~~ (c) Professional conference or workshop. The required documentation for this activity is a certificate or documentation of attendance.

~~((4))~~ (d) Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript.

~~((5))~~ (e) Publications. The required documentation for this activity is a copy of the publication.

~~((6))~~ (f) Presentations. The required documentation for this activity is a copy of the presentation or program listing. Any particular presentation may be reported only once per reporting period.

~~((7))~~ (g) Interactive online courses. The required documentation for this activity is a certificate or documentation of completion.

~~((8))~~ (h) Development of instructional materials incorporating alternative media such as: Video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process.

~~((9))~~ (i) Professional manuscript review. The required documentation for this activity is a letter from publishing organization verifying review of manuscript. A maximum of ten hours is allowed per reporting period for this category.

~~((10))~~ (j) Guest lecturer for occupational therapy related academic course work (academia not primary role). The required documentation for this activity is a letter or other documentation from instructor.

~~((11))~~ (k) Serving on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of ten hours is allowed per reporting period for this category.

~~((12))~~ (l) Self-study of cassette, tape, video tape, or other multimedia device, or book. The required documentation for this activity is a two page synopsis of each item written by the licensee. A maximum of ten hours is allowed per reporting period for this category.

~~((13))~~ (m) Level II fieldwork direct supervision of an occupational therapy student or occupational therapy assistant student by site designated supervisor(s). The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. A maxi-

num of ten hours per supervisor is allowed per reporting period for this category.

#### NEW SECTION

**WAC 246-847-066 Suicide assessment training standards.** (1) A qualifying training in suicide assessment must:

(a) Be an empirically supported training in suicide assessment that includes risk assessment, screening, and referral;

(b) Be provided by a single provider and must be at least three hours in length which may be provided in one or more sessions.

(2) The hours spent completing a training program in suicide assessment under this section count toward meeting any applicable continued competency requirements.

(3) Nothing in this section is intended to expand or limit the occupational therapist or occupational therapy assistant scope of practice.

**WSR 14-05-017  
PERMANENT RULES  
OFFICE OF**

**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2013-24—Filed February 10, 2014,  
7:39 a.m., effective March 15, 2014]

Effective Date of Rule: March 15, 2014.

Purpose: The new rule will require organizations that hold a certificate from the commissioner to issue charitable gift annuities to file their financial and related statements with the commissioner electronically rather than by paper. The new rule will also require these organizations to file their gift annuity contracts electronically with the commissioner using the SERFF system.

Statutory Authority for Adoption: RCW 48.38.075.

Other Authority: RCW 48.38.010 (9) and (10) and 48.38.030.

Adopted under notice filed as WSR 14-02-075 on December 30, 2013.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 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 8, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, 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 8, Amended 0, Repealed 0.

Date Adopted: February 10, 2014.

Mike Kreidler  
Insurance Commissioner

### Chapter 284-38 WAC

#### CHARITABLE GIFT ANNUITIES

#### NEW SECTION

**WAC 284-38-010 Definitions.** The definitions in this section apply throughout this chapter:

"Certificate holder" means any insurer or educational, religious, charitable, or scientific institution that has been issued a certificate of exemption by the commissioner to conduct a charitable gift annuity business.

"Complete filing" means a package of information containing charitable gift annuity contracts, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

"Contract" means a charitable gift annuity contract as described in chapter 48.38 RCW.

"Date filed" means the date a complete charitable gift annuity contract filing has been received and accepted by the commissioner.

"Filer" means a person, organization, or other entity that files charitable gift annuity contracts with the commissioner.

"Objection letter" means correspondence sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a charitable gift annuity contract under RCW 48.38.010(9), 48.18.110, 48.38.030, or 48.38.042.

"SERFF" means the system for electronic rate and form filing. SERFF is a proprietary National Association of Insurance Commissioners (NAIC) computer-based application that allows filers to create and submit rate, rule, and form filings electronically to the commissioner.

#### FILING CHARITABLE GIFT ANNUITY CONTRACTS FORMS

#### NEW SECTION

**WAC 284-38-100 Filing instructions that are incorporated into this chapter.** SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner must incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) The *Washington State SERFF Life and Disability Rate and Form Filing General Instructions* posted on the commissioner's web site, [www.insurance.wa.gov](http://www.insurance.wa.gov).

NEW SECTION

**WAC 284-38-110 General charitable gift annuity contract filing rules.** Filers and certificate holders must submit complete filings that comply with these rules:

(1) Filings must comply with the filing instructions and procedures in the *SERFF Industry Manual* available within the SERFF application and *Washington State SERFF Life and Disability Rate and Form Filing General Instructions*.

(2) Filers must submit every charitable gift annuity contract to the commissioner electronically using SERFF.

(a) Every charitable gift annuity contract filed in SERFF must be attached to the form schedule.

(b) All written correspondence related to a charitable gift annuity contract filing must be sent in SERFF.

(3) All filed contracts must be legible for both the commissioner's review and retention as a public record. Filers must submit new and replaced contracts to the commissioner for review in final printed form displayed in ten-point or larger type.

(4) Each contract must have a unique identifying number and a way to distinguish it from other editions of the same contract.

(5) Filers must submit a completed compliance checklist provided in the SERFF application with each new charitable gift annuity contract as supporting documentation. If the filing includes more than one new contract, the filer may:

(a) Complete a separate checklist for each charitable gift annuity contract; or

(b) Complete one checklist and submit an explanatory memorandum that lists any material differences between the filed contracts.

NEW SECTION

**WAC 284-38-120 Filing revised or replaced charitable gift annuity contracts forms.** If a revised or replaced charitable gift annuity contract form is being filed, in addition to the requirements of WAC 284-38-110, the filer must provide the following supporting documentation:

(1) If a contract is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the disapproved contract.

(2) If a previously approved contract is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced contract using one of these methods:

(a) A draft contract that strikes through deletions and underlines additions or changes in the contract;

(b) A draft contract that includes comments in the margins explaining the changes in the contract; or

(c) A side-by-side comparison of current and proposed contract language.

