

WSR 14-24-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-326—Filed November 19, 2014, 3:26 p.m., effective November 19, 2014, 6:01 p.m.]

Effective Date of Rule: November 19, 2014, 6:01 p.m.

Purpose: Amend commercial fishing for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Amending WAC 220-47-311 and 220-47-411.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: There are not enough harvestable quotas remaining in Puget Sound Salmon Management and Catch Reporting Areas 10 and 11 to provide for a commercial purse seine fishery. Puget Sound Salmon Management and Catch Reporting Area 8D is closing due to concerns about not reaching egg-take goals at the Tulalip Hatchery. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2014.

James B. Scott, Jr.
for Philip Anderson
Director

NEW SECTION

WAC 220-47-31100M Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311, effective 6:01 p.m. November 19, 2014, until further notice, it is unlawful to fish for or possess salmon taken for commercial purposes with purse seine gear in Puget Sound Salmon Management and Catch Reporting Areas 8D, 10 and 11.

NEW SECTION

WAC 220-47-41100E Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective

6:01 p.m. November 19, 2014, until further notice, it is unlawful to fish for or possess salmon taken for commercial purposes with gillnet gear in Puget Sound Salmon Management and Catch Reporting Area 8D.

WSR 14-24-045
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed November 24, 2014, 8:39 p.m., effective November 28, 2014]

Effective Date of Rule: November 28, 2014.

Purpose: This rule change will ease a significant financial burden that was placed on small daycares and small or limited school remodel projects; the current rule exempts Group E occupancies with an occupant load of thirty or fewer from requirements for manual fire alarm systems. This rule will raise that number to fifty or fewer. It will also specify that an emergency voice alarm system is not required in Group E occupancies of one hundred or fewer occupants if the manual fire alarm system initiates an approved signal.

Note: This submission is filed to renew the emergency rule originally filed as WSR 14-08-090 on April 1, 2014, and refiled on July 31, 2014, as WSR 14-16-072. The state building code council filed for permanent rule making on July 28, 2014, under WSR 14-16-032.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54A-0907.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

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

Reasons for this Finding: The 2012 Fire Code places an undue financial hardship on school districts and small Group E daycare centers. The amendment provides an adequate level of safety as determined by the national standard for 2015. The 2012 Fire Code had the consequence of an increased scope that was not justified.

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

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

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

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

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

Date Adopted: March 7, 2014.

C. Ray Allshouse
Chair

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

WAC 51-54A-0907 Fire alarm and detection systems.

907.2.3 Group E. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/ alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTION: 1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
3.1 Interior corridors are protected by smoke detectors.
3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.

907.2.9.1.1 Group R-2 boarding homes. A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

WSR 14-24-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-331—Filed November 25, 2014, 9:59 a.m., effective November 25, 2014, 9:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100F; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This emergency rule is to allow the harvest of remaining nontreaty share of south sound chum as agreed to with the tribal comanagers in Salmon Management and Catch Reporting Areas 10 and 11. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 25, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-47-41100F Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes with gillnet gear in Puget Sound Salmon Management and Catch Reporting Areas 10 and 11 except that the areas are open to commercial gillnet fishing for salmon from 4:00 p.m. November 25 to 8:00 a.m. November 26, 2014.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 27, 2014:

WAC 220-47-41100F Gillnet—Open periods.

WSR 14-24-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-329—Filed November 25, 2014, 1:44 p.m., effective November 25, 2014, 1:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-040, 220-52-042, and 220-52-045.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area. A longer gear set period will allow for safer fishing conditions. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: November 25, 2014.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000R Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until further notice and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from November 30, 2014, to December 28, 2014, are only valid for the area south of 46°28.00 N. Lat.

(2) Inspections for Washington crab vessel-hold inspection certificates will be conducted starting at 12:00 noon on November 30, 2014.

(3) It is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(4) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47°00.00 N. Lat., provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and allows a vessel-hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator must call 360-581-3337, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

(5) It is permissible for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery between Klipsan Beach (46°28.00) and the U.S./Canada Border. The primary or alternate operator of the crab pot gear named on the license associated with the gear must be on board the vessel when the gear is being deployed.

Such a vessel may deploy crab pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date. All other provisions of the permanent rule remain in effect.