NEW SECTION

**WAC 284-38-130 Filing authorization rules.** (1) A certificate holder may authorize a third party to file charitable gift annuity contracts on its behalf.

(2) If a certificate holder delegates filing authority to a third party, each filing must include a letter signed by an

employee of the certificate holder authorizing the third party to make filings on behalf of the certificate holder. This subsection does not apply to a third party that is an affiliate or wholly owned subsidiary of the certificate holder.

(3) The certificate holder may not delegate responsibility for the content of a filing to a third party. The commissioner considers errors and omissions by the third party to be errors and omissions of the certificate holder.

(4) If a third party has a pattern of making filings that do not comply with this subpart, the commissioner may reject a delegation of filing authority from the certificate holder.

NEW SECTION

**WAC 284-38-140 The commissioner may reject annuity contract filings.** (1) The commissioner may reject and close any filing that does not comply with WAC 284-38-100. If the commissioner rejects a filing, the certificate holder has not filed the charitable gift annuity contract with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

**WAC 284-38-150 Responding to objection letters.** If the commissioner disapproves a filing under RCW 48.38.010 (9), 48.18.110, 48.38.030, or 48.38.042, the objection letter will state the reason(s) for disapproval, including relevant law and administrative rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response includes:

(a) A separate response to each objection; and

(b) If appropriate, revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

**ANNUAL REPORTING REQUIREMENTS**NEW SECTION

**WAC 284-38-200 Annual reporting requirements.**

(1) Every certificate holder must electronically file with the commissioner a completed annual report within sixty days of its fiscal year end. A copy of the annual report form and instructions for completing and filing the annual report are available on the commissioner's web site at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(2) As an ongoing statement of financial condition, required under RCW 48.38.010(10), the certificate holder must annually electronically file the following financial reports:

(a)(i) An audited financial statement specific to the certificate holder prepared in accordance with generally accepted accounting principles for the fiscal year immediately preceding; or

(ii) A consolidated audited financial statement prepared in accordance with generally accepted accounting principles for the fiscal year immediately preceding, which includes a supplemental schedule specific to the certificate holder. The

audited financial statement must be filed within fifteen days of its release date following the certificate holder's fiscal year end.

(b) Unless permanently exempt in accordance with Internal Revenue Service regulations, file a complete public inspection copy of the certificate holder's IRS Form 990 within fifteen days of its filing with the IRS.

(c) Any other financial information required by the commissioner.

(3) The failure by a certificate holder to file an audited financial statement within nine months following its most recent fiscal year end, and when applicable its IRS Form 990 within fifteen days of its filing with the IRS, will constitute a finding as referenced under RCW 48.38.050 that the certificate holder failed to provide a satisfactory statement of financial condition as required under RCW 48.38.010(10). The finding may subject the certificate holder to disciplinary action as allowed under RCW 48.38.050.

(4) An encrypted or password protected filing or transmission is not considered filed under RCW 48.38.010(10) and this section.

(5) For purposes of determining whether a filing deadline has been met, a document is considered received if electronically submitted on or before the date it is due.

#### WSR 14-05-035

##### PERMANENT RULES

##### DEPARTMENT OF

##### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 12, 2014, 9:41 a.m., effective March 15, 2014]

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

Purpose: The department is amending these rules to comply with and be consistent with newly passed state laws SB [SSB] 5077 Gender-neutral terms; HB [SHB] 1629 Concerning credentialing and continuing education requirements for long-term services; and SB 5510 Vulnerable adults—Abuse.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020, 388-78A-2035, 388-78A-2440, 388-78A-2460, 388-78A-2474, 388-78A-2730, and 388-78A-3180.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 13-20-082 on December 27 [September 30], 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: February 5, 2014.

Katherine I. Vasquez

Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-06 issue of the Register.

#### WSR 14-05-050

##### PERMANENT RULES

##### HORSE RACING COMMISSION

[Filed February 14, 2014, 1:16 p.m., effective March 17, 2014]

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

Purpose: To increase penalties for the use of illegal controlled substances.

Citation of Existing Rules Affected by this Order: Amending WAC 260-84-065.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 14-01-069 on December 16, 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 1, Repealed 0.

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

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

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

Date Adopted: February 14, 2014.

Douglas L. Moore

Executive Secretary

**AMENDATORY SECTION** (Amending WSR 13-07-046, filed 3/15/13, effective 4/15/13)

**WAC 260-84-065 Licensees—Drug and alcohol penalties.** (1) Be under the influence of or affected by intoxicating liquor, marijuana, and/or prescription drugs, (~~or have within their body any illegal controlled substance~~) in violation of WAC 260-34-020 (1) and (5):

(a) First offense - Warning to one-day suspension;

(b) Second offense - Three-day suspension;

(c) Third offense - Thirty-day suspension;

(d) Subsequent offenses (within five years) - One-year suspension.

(2) Be under the influence of or affected by intoxicating liquor, marijuana, and/or prescription drugs, (~~or having~~

~~within their body any illegal controlled substance,))~~ while on horseback, in violation of WAC 260-34-020 (1) and (5):

- (a) First offense - Warning to one-day suspension;
- (b) Second offense - Three-day to thirty-day suspension;
- (c) Third offense - Thirty-day to one-year suspension;
- (d) Subsequent offenses (within five years) - Revocation.

(3) Be under the influence of or affected by, or have within their body any illegal controlled substance or unprescribed medication in violation of WAC 260-34-020(1):

- (a) First offense - Thirty-day suspension;
- (b) Second offense – One hundred eighty-day suspension;

(c) Third offense – Three hundred sixty-five day suspension;

- (d) Subsequent offenses – Revocation.

(4) Engage in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2):

- (a) First offense - Five-day suspension;
- (b) Second offense - Thirty-day suspension;
- (c) Third offense - One-year suspension;
- (d) Subsequent offenses (within five years) - Revocation.

~~((4))~~ (5) Engaging in the illegal sale or distribution of a controlled substance, including marijuana, or possess an illegal controlled substance, including marijuana with intent to deliver in violation of WAC 260-34-020(3), revocation and immediate ejection from the grounds.