NEW SECTION

WAC 220-52-04500A Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-52-045 effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

(2) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) It is permissible to set crab gear beginning at 8:00 a.m., November 28, 2014.

(4) It is permissible to pull crab gear beginning at 9:00 a.m., December 1, 2014.

(5) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from fishing in the following areas for the durations specified:

(a) The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 10 days have elapsed from the time that the area north of Klipsan Beach opens; and

(b) The waters between Oysterville (46°33.00) and the U.S. Canadian border until 35 days have elapsed from the time that the area north of Oysterville opens

(6) All other provisions of the permanent rule remain in effect.

NEW SECTION

WAC 220-52-04200A Commercial crab fishery—Buoy tag, pot tag, and buoy requirements. Notwithstanding the provisions of WAC 220-52-045 effective immediately until further notice:

(1) The department will only issue replacement buoy tags for the coastal crab fishery 15 days after the season is opened and after a signed affidavit is received by an authorized department employee. The affidavit must be signed by the primary or alternate operator fishing the commercial crab gear and describe the number of buoy tags lost, the location and date where the licensee last observed lost gear or tags, and the presumed cause of the loss.

(2) Coastal crab license holders with a 300-pot limit may replace lost tags according to the following schedule:

(a) Period 1: Up to 15 tags.

(b) Period 2: 10 additional tags with no more than 25 tags total issued through the end of Period 2.

(c) Period 3: 5 additional tags with no more than 30 tags total issued through the end of the season.

(3) Coastal crab license holders with a 500-pot limit may replace lost tags according to the following schedule:

(a) Period 1: Up to 25 tags.

(b) Period 2: 15 additional tags with no more than 40 tags total issued through the end of Period 2.

(c) Period 3: 10 additional tags with no more than 50 tags total issued through the end of the season.

(4) Replacement tag periods are defined as follows:

(a) Period 1 is the period between the first business day after 15 days following the season opening through the next 30 days.

(b) Period 2 is the period between the first business day after the end of Period 1 through the next 30 days.

(c) Period 3 is the period between the first business day after the end of Period 2 through the end of the season.

WSR 14-24-064**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 14-330—Filed November 25, 2014, 4:10 p.m., effective December 3, 2014, 12:01 p.m.]

Effective Date of Rule: December 3, 2014, 12:01 p.m.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000T; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Survey results show that adequate razor clams are available for recreational harvest in Razor Clam Areas 1, 3, 4, and 5. Washington department of health has certified clams from these beaches are safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 25, 2014.

David Giglio
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000T Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

1. Effective 12:01 p.m. December 3 through 11:59 p.m. December 9, 2014, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. December 3 through 11:59 p.m. December 9, 2014, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. December 6 through 11:59 p.m. December 6, 2014, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

4. Effective 12:01 p.m. December 5 through 11:59 p.m. December 7, 2014, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

5. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 10, 2014:

WAC 220-56-36000T Razor clams—Areas and seasons.

WSR 14-24-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-332—Filed November 25, 2014, 4:23 p.m., effective November 25, 2014, 4:23 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05700J and 220-32-05700K; and amending WAC 220-32-057.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife com-

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Extends ongoing sturgeon set line commercial treaty fishery in The Dalles Pool (SMCRA 1G) through the remainder of the year. Allow sales only of sturgeon, (including platform and hook and line). Harvestable sturgeon remain available based on low harvest observed since this season opened (October 27) and the current sturgeon guideline. Conforms state rules to tribal rules. This rule is consistent with compact action of November 25, 2014. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel rules for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 25, 2014.

David Giglio
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05700K Columbia River sturgeon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-057, effective immediately, it is unlawful to take, fish for or possess sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except that those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with set line gear under the following provisions:

(1) **Open period:** Immediately through 11:59 p.m. December 31, 2014.

(2) **Area:** SMCRA 1G (The Dalles Pool)

(3) **Gear:** Setlines. Fishers are encouraged to use circle hooks and avoid J-hooks. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal identification.

(4) **Allowable Sales:** White Sturgeon (43 to 54 inches in fork length) may be sold. Sturgeon within the legal size limit and caught in platform and hook and line fishery may be sold if caught during the open period and open area of the set line fishery. Sales of fish landed during the open period are allowed after the period concludes.

(5) **Sanctuaries:** Standard sanctuaries applicable to these gear types.

(6) **Additional Regulations:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240, except that landings must be reported within 24-hours of completing the fish ticket.

(7) **Miscellaneous:** It is unlawful to sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to sale of the sturgeon to a wholesale dealer licensed under chapter RCW 75.28, or to sell or barter sturgeon eggs at retail. It is unlawful to deliver to a wholesale dealer licensed under chapter RCW 75.28 any sturgeon that are not in the round with the head and tail intact.

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.

Reviser's note: The unnecessary underscoring 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05700J Columbia River sturgeon seasons above Bonneville Dam. (14-313)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2015:

WAC 220-32-05700K Columbia River sturgeon seasons above Bonneville Dam.

WSR 14-24-079

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 1, 2014, 9:28 a.m., effective December 1, 2014, 9:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: New WAC 182-505-0300 is necessary to provide temporary Washington apple health coverage to individuals who are determined eligible for hospital presumptive eligibility coverage by a qualified hospital.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Patient Protection and Affordable Care Act established under Public Law 111-148.

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

Reasons for this Finding: Federal statute requires this rule-making action.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 1, 2014.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-505-0300 Washington apple health—Hospital presumptive eligibility. (1) **Generally.** The hospital

presumptive eligibility (HPE) program provides temporary Washington apple health (WAH) coverage to HPE-eligible persons who enroll through an HPE-qualified hospital.

(2) **HPE-eligible persons.** To be HPE-eligible, a person must:

- (a) Be younger than age sixty-five;
- (b) Not be a WAH beneficiary;
- (c) Not be a supplemental security income beneficiary;
- (d) Not have received HPE coverage within the preceding twenty-four months; and
- (e) Meet the eligibility requirements for one or more of the following programs:
 - (i) WAH for pregnant women (chapter 182-505 WAC);
 - (ii) WAH for kids (chapter 182-505 WAC);
 - (iii) WAH for foster care (chapter 182-505 WAC);
 - (iv) WAH for parents and caretaker relatives (chapter 182-505 WAC);
 - (v) WAH for adults (chapter 182-505 WAC);
 - (vi) TAKE CHARGE for family planning services (chapter 182-532 WAC).

(3) **HPE-qualified hospitals.** To be HPE-qualified, a hospital must:

- (a) Operate in Washington state;
- (b) Submit a signed core provider agreement (CPA);
- (c) Submit a signed HPE agreement;
- (d) Comply with the terms of the CPA and HPE agreement;
- (e) Determine HPE eligibility using only those employees who have successfully completed the agency's HPE training;
- (f) Agree to provide HPE-application assistance to anyone who requests it; and
- (g) Agree to be listed on the agency's web site as an HPE-application assistance provider.

(4) **Limitations.**

(a) An HPE-qualified hospital must attempt to help the person complete a regular WAH application before filing an HPE application. If the person cannot indicate whether he or she expects to file a federal tax return or be claimed as a tax dependent, the HPE-qualified hospital may treat the person as a nonfiler under WAC 182-506-0010 (5)(c) for HPE purposes.

- (b) HPE coverage begins on the earlier of:
 - (i) The day the HPE-qualified hospital determines the person is eligible; or
 - (ii) The day the HPE-qualified hospital provides a covered medical service to the person, but only if the hospital determines the person is eligible and submits the decision to the agency no later than five calendar days after the date of service.
- (c) HPE coverage ends on the earlier of:
 - (i) The last day of the month following the month in which HPE coverage began; or
 - (ii) The day the agency determines the person is eligible for other WAH coverage.
- (d) HPE coverage does not qualify a person for continuous eligibility under WAC 182-504-0015.

(e) If HPE coverage is based on pregnancy, the pregnant woman is eligible for HPE coverage only once for that pregnancy.

(f) The HPE program covers only those services included in the programs listed in subsection (2)(e) of this section except that pregnancy-related services are limited to ambulatory prenatal care.

(g) A child born to a woman with HPE coverage is ineligible for WAH under WAC 182-505-0210(2). An HPE-qualified hospital must complete a separate HPE determination for the newborn child.