~~((5))~~ (6) Possess an illegal controlled substance, including marijuana if under the age of twenty-one, and excluding marijuana if twenty-one years or older in violation of WAC 260-34-020(4):

- (a) First offense - Thirty-day suspension;
- (b) Second offense - One-year suspension; and
- (c) Third offense - Revocation.

~~((6))~~ (7) Possession of marijuana over the age of twenty-one, WAC 260-34-020(5):

(a) First offense - Warning to ~~((one-day))~~ three-day suspension;

- (b) Second offense - Three-day to thirty-day suspension;
- (c) Third offense - Thirty-day to one-year suspension;
- (d) Subsequent offenses (within five years) - Revocation.

~~((7))~~ (8) Possession of any equipment, products or materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance in violation of WAC 260-34-020(6):

- (a) First offense - Three-day suspension;
- (b) Second offense - Three-day to thirty-day suspension;
- (c) Third offense - One-year suspension;
- (d) Subsequent offenses (within five years) - Revocation.

~~((8))~~ (9) Refusal to submit to blood, breath, oral fluids, and/or urine testing, in violation of WAC 260-34-020(7), immediate ejection ~~((from))~~ from the grounds and a one-year suspension ~~((to))~~.

Subsequent offenses - Revocation.

~~((9))~~ (10)(a) For violations of WAC 260-34-020 (1), (4), or (5), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission ~~((security))~~ investigators.

(iii) Have no violations of chapter 260-34 WAC.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards finds that the licensee or applicant failed to comply with the conditions required in (a)(iii) of this subsection, the board of stewards may impose the original suspension. If the failure to comply with the conditions of the stay is a violation of chapter 260-34 WAC, the board of stewards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

~~((10))~~ (11) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

~~((11))~~ (12) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

~~((12))~~ (13) Any licensee or applicant who has an alcohol concentration of 0.02 percent or higher while on horseback is prohibited from being on horseback until his/her alcohol concentration is below 0.02 percent.

(14) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of marijuana is prohibited from performing any duties for which a license is required until the licensee provides a negative test for the presence of marijuana.



**WSR 14-05-051**  
**PERMANENT RULES**  
**HORSE RACING COMMISSION**

[Filed February 14, 2014, 1:17 p.m., effective March 17, 2014]

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

Purpose: Defines what constitutes a self-service device and change the definition of a cash voucher to allow an electronic voucher.

Citation of Existing Rules Affected by this Order: Chapter 260-48 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 14-01-070 on December 16, 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 4, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 14, 2014.

Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

**WAC 260-48-490 Definitions.** (1) "Common pool wagering." The inclusion of wagers placed at guest association locations and secondary parimutuel organizations (SPMO) into a common parimutuel pool for the purpose of display of wagering information and calculation of payoffs on winning wagers.

(2) "Guest association." An association approved to offer simulcast races and parimutuel wagering on races conducted at other racetracks.

(3) "Host association." An association where live racing and parimutuel wagering are conducted and on which parimutuel wagering is conducted by guest associations or satellite locations.

(4) "Parimutuel system." The hardware, software and communications equipment used to record wagers, calculate payouts for winning wagers, and transmit wagering transactions and parimutuel pool data for display to patrons and to communicate with other parimutuel systems linked to facilitate common pool wagering.

(5) "Parimutuel wagering." A form of wagering on the outcome of a horse race in which all wagers are pooled and held by a parimutuel pool host for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning contestants.

(6) "Parimutuel voucher." A record of a parimutuel wager in either paper or electronic form.

(7) "Secondary parimutuel organization (SPMO)." An entity other than a licensed association that offers and accepts parimutuel wagers. This may include a satellite location (off-track wagering) or an advance deposit wagering service provider.

~~((7))~~ (8) "Self-service device." A computerized wagering device that allows the patron, only while on the grounds of a licensed Class 1 racing association, to wager by use of portable electronic device. The self-service device allows the patron to place wagers only. The patron must contact a mutuel clerk to cash in any winnings.

(9) "Self-service terminal." A computerized wagering device that allows the patron to wager by use of a touch activated screen using account cards, vouchers, winning tickets and cash.

~~((8))~~ (10) "Simulcast." Live video and audio transmission of a race and parimutuel information for the purpose of parimutuel wagering at locations other than a host association.

(11) "Stored value instrument." A self-service device or self-service terminal.

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

**WAC 260-48-520 Parimutuel tickets.** A parimutuel ticket is evidence of a wager into the parimutuel pool operated by the association and is evidence of the association's obligation to pay to the holder a portion of the distributable amount of the parimutuel pool that is represented by a valid parimutuel ticket. The association must cash all valid winning parimutuel tickets when they are presented for payment.

(1) To be deemed a valid parimutuel ticket, the ticket must have been issued by a parimutuel ticket machine, self-service terminal operated by the association, or self-service device and recorded as a ticket entitled to a share of the parimutuel pool. The parimutuel ticket must also contain the following:

- (a) The name of the association operating the meeting;
- (b) A unique identifying number or code;
- (c) The terminal ~~((at which))~~ or device where the ticket was issued;
- (d) The date that the wagering transaction was issued;
- (e) The race number;
- (f) The type or types of wager(s);
- (g) The number or numbers representing the betting interests; and
- (h) The amount or amounts of the wagers into the parimutuel pool or pools for which the ticket is evidence.

(2) No parimutuel ticket recorded or reported as paid, ~~((cancelled))~~ canceled, or nonexistent will be considered a valid parimutuel ticket.

(3) The association must maintain a record of all winning parimutuel tickets, not presented for payment. A record of these tickets when cashed must be retained for a period of twenty-four months from the date cashed. This record will be made available for inspection by the commission or its authorized representative when requested.

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

**WAC 260-48-680 Parimutuel ((~~cash~~)) vouchers.** (1) A parimutuel ((~~cash~~)) voucher is a ((~~document~~)) record or card produced by a parimutuel system device on which a stored cash value is represented and the value is recorded in and redeemed through the parimutuel system. Parimutuel ((~~cash~~)) vouchers may be offered by an association that issues parimutuel tickets. The stored value on a voucher may be redeemed in the same manner as a value of a winning parimutuel ticket for wagers placed at a parimutuel window, a self-service device, or a self-service terminal, and may be redeemed for their cash value at any time.