WSR 14-24-115
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-334—Filed December 3, 2014, 9:31 a.m., effective December 3, 2014, 9:31 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100G; and amending WAC 220-47-411.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This emergency rule is to allow the harvest of remaining nontreaty share of Nooksack and Samish chum as agreed to with the tribal comanagers in Salmon Management and Catch Reporting Area 7B. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 3, 2014.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-41100G Gillnet—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is unlawful to take, fish for or possess salmon taken for commercial purposes with gillnet gear in Puget Sound Salmon Management and Catch Reporting Area 7B except that the area is open to commercial gillnet fishing for salmon from 4:00 p.m. December 3 to 4:00 p.m. December 5, 2014.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. December 5, 2014:

WAC 220-47-41100G Gillnet—Open periods.

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 12, Amended 0, Repealed 0.

Date Adopted: December 3, 2014.

Kevin M. Sullivan
Rules Coordinator

Chapter 182-531A WAC**APPLIED BEHAVIOR ANALYSIS**NEW SECTION

WAC 182-531A-0100 Applied behavior analysis (ABA)—Purpose. Applied behavior analysis (ABA) assists children and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which there is evidence ABA is effective, per WAC 182-501-0165. ABA services support learning, skill development, and assistance in any of the following areas or domains: Social, behavior, adaptive, motor, vocational, or cognitive.

NEW SECTION

WAC 182-531A-0200 Applied behavior analysis (ABA)—Definitions. The following definitions and those found in chapter 182-500 WAC, medical definitions, and chapter 182-531 WAC, physician-related services, apply throughout this chapter.

Applied behavior analysis or ABA – Applied behavior analysis (ABA) is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA involves the systematic application of scientifically validated principles of human behavior to change inappropriate behaviors. ABA uses scientific methods to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods used include: Assessment of behavior, caregiver interviews, direct observation, and collection of data on targeted behaviors. A single-case design is used to demonstrate the relationship between the environment and behavior as a means to implement client-specific ABA therapy treatment plans with specific goals and promote lasting change. ABA also includes the implementation of a functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behaviors.

WSR 14-24-121
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed December 3, 2014, 10:22 a.m., effective December 22, 2014]

Effective Date of Rule: December 22, 2014.

Purpose: In response to a court-approved settlement agreement, the agency is adopting chapter 182-531A WAC concerning coverage for applied behavioral analysis (ABA) services for children with autism spectrum disorders. The new rules address prior authorization for services, evaluating and prescribing provider requirements, ABA provider requirements, payment, and related issues.

Chapter 182-531A WAC will enact on a permanent basis the emergency rules filed as WAC 182-531-1410, 182-531-1412, 182-531-1414, 182-531-1416, 182-531-1418, 182-531-1420, 182-531-1422, 182-531-1424, 182-531-1426, 182-531-1428, 182-531-1430, 182-531-1432, 182-531-1434, and 182-531-1436 that were published as WSR 14-18-010.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The agency has been working with stakeholders and experts in autism spectrum disorders to craft rules to ensure public health and safety; however, the agency must file an emergency WAC for the short-term to remain in compliance with the January 2, 2013, deadline.

The agency filed the permanent rules under WSR 14-24-083 on December 1, 2014. These rules become effective on January 1, 2015.

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 12, Amended 0, Repealed 0.

Autism spectrum disorder (ASD) - A condition, as defined by *Diagnostic and Statistical Manual of Mental Disorders* (DSM) criteria.

Autism spectrum disorder (ASD) diagnostic tool - A validated tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and assist in the development of a multidisciplinary clinical treatment plan. Examples of autism diagnostic tools include:

- (a) Autism Diagnosis Interview (ADI); and
- (b) Autism Diagnostic Observation Schedule (ADOS).

Autism spectrum disorder (ASD) screening tool - A tool used to detect ASD indicators or risk factors which then require confirmation. Examples of screening tools include, but are not limited to:

- (a) Ages and Stages Questionnaire (ASQ);
- (b) Communication and Symbolic Behavior Scales (CSBS);
- (c) Parent's Evaluation and Developmental Status (PEDS);
- (d) Modified Checklist for Autism in Toddlers (MCHAT); and
- (e) Screening Tools for Autism in Toddlers and young children (STAT).

Centers of excellence (COE) - A hospital, medical center, or other health care provider that establishes or confirms the diagnosis of an autism spectrum disorder and develops the multidisciplinary clinical treatment plan and that has been designated by the agency as a center of excellence.

Client or child - For the purposes of this chapter, client or child means a person younger than twenty-one years of age and enrolled in Washington apple health (WAH).

Family member - A child's parent, guardian, caregiver, or other support person.

Qualifying diagnosis - A diagnosis of an ASD, as defined by the DSM, or other developmental disability for which there is evidence ABA is effective.

NEW SECTION

WAC 182-531A-0300 Applied behavior analysis (ABA)—Threshold requirements. The medicaid agency pays for ABA services when the services are:

- (1) Covered;
- (2) Medically necessary;
- (3) Within the scope of the eligible client's medical care program;
- (4) Provided to clients who meet the criteria in WAC 182-531A-0400;
- (5) Within currently accepted standards of evidence-based medical practice;
- (6) Not replicative of ABA services paid for by other state agencies using medicaid funds;
- (7) Completed in the stages described in this chapter;
- (8) Provided by qualified health care professionals, as described in this chapter;
- (9) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's *Applied Behavior Analysis Provider Guide*; and

(10) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's *Applied Behavior Analysis Provider Guide*.

NEW SECTION

WAC 182-531A-0400 Applied behavior analysis (ABA)—Client eligibility. To be eligible for applied behavior analysis (ABA) services, a client must:

- (1) Be under twenty-one years of age;
- (2) Be covered under Washington apple health (WAH);
- (3) Provide documentation created by a clinician that:
 - (a) Establishes the presence of functional impairment; delay in communication, behavior, or social interaction; or repetitive or stereotyped behavior;
 - (b) Establishes that the client's impairment, delay, or behaviors adversely affect development or communication, or both, such that:
 - (i) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit interferes with these activities; or
 - (ii) The child's behavior endangers the child or another, or impedes access to home and community activities available to other children of the same age; and
 - (c) An agency-recognized center of excellence (COE) has confirmed that:
 - (i) The child meets all requirements in (a) and (b) of this subsection;
 - (ii) The child has a qualifying diagnosis;
 - (iii) There is a reasonable calculation the requested services will result in measurable improvement in either the client's behavior, skills, or both; and
 - (iv) Either:
 - (A) Less intrusive or less intensive behavioral interventions have been tried and have not been successful; or
 - (B) No equally effective and substantially less costly alternative is available for reducing interfering behaviors, increasing prosocial skills and behaviors, or maintaining desired behaviors.

NEW SECTION

WAC 182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and order. (1) Any person may refer a client suspected of meeting the criteria in WAC 182-531A-0400 to a center of excellence (COE) for an evaluation.

(2) The COE must complete a comprehensive diagnostic evaluation and create a multidisciplinary clinical treatment plan that includes:

- (a) Documentation showing how the diagnosis was made or confirmed by a COE physician or psychologist that includes:
 - (i) Results of formal diagnostic procedures performed by a clinician, including name of measure, dates, and results, as available; or
 - (ii) Clinical findings and observations used to confirm the diagnosis;
- (b) Documentation showing that the client's behaviors or skill deficits adversely affect on development or communication, or demonstrating injurious behavior, such that:

(i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit interferes with these activities; or

(ii) The client presents a safety risk to self or others;

(c) Documentation showing that, if applied behavior analysis (ABA) is included in the multidisciplinary clinical treatment plan:

(i) Less intrusive or less intensive behavioral interventions have been tried and were not successful; or

(ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors;

(d) Recommendations that address all of the child's health care needs;

(e) A statement that the evaluating and prescribing provider believes that there is a reasonable calculation that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(f) An order for ABA services. If ordered, a copy of the COE's comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan must be forwarded to the ABA provider selected by the child's guardian under this chapter or provided to the child's guardian to forward to the selected ABA provider.

(3) The COE must also include the following items, if it possesses a copy:

(a) Results of routine developmental screening performed by the child's primary care provider at well child visits;

(b) Audiology and vision assessment results, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism screening questionnaire, including date completed and significant results;

(d) Documentation of a formal cognitive or developmental assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores; and

(e) Documentation of a formal adaptive behavior assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing scores of each domain.