(2) An association may, with the prior approval of the commission, issue special parimutuel cash vouchers as incentives or promotional prizes, and may restrict the use of those vouchers to the purchase of parimutuel wagers.

(3) The tote system transaction record for all parimutuel vouchers will include the following:

(a) The voucher identification number in subsequent parimutuel transactions;

(b) Any parimutuel wagers made from a voucher will identify the voucher by identification number.

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

**WAC 260-48-690 Other stored value instruments and systems.** (1) An association may not, without the prior approval of the commission, utilize any form of stored value instrument or system other than a parimutuel voucher for the purpose of making or cashing parimutuel wagers.

(2) Any request for approval of a stored value instrument or system will include a detailed description of the standards utilized:

(a) To identify the specific stored value instrument or account in the parimutuel system wagering transaction record;

(b) To verify the identity and business address of the person(s) obtaining, holding, and using the stored value instrument or system; and

(c) To record and maintain records of deposits, credits, debits, transaction numbers, and account balances involving the stored value instruments or accounts.

(3) A stored value instrument or system will prevent wagering transactions in the event such transactions would create a negative balance in an account, and will not automatically transfer funds into a stored value instrument or account without the direct authorization of the person holding the instrument or account.

(4) A stored value instrument while being used to place a wager may only send and receive the signal within the association's property.

(5) Any request for approval of a stored value instrument or system will include all records and reports relating to all transactions, account records, and customer identification and verification in hard copy or in an electronic format approved by the commission. All records will be retained for a period of not less than three years.

## WSR 14-05-056

### PERMANENT RULES

### GAMBLING COMMISSION

[Order 694—Filed February 14, 2014, 2:39 p.m., effective March 17, 2014]

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

Purpose: These amendments clarify the rule to allow more than one "envy" and "share the wealth" "bonus feature" to be offered in a single card game. The amendments also add definitions and clarifications to bring agency rules in-line with current practice.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-040.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Adopted under notice filed as WSR 13-23-041 on November 15, 2013.

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

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

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

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

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

Date Adopted: February 14, 2014.

Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-03-099, filed 1/17/14, effective 2/17/14)

**WAC 230-15-040 Requirements for authorized card games.** (1) In order for a card game to be authorized, it must be approved by the director or the director's designee and must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than four "separate games" with a single hand of cards(~~(-However,))~~ and no more than three of the "separate games" may offer a wager that exceeds five dollars each. (~~(We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and~~

~~(e))~~ (i) "Separate game" means each individual objective to be achieved within a card game that requires a separate wager and results in a distinct and separate pay out based upon the outcome.

(ii) Progressive jackpots are considered "separate games."

(c) Identify "bonus features" to be allowed in each card game;

(i) "Bonus feature" means an added prize and/or variation based on achieving the predetermined specific hand required to win the prize and does not require a separate wager. More than one "bonus feature" may be offered per card game. A "bonus feature" must not be combined with a progressive jackpot. Examples include, but are not limited to, "envy" and "share the wealth" "bonus features" when operated as described below.

(ii) A "bonus feature" is not considered a separate game.

(d) Operate "envy" and "share the wealth" "bonus features" as follows:

(i) If a player makes a wager that qualifies for an "envy" "bonus feature" pay out, they are entitled to receive a prize if another player's hand achieves the predetermined specific hand. If a player is playing more than one wagering area or if a hand they are playing is split into two or more hands and any one of their hands achieves the predetermined specific hand, their other hand with a qualifying wager is entitled to receive a prize also.

(ii) If a player makes a wager that qualifies for a "share the wealth" pay out, they are entitled to receive a prize if their hand(s) or another player's hand(s) achieves the predetermined specific hand.

(e) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game, except as authorized in approved card game rules for variations of the game of Pai Gow poker where a player may bank the game every other hand; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) ~~((A#))~~ "Envy" or "share the wealth" ~~((wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager))~~ "bonus features"; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated ~~((in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved))~~ as described in the commission approved game rules on our web site. However:

(a) Card game licensees may make immaterial modifications to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-055.

(5) A player's win or loss must be determined during the course of play of a single card game, except for:

(a) A carryover pot game. A carryover pot is an optional pot that accumulates as a dealer and participating players contribute to the pot. The winner of the pot is not necessarily determined after one game and the pot can be carried over to more than one game. Carryover pots must not carryover more than ten games. Participants must include at least one player and the dealer competing for the highest qualifying winning hand. Game rules must state how the pot is distributed. If the carryover pot has not been won by the tenth game, the dealer will divide it equally between the remaining players still participating in the pot and the house or, if allowed by game rules, only the players still participating in the pot; and

(b) In the game of Mini-Baccarat, a player may make an optional wager on the player hand winning the next three consecutive games, or the banker hand winning the next three consecutive games.

#### WSR 14-05-061

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 18, 2014, 8:34 a.m., effective March 21, 2014]

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

Purpose: The department is adding new sections in chapter 388-106 WAC to establish a methodology for how DSHS calculates nursing home comparable home and community based long-term care availability to be used in the nursing home certificate of need process in Washington state. DSHS is creating this new section for clarification about how it calculates comparable nursing home capacity.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-1600, 388-106-1610, and 388-106-1620.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 14-02-006 on December 19, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, 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 3, Amended 0, Repealed 0.

Date Adopted: February 12, 2014.

Katherine I. Vasquez  
Rules Coordinator

### Nursing Facility Certificate of Need

#### NEW SECTION

**WAC 388-106-1600 What definitions apply to the nursing facility certificate of need? "Activities of daily living"**, as defined in WAC 388-106-0010, includes tasks such as walking, eating, taking medications, maintaining personal hygiene, moving in bed and toileting.

**"Care assessment"** is an assessment tool used to determine eligibility for services and level of service need, and identify strengths, preferences and potential referrals to develop an individualized care plan.

**"Certificate of need program"** is a regulatory process under Chapter 70.38 RCW that requires certain healthcare providers, including nursing homes, to receive approval from the Department of Health before building certain types of facilities or offering new or expanded services.

**"Community residential"** refers to licensed community settings such as assisted living facilities and adult family homes where long-term care services are provided to residents.

**"Department"** means the Department of Social and Health Services.

**"Department of Health"** is the state agency that operates the certificate of need review program and determines the need for specific facilities and services, including nursing homes, in a manner that is consistent with the statewide health resources strategy developed under RCW 43.370.030 and 70.38.

**"In-home personal care"** is care provided by an agency or individual provider to clients living in their own home.

**"Minimum Data Set" or "MDS"** is a tool that is used to perform the comprehensive assessment of each resident's functional capabilities, which is required for all residents in medicare or medicaid certified nursing homes.

**"RUG III Score"** is the classification of each nursing facility resident into a specific group based on the individual's medical condition and level of care required.

#### NEW SECTION

**WAC 388-106-1610 What is the purpose of determining nursing facility comparable home and community based long-term capacity?** The Department of Health's certificate of need program is required to determine the need for nursing homes under WAC 246-310-210 (6)(b)(ii). The determination of need is based in part upon the availability of home and community-based long-term services in the planning area of the proposed nursing facility. When evaluating the need for additional nursing home beds, the data considered by the Department of Health must include data provided by the Department.

#### NEW SECTION

**WAC 000-106-1620 What methodology does the department use to determine statewide or county specific**

**nursing home comparable home and community-based long-term services availability?** The Department uses the following methodology to determine the statewide or county specific nursing home comparable home and community-based long-term services availability.

(1) The department selects a recent, one-year time period from which to use MDS assessment data.

(2) The "typical RUG-III ADL score" is determined as follows. From the MDS data, two activity of daily living (ADL) RUG-III score values are calculated: (1) the mean RUG-III ADL score, rounded to the nearest whole number, and (2) the modal RUG-III ADL score that occurs most commonly in the nursing home population in the selected time period. The "typical RUG-III ADL score" is the lower of the mean and modal values.

(3) Using the most recent month that both payment and assessment data are considered to be complete, persons receiving medicaid paid in-home personal care or community residential services are identified, and the MDS-equivalent ADL score from each home and community-based client's current CARE assessment is constructed.

(4) Using data from the month selected in subsection (3), count the number of in-home personal care clients being served by either the Aging and Long-Term Support or Developmental Disabilities Administrations who have an MDS-equivalent score at or above the typical RUG-III ADL nursing home score that was calculated in subsection (2).

(5) Using data from the month selected in subsection (3), calculate the proportion of medicaid-paid community residential clients with an MDS-equivalent score that is at or above the typical RUG-III ADL nursing home score calculated in subsection (2).

(i) When determining county level measures of nursing home comparable home and community based capacity, the statewide average for Medicaid- paid community residential clients is used.

(6) Calculate the overall statewide licensed capacity of community residential facilities.

(7) The proportion calculated in subsection (5) and the community residential capacity determined in subsection (6) are multiplied to estimate the community residential capacity that is nursing home comparable.

(8) Add the numbers calculated in subsections (4) and (7) to determine the total countable nursing-home-comparable home and community-based long-term capacity to be used in reporting to the Department of Health the availability of other services in the community as required in RCW 70.38.115.

**Reviser's note:** The section above was filed by the agency as WAC 000-106-1620. However, the other rules for the department of social and health services are found in Title 388 WAC. The section above appears to be WAC 388-106-1620, but pursuant to the requirements of RCW 34.08.040, it is published in the same form as filed by the agency.

**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.

**WSR 14-05-062**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed February 18, 2014, 8:46 a.m., effective March 21, 2014]

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

Purpose: The department is amending rules under WAC 388-410-0025 and 388-410-0033 to make changes that clarify rules about options concerning waiving, compromising, writing off, or terminating Basic Food and WASHCAP overpayment claims and clarify that federal law does not allow for supplemental nutrition assistance program (SNAP) overpayment claims to be dismissed on the basis of equitable estoppel.

This rule making is part of the corrective action plan for a recent USDA Food and Nutrition Service Recipient Claim Management Evaluation Review (RCMER). Section 13 (b)(1) of the Food and Nutrition Act of 2008, as amended, requires the department to establish and collect overpayments of SNAP benefits "unless otherwise provided for in this section." The act affords no provision to compromise claims or bar collection of administrative error claims on the grounds of equitable estoppel.

Citation of Existing Rules Affected by this Order: Amending WAC 388-410-0025 and 388-410-0033.

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

Other Authority: 7 C.F.R. 273.18.

Adopted under notice filed as WSR 14-01-109 on December 18, 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 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: February 12, 2014.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-20-062, filed 9/29/06, effective 11/1/06)

**WAC 388-410-0025 Am I responsible for an overpayment in my assistance unit?** If your assistance unit (AU) received more Basic Food or WASHCAP benefits than it was supposed to receive, your AU has an overpayment. If you

have an overpayment, we determine the amount you were overpaid and set up a claim to recover this overpayment.

(1) We set up an overpayment for the full amount your AU was overpaid for every adult AU member at the time your AU was overpaid.

(2) Each adult member is responsible for the whole overpayment until we recover the entire amount of the overpayment. We do not collect more than the amount your AU was overpaid.

(3) If we determine you are responsible for an overpayment, you are responsible for the overpayment even if you are now in a different AU than you were when you had the overpayment.

(4) You may be responsible for a Basic Food or WASHCAP overpayment even if it was the department's fault you were overpaid.

(5) We do not apply equitable estoppel, as described under WAC 388-02-0495, to Basic Food or WASHCAP overpayments.

(6) We may reduce all or part of an overpayment if we determine you are unable to repay the balance or that doing so would be a hardship. See WAC 388-410-0033.

AMENDATORY SECTION (Amending WSR 06-20-062, filed 9/29/06, effective 11/1/06)

**WAC 388-410-0033 How and when does the department collect a Basic Food or WASHCAP overpayment?**

(1) When we set up an overpayment because you received more Basic Food or WASHCAP benefits than you were supposed to receive, we start to collect the benefits you were overpaid. This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) Set up an overpayment that we do not have to set up under WAC 388-410-0030(5).