NEW SECTION

WAC 182-531A-0600 Applied behavior analysis (ABA)—Stage two: Functional assessment and treatment plan development. (1) If the center of excellence's (COE's) evaluating and prescribing provider has ordered applied behavior analysis (ABA) services, the client may begin stage two - ABA assessment, functional analysis, and ABA therapy treatment plan development.

(2) Prior to implementing the ABA therapy treatment plan, the ABA provider must receive prior authorization from the agency. The prior authorization request, including the assessment and ABA therapy treatment plan, must be received by the agency within sixty days of the family scheduling the functional assessment.

(3) The child's legal guardian selects the ABA provider and the setting in which services will be rendered. ABA services may be rendered in one of the following settings:

(a) Day services program, which mean an agency-approved, outpatient facility or clinic-based program that:

(i) Employs or contracts with a lead behavior analysis therapist (LBAT), therapy assistant, speech therapist, and if clinically indicated, an occupational therapist, physical therapist, psychologist, medical clinician, and dietitian;

(ii) Provides multidisciplinary services in a short-term day treatment program setting;

(iii) Delivers comprehensive intensive services;

(iv) Embeds early, intensive behavioral interventions in a developmentally appropriate context;

(v) Provides an individualized developmentally appropriate ABA therapy treatment plan for each child; and

(vi) Includes family support and training.

(b) Community-based program, which means a program that provides services in a natural setting, such as a school, home, office, or clinic. A community-based program:

(i) May be used after discharge from a day services program (see subsection (3)(a) of this section);

(ii) Provides a developmentally appropriate ABA therapy treatment plan for each child;

(iii) Provides ABA services in the home (wherever the child resides), office, clinic, or community setting, as required to accomplish the goals in the ABA therapy treatment plan. Examples of community settings are: A park, restaurant, child care, early childhood education, or school and must be included in the ABA therapy treatment plan with services being provided by the enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family education, support, and training.

(4) An assessment, as described in this chapter, must be conducted and an ABA therapy treatment plan developed by an LBAT in the setting chosen by the child's legal guardian. The ABA therapy treatment plan must follow the agency's ABA therapy treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be applicable to the services to be rendered over the next six months, based on the LBAT's judgment, and correlate with the COE's current diagnostic evaluation (see WAC 182-531A-0500(2));

(c) Address each behavior, skill deficit, and symptom that prevents the child from adequately participating in home, school, community activities, or that presents a safety risk to the child or others;

(d) Be individualized;

(e) Be client-centered, family-focused, community-based, culturally competent, and minimally intrusive;

(f) Take into account all school or other community resources available to the client, confirm that the requested services are not redundant, but are in coordination with, other services already being provided or otherwise available, and coordinate services (e.g., from school and special education or from early intervention programs and early intervention providers) with other interventions and treatments (e.g.,

speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

(g) Focus on family engagement and training;

(h) Identify and describe in detail the targeted behaviors and symptoms;

(i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, (e.g., discrete trial training, reinforcement, picture exchange, communication systems) including documentation of the number of service hours, in terms of frequency and duration, for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in the three- to six-month treatment period;

(l) Incorporate strategies for generalized learning skills;

(m) Integrate family education, goals, training, support services, and modeling and coaching family/child interaction;

(n) Incorporate strategies for coordinating treatment with school-based special education programs and community-based early intervention programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

NEW SECTION

WAC 182-531A-0700 Applied behavior analysis (ABA)—Stage three: Delivery of ABA services. (1) Applied behavioral analysis must be prior authorized (PA) before delivery. To request PA, submit the following documents to the agency:

(a) The comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan completed by the center of excellence (COE) described in this chapter;

(b) The ABA assessment and ABA therapy treatment plan described in this chapter; and

(c) Other documents required as described in the agency's ABA provider guide.

(2) After the services are prior authorized, the ABA therapy treatment plan is implemented by the lead behavior analysis therapist (LBAT) or a therapy assistant in conjunction with other care team members. The LBAT is responsible for communicating and collaborating with other care team members to ensure consistency in approaches to achieve treatment goals.