(2) You can repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your EBT account;

(c) Making regular payments under a scheduled repayment agreement as described in subsection (4) of this section; or

(d) Having your current Basic Food or WASHCAP benefits reduced.

(3) If you have an inactive EBT account and we cancelled Basic Food or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled benefits to reduce the amount of your overpayment.

(4) If your AU currently receives Basic Food or WASHCAP benefits, you can repay your overpayment by making monthly payments. The payments must be more than we would recover through us reducing your benefits. Your AU or the department can request a change to the agreement if necessary.

(5) If you are responsible for repaying an administrative or inadvertent household error overpayment, we automatically reduce your monthly benefits unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; or

(c) Arrange with us to compromise (reduce) or waive all or part of your overpayment under section (13) below; or

(d) Request a hearing and continued benefits within ninety days of the date you received your collection action notice.

(6) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date you receive your collection action notice. If you do not do this, we will reduce your current monthly benefits.

(7) If you receive ongoing Basic Food or WASHCAP benefits, we can reduce your monthly benefits to repay the overpayment. We do not reduce your first Basic Food or WASHCAP allotment when we first approve your application for benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

- (i) Ten percent of your monthly benefits; or
- (ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

- (i) Twenty percent of your monthly benefits; or
- (ii) Twenty dollars per month.

(8) If you do not meet the terms of a repayment agreement with the department, we automatically reduce your current benefits unless you:

(a) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

(9) If your overpayment claim is past due for one hundred eighty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, Social Security benefits, or federal wages. We do not count your overpayment as past due if you:

- (a) Repay the entire overpayment by the due date;
- (b) Have your monthly benefits reduced to repay the overpayment; or

(c) Arrange with us to compromise (reduce) or waive all or part of your overpayment under section (13) below; or

(d) Meet the requirements of your scheduled repayment agreement.

(10) If you no longer receive Basic Food or WASHCAP benefits, we can garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

(11) We suspend collection on an overpayment if:

- (a) We cannot find the responsible AU members; or
- (b) The cost of collecting the overpayment would likely be more than the amount we would recover.

(12) We can ~~((negotiate the amount of an overpayment if))~~ compromise (reduce) all or part of any unpaid claim when:

(a) ~~((the))~~ The amount you offer to repay is close to what we could expect to receive from you before we can no longer legally collect the overpayment from you((-)); or

(b) We determine that you are unable to repay the balance or that doing so would be a hardship.

(13) We write off unpaid overpayments and release any related liens when:

(a) ~~((We can not possibly collect any more funds))~~ The claim is invalid;

(b) All adult household members die;

(c) The claim balance is less than twenty-five dollars and has been delinquent for ninety days or more;

(d) We determine it is not cost effective to pursue the claim further;

(e) We agreed to accept a partial payment that left an unpaid balance after this payment; ~~((€))~~

(f) You have paid ten percent of your monthly benefits or ten dollars, whichever is greater, on an administrative or inadvertent household error overpayment for at least thirty-six months;

~~((e) There is an unpaid balance left after an overpayment case has been suspended))~~ (g) The claim has been delinquent for three ~~((consecutive))~~ years or more unless ~~((a collection may be possible))~~ we plan to pursue the claim through the Treasury Offset Program((-); or

(h) An administrative law judge orders us to do so.

(14) If your AU has an overpayment from another state, we can collect this overpayment if the state where you were overpaid does not plan to collect it and they give us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.

(15) You can ask for a hearing to contest whether you owe an overpayment, whether we calculated the overpayment correctly, or whether we should have waived an overpayment.

### WSR 14-05-063

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 18, 2014, 8:49 a.m., effective March 21, 2014]

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

Purpose: The USDA Food and Nutrition Service (FNS) issued final rules to amend supplemental nutrition assistance program (SNAP) regulations definition of the term "trafficking" to include the attempt to buy or sell SNAP benefits and/or EBT cards.

The department is amending rules under WAC 388-446-0015 and 388-412-0046 to make changes concerning food benefit trafficking rules and related intentional program violations (IPV) to comply with the federal regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 388-412-0046 and 388-446-0015.

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

Other Authority: 7 C.F.R. § 271.2,

Adopted under notice filed as WSR 14-01-111 on December 18, 2013.

Changes Other than Editing from Proposed to Adopted Version: The proposed rule-making changes to WAC 388-412-0040 Can I get my benefits replaced?, are not being adopted under this authority.

The changes were made because the department decided not to make any changes to this section until a cost analysis and computer system programming updates can be made to support this change. The department may propose these changes under a separate rule-making authority in the future.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: February 12, 2014.

Katherine I. Vasquez  
Rules Coordinator

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

**WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?** (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;

(viii) Employment or school related items; and

(ix) Other necessary incidentals and items.

(d) It is not legal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

(i) Gamble. Gambling includes:

(A) The purchase of lottery tickets;

(B) The purchase of pull tabs;

(C) Use of punch boards;

(D) Purchase of bingo cards;

(E) Betting on horse racing;

(F) Participating in casino games; and

(G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.

(ii) Participate in or purchase any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;

(iii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(iv) Purchase any alcoholic items regulated under Title 66 RCW;

(v) Purchase or participate in any activities in any of the following locations:

(A) Taverns licensed under RCW 66.24.330;

(B) Beer/wine specialty stores licensed under RCW 66.24.371;

(C) Nightclubs licensed under RCW 66.24.600;

(D) Contract liquor stores defined under RCW 66.04.010;

(E) Bail bond agencies regulated under chapter 18.185 RCW;

(F) Gambling establishments licensed under chapter 9.46 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of eighteen are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits including those from the Basic Food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA) help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, or an authorized representative may use your food assistance benefits to buy food items for your household from food retailer authorized to accept supplemental nutrition assistance program (SNAP)

benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(c) You can use your food assistance benefits to buy items such as:

- (i) Breads and cereals;
- (ii) Fruits and vegetables;
- (iii) Cheese, milk, and other dairy products;
- (iv) Meats, fish, poultry, and eggs;
- (v) Most other food items that are not prepared hot foods; and

(vi) Seeds and plants that produce food.

(d) It is not legal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household or your authorized representative.

(ii) Use food benefits on your EBT card for any purpose other than to buy food for eligible household members.

(iii) Exchange your food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging food benefits or attempting to exchange food benefits for cash, drugs, weapons or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate your EBT card, EBT card number, personal identification numbers (PINs), or any benefits to any person or entity.

(v) Buy, attempt to buy, or steal someone's EBT card, EBT card number, or PIN.

(vi) Sell or trade any food that was purchased using your food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

~~((vi))~~ (vii) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(e) If you intentionally misuse your food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

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

**WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearings (ADH) for food assistance.[?]** (1) An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow. This includes making a false statement regarding household circumstances.

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program

(SNAP) under Title 7 of the Code of Federal Regulations or any state statute relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including:

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), if:

(a) The suspected IPV causes an over issuance of four hundred fifty dollars or more; or

(b) The suspected IPV is due to the trafficking of food benefits; and

(c) The person has not been referred for criminal proceedings.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV can choose to waive their right to an ADH by signing a disqualification consent agreement that waives their right to the hearing and accepts the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we suspect someone has committed an IPV, we refer their case for an administrative disqualification hearing (ADH). The office of administrative hearings (OAH) sends them notice of an ADH at least thirty days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

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

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has ten days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they can request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.



(8) The person or a representative shall have the right to one continuance of up to thirty days if a request is filed ten days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within ten days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if this is requested by the person or department representative at least a week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within thirty days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 14-05-064**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed February 18, 2014, 8:53 a.m., effective March 21, 2014]

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

Purpose: The department is amending rules under WAC 388-410-0020 and 388-410-0030 to make changes that are consistent with federal requirements and regulations concerning establishment, collection and calculation of Basic Food benefit errors and overpayment claims.

This rule making is part of the corrective action plan for a recent USDA Food and Nutrition Service Recipient Claim Management Evaluation Review (RCMER). The RCMER found that [the] Washington Administrative Code (WAC) was inconsistent with federal regulations concerning the establishment of claims for supplemental nutrition assistance

program (SNAP) benefit overpayments. The department must establish overpayments for SNAP even if the department does not meet federal timeliness standards for establishing claims.

Citation of Existing Rules Affected by this Order: Amending WAC 388-410-0020 and 388-410-0030.

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

Other Authority: 7 C.F.R. 273.18.

Adopted under notice filed as WSR 14-01-110 on December 18, 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 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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Date Adopted: February 12, 2014.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 06-20-062, filed 9/29/06, effective 11/1/06)

**WAC 388-410-0020 What happens if I receive more Basic Food or WASHCAP benefits than I am supposed to receive?** (1) If you receive more Basic Food or WASHCAP benefits than you were supposed to receive, your assistance unit (AU) has an overpayment. There are three types of overpayments:

(a) **Administrative error overpayment:** When you received too many benefits because the department made a mistake.

(b) **Inadvertent household error overpayment:** When you received too many benefits because you made a mistake or didn't understand what you were supposed to do.

(c) **Intentional program violation (IPV) overpayment:** When you received too many benefits because you broke a federal food ((stamp)) assistance rule on purpose. If you have an IPV, you could be disqualified from receiving Basic Food or WASHCAP benefits under chapter 388-446 WAC.

~~((2) We must discover an overpayment within certain time frames for us to establish and collect an overpayment. If we do not discover that you received too many benefits within the time frame described below based on the type of overpayment, we will not set up an overpayment.~~

(a) <del>Administrative error overpayment:</del>	(b) <del>Inadvertent household error overpayment:</del>	(c) <del>Intentional program violation overpayment:</del>
We must discover the overpayment within twelve months of the date you were overpaid.	We must discover the overpayment within twenty-four months of the date you were overpaid.	We must discover the overpayment within seventy-two months of the date you were overpaid.))

AMENDATORY SECTION (Amending WSR 06-20-062, filed 9/29/06, effective 11/1/06)

**WAC 388-410-0030 How does the department calculate and set up my Basic Food or WASHCAP overpayment?** (1) We calculate the amount of your Basic Food or WASHCAP overpayment by counting the difference between:

- (a) The benefits your assistance unit (AU) received; and
  - (b) The benefits your AU should have received.
- (2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

- (a) Had correct and complete information; and
- (b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) If we paid you too few Basic Food or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

- (a) We have **not** already issued you benefits to replace what you were underpaid; and
- (b) We have **not** used this amount to reduce another overpayment.

(5) We **must** set up an inadvertent household error or administrative error overpayment if:

- (a) We discovered the overpayment through the federal quality control process;
- (b) You currently receive Basic Food or WASHCAP benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently receive Basic Food or WASHCAP benefits.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification hearing, we will not set up and start collecting the overpayment if doing so could negatively impact this process.

(7) We set up an intentional program violation overpayment based on the results of an administrative disqualification hearing (chapter 388-02 WAC) unless:

- (a) Your AU has repaid the overpayment; or
- (b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

(8) We must calculate the overpayment amount:

(a) For an administrative error overpayment - up to twelve months prior to when we became aware of the overpayment;

(b) For an inadvertent household error overpayment - for no more than twenty-four months before we became aware of the overpayment; and

(c) For intentional program violation (IPV) overpayments - from the month the act of IPV first occurred but no more than six years before we became aware of the overpayment.

**WSR 14-05-079  
PERMANENT RULES  
DEPARTMENT OF  
ENTERPRISE SERVICES**

[Filed February 18, 2014, 12:43 p.m., effective January 1, 2015]

Effective Date of Rule: January 1, 2015.

Purpose: RCW 48.62.061 directs the state risk manager to maintain rules for the management, operation, and solvency of self-insurance programs, including the necessity and frequency of actuarial analyses and claims audits.