(3) If services are rendered by a therapy assistant, the therapy assistant must:

(a) Assess the client's response to techniques and report that response to the LBAT;

(b) Provide direct on-site services in the client's natural setting found in the home, office, clinic, or community, or in the day services program;

(c) Be supervised directly by an LBAT for a minimum of five percent of total direct care per week (e.g., one hour per twenty hours of care);

(d) Consult the LBAT when considering modification to technique, when barriers and challenges occur that prohibit implementation of plan, and as otherwise clinically indicated (see WAC 182-531-1426 for appropriate procedures and physical interventions and WAC 182-531-1428 for prohibited procedures and physical interventions);

(e) Ensure family involvement through modeling, coaching, and training to support generalization and maintenance of achieved behaviors;

(f) Keep documentation of each visit with the client and family to include targeted behavior, interventions, response, modifications in techniques, and a plan for the next visit, along with behavior tracking sheets that record and graph data collected for each visit; and

(g) Maintain documentation of family's confirmation that the visit occurred, recording signature, and date.

NEW SECTION

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements. (1) **Stage one.** The center of excellence's (COE's) evaluating and prescribing providers must function as a multidisciplinary team whether facility-based or practitioner-based.

(a) The qualifications for a COE are:

(i) The entity or individual employs:

(A) A person or persons licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and has a specialty in one of the following:

(I) Neurology;

(II) Pediatric neurology;

(III) Developmental pediatrics;

(IV) Psychology;

(V) Pediatric psychiatry; or

(VI) Psychiatry; or

(B) A licensed midlevel practitioner (i.e., advanced registered nurse practitioner (ARNP) or physician assistant (PA)) who has been trained by and works under the tutelage of one of the specialists in (a)(i)(A) of this subsection and meets the qualifications in (a)(ii) of this subsection; or

(C) Another qualified medical provider who meets qualifications in (a)(ii) of this subsection and who has been designated as a center of excellence by the agency.

(ii) The entity or individual has been prequalified by the agency as meeting or employing persons meeting the following criteria:

(A) Physicians and psychologists must have demonstrated expertise to diagnose an autism spectrum disorder using a validated diagnostic tool or confirm the diagnosis by observing the client's behavior, interviewing family members, or reviewing the documentation available from the client's primary care provider, the child's individualized education plan (IEP), or individualized family service plan (IFSP); or

(B) Have sufficient experience in or knowledge of the medically necessary use of applied behavior analysis (ABA);

(C) Are sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and to develop a multidisciplinary clinical treatment plan as described in WAC 182-531-1418(2); and

(iii) The entity or individual is enrolled with the agency or the client's MCO, unless the client has third-party insurance.

(b) Examples of providers who can qualify and be paid for these services as a designated COE are:

- (i) Multidisciplinary clinics;
- (ii) Individual qualified provider offices; and
- (iii) Neurodevelopmental centers.

(2) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

(a) Lead behavior analysis therapist (LBAT).

(i) Requirements.

(A) The LBAT must be:

(I) Licensed by the department of health (DOH) to practice independently as a physician, psychologist, or licensed mental health practitioner under Title 18 RCW, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW, in good standing with no license restrictions; or

(II) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as a physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW in good standing with no license restrictions; or

(III) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC.

(B) The LBAT must:

(I) Enroll as a servicing provider and be authorized to supervise ancillary providers; and

(II) Be a board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board; or

(III) Have two hundred twenty-five hours of course work related to behavior analysis and either: Seven hundred fifty hours of supervision under a BCBA, or two years of practical experience designing and implementing comprehensive ABA therapy treatment plans. (a)(i)(B)(III) of this subsection is retroactive to January 1, 2013.

(ii) Role. The LBAT must:

(A) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment being provided by other health care professionals, and that states how all treatment will be coordinated, as applicable; and

(B) Supervise a minimum of five percent of the total direct care provided by the therapy assistant per week (e.g., one hour per twenty hours of care).

(b) Therapy assistant. Requirements.

(i) Therapy assistants must be:

(A) Able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed

as a counselor under Title 18 RCW in good standing with no license restrictions; or

(B) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(C) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;

(ii) The therapy assistant must:

(A) Have sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a child with core symptoms of autism; and

(B) Have a written letter of attestation signed by the lead LBAT that the therapy assistant has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services prior to providing services without supervision to covered clients; and

(C) Enroll as a performing/servicing provider.