The self-insurance rules were originally adopted in 2011. The following changes are needed to strengthen the funding requirements for self-insurance pools and establish procedures for the state risk manager to follow when pools fall below appropriate funding levels.

**AMENDED SECTIONS:**

WAC 200-100-02023 Standards for operation—Elections of the governing body.

- The proposed changes provide flexibility to the risk pools to establish the governance structure best suited to the size of their membership.

WAC 200-100-03001 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements.

- The proposed changes:
  - o Clarify that estimates must be written, and standardizes current actuarial practice of providing estimates at various actuarial confidence levels as indicated in the proposed change. The proposed change allows the pool, its members and the state risk manager to clearly identify the level of funds available to pay claims.
  - o Provide clarity as to when a pool has met the primary asset test.
  - o Increases the amount of combined assets needed from the seventy percent to the eighty percent confidence level.
  - o Establish criteria for and clearly identifies a second solvency test as the total asset test.

- o Establish a remedy to be taken by the state risk manager when a pool fails to respond to the state risk manager's requests for an improvement plan.
- o Identifies the procedure to be followed by the state risk manager when a pool operating under supervisory watch of the state risk manager declines to the point that monetary reserves available to pay claims fall below the seventy percent confidence level.
- o Clarify the specific work to be done by an independent actuary on behalf of the state risk manager.

WAC 200-100-037 Standards for management and operations—Financial plans.

- The proposed changes:
  - o Reduce the time that audited financial statements are to be provided to the state risk manager from one year to eight months from a pool's fiscal year end.
  - o Prevents loaning of monies needed to pay claims to any entity.

WAC 200-100-060 Standards for management and operations—State risk manager reports.

- The proposed changes reduce the time that audited financial statements are to be provided to the state risk manager from one year to eight months from a pool's fiscal year end. This change also appears in WAC 200-100-037.

Citation of Existing Rules Affected by this Order: Amending WAC 200-100-02023, 200-100-03001, 200-100-037, and 200-100-060.

Statutory Authority for Adoption: RCW 48.62.061.

Adopted under notice filed as WSR 13-17-106 on August 21, 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 4, 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 4, Repealed 0.

Date Adopted: February 12, 2014.

Jack Zeigler  
Rules and Policy Manager

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

**WAC 200-100-02023 Standards for operation—Elections of the governing body.** The governing body of every joint self-insurance program shall be elected by a majority of the members. Elections may be conducted during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. ~~((Each ballot shall be read orally as to the member name and vote and recorded in the meeting minutes.))~~ Joint self-insurance programs governed by a governing body which requires the inclusion of a voting representative from each member entity in such governing body are exempt from the requirements of this section.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

**WAC 200-100-03001 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements.** (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides written estimates of the liability for unpaid claims measured at the expected level and the seventy, eighty, and ninety percent confidence level.

(2) The governing body of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs meeting this requirement shall be considered in compliance with the primary asset test. All joint self-insurance programs that do not meet the requirements ~~((to maintain sufficient primary assets))~~ of the primary asset test shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The governing body of ~~((the))~~ every joint self-insurance program operating under this chapter shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the ~~((seventy))~~ eighty percent confidence level as determined by the program's actuary as of fiscal year end.

(4) All joint self-insurance programs authorized by chapter 48.62 RCW shall meet the requirements of both the primary asset test and the total asset test. The governing body of all joint self-insurance programs that do not meet ~~((the reserve))~~ requirements ~~((to maintain sufficient primary and secondary assets))~~ of the total asset test shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving

the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission.

Joint self-insurance programs operating under an approved plan and making satisfactory progress according to the terms of the plan shall remain under supervisory watch by the state risk manager until the terms of the approved plan have been met. Programs under supervisory watch but not making satisfactory progress may be subject to the following requirements:

(a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;

(b) Submission of quarterly reports;

(c) On-site monitoring by the state risk manager; or

(d) Service of a cease and desist order upon the program.

(5) Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include written notification to every member of the joint self-insurance program, the service of a cease and desist order upon the program, and other available remedies necessary to ensure the program operates in a financially sound manner.

(6) All joint self-insurance programs that do not maintain total primary and secondary assets in an amount equal to or greater than unpaid claim estimate at the seventy percent confidence level, as determined by the program's actuary, as of fiscal year end shall be issued a cease and desist order by the state risk manager. Such programs will be considered under a supervisory cease and desist order.

~~((4))~~ (7) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.

~~((5))~~ (8) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the ~~((adequacy of reserves))~~ accuracy of the estimate for unpaid claims liabilities, including the estimate of unallocated loss adjustment expenses. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

**WAC 200-100-037 Standards for management and operations—Financial plans.** (1) All joint self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy which conforms to RCW 48.62.111 governing the investments of the program; and

(c) The preparation and submission of accurate and timely annual financial reports of the program as prescribed by the state auditor's office.

(d) The submission of audited financial statements to the state risk manager within ~~((one year))~~ eight months of the program's fiscal year end which meet the requirements of the state auditor and state risk manager as described in ~~((RCW 82.60.060(3))~~ this chapter.

(2) No financial plan of a joint self-insurance program shall permit any loans ~~((to any member))~~ from primary assets held for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

**WAC 200-100-060 Standards for management and operations—State risk manager reports.** (1) Every joint property and liability self-insurance program authorized to transact business in the state of Washington shall submit the annual report to the state risk manager.

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form:

(a) Unaudited annual financial statements, including attestation, as provided to the state auditors office;

(b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the unaudited financial statements are based;

(c) Copies of all insurance coverage documents;

(d) List of contracted consultants;

(e) Details of changes in articles of incorporation, bylaws or foundation agreement;

(f) Details of services provided by contract to nonmembers;

(g) List of members added or terminated.

Such reports shall be submitted to the state risk manager no later than one hundred fifty days following the completion of the joint program's fiscal year.

(3) Audited financial statements shall be provided to the state risk manager within ~~((one year))~~ eight months of the program's fiscal year end and comply with requirements for submission of audited financial statements established by the state risk manager.

(4) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(5) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

(a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;

(b) On-site monitoring by the state risk manager;

(c) Service of a cease and desist order upon the program.