(iii) Role. The therapy assistant must:

(A) Deliver services according to the ABA therapy treatment plan; and

(B) Be supervised by an LBAT who meets the requirements in (a)(i) of this subsection; and

(C) Review the client's progress with the LBAT at least every two weeks to confirm that the ABA therapy treatment plan still meets the child's needs. If changes are clinically indicated, they must be made by the LBAT.

(c) Licensure for facility-based day program setting. This applies to the model described in WAC 182-531-1420 (2)(a). Outpatient hospital facilities providing these services must meet the applicable DOH licensure requirements. A clinic or nonhospital-based facility providing these services must be licensed as a community mental health agency by DBHR, as described in chapter 388-877A WAC. A provider rendering direct ABA services must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable. Other providers serving as members of the multidisciplinary care team must be licensed or certified under Title 18 RCW, as required.

NEW SECTION

WAC 182-531A-0900 Applied behavior analysis (ABA)—Covered services. (1) The medicaid agency covers only the following ABA services delivered in settings described in stage two, as noted in WAC 182-531-1420 (1) and (2), for eligible clients:

(a) The ABA assessments to determine the relationship between environmental events and behaviors;

(b) The direct provision of ABA services by the therapy assistant or lead behavior analysis therapist (LBAT);

(c) Initial ABA assessment and development of a written, initial ABA therapy treatment plan, limited to one per year;

(d) Additional ABA assessments and revisions of the initial ABA therapy treatment plan to meet client's needs, limited to four per year;

(e) Supervision of the therapy assistant;

(f) Training and evaluation of family members or caregiver to carry out the approved ABA therapy treatment plans;

(g) Observation of the client's behavior to determine the effectiveness of the approved ABA therapy treatment plan; and

(h) On-site assistance in a difficult or crisis situation.

(2) The agency covers the following services, which may be provided in conjunction with ABA services under other agency programs and be consistent with the program rules in the Washington Administrative Code:

(a) Speech and language therapy;

(b) Occupational therapy;

(c) Physical therapy;

(d) Counseling;

(e) Interpreter services;

(f) Dietician services; and

(g) Transportation services.

(3) The agency does not authorize payment of ABA services if the services are duplicative of services being rendered in another setting.

(4) Limits in amount or frequency of the covered services described in this section are subject to the provisions in WAC 182-501-0169, limitation extension.

NEW SECTION

WAC 182-531A-1000 Applied behavior analysis (ABA)—Noncovered services. The medicaid agency does not cover the following services under the ABA program including, but not limited to:

(1) Autism camps;

(2) Dolphin therapy;

(3) Equine therapy/hippo therapy;

(4) Primarily educational services;

(5) Recreational therapy;

(6) Respite care;

(7) Safety monitoring services;

(8) School-based health care services or early intervention program-based services, unless prior authorized and as described in WAC 182-531-1420 (2)(b)(iii);

(9) Vocational rehabilitation;

(10) Life coaching; and

(11) Treatment that is unproven or investigational (e.g., holding therapy, Higashi (day life therapy), auditory integration therapy).

NEW SECTION

WAC 182-531A-1100 Applied behavior analysis (ABA)—Prior authorization and recertification of ABA services. (1) The medicaid agency requires prior authorization (PA) and recertification of the medical necessity of applied behavior analysis (ABA) services.

(2) Requirements for PA requests are described in WAC 182-531A-0700.

(3) The agency may reduce or deny services requested based on medical necessity (refer to subsection (5) of this section) when completing PA or recertification responsibilities.

(4) The following are requirements for recertification of ABA services:

(a) Continued ABA services require the agency's authorization. Authorization is granted in three-month increments, or longer at the agency's discretion;

(b) The lead behavior analysis therapist (LBAT) must request authorization for continuing services three weeks prior to the expiration date of the current authorization. A reevaluation and revised ABA therapy treatment plan documenting the client's progress and showing measurable changes in the frequency, intensity, and duration of the targeted behavior/symptoms addressed in the previously authorized ABA therapy treatment plan must be submitted with this request. Documentation must include:

(i) Projection of eventual outcome;

(ii) Assessment instruments;

(iii) Developmental markers of readiness; and

(iv) Evidence of coordination with providers.

(c) When completing recertification responsibilities, the agency may request another evaluation from the COE to obtain that provider's review and recommendation. This COE provider must review the ABA therapy treatment plan, conduct a face-to-face visit with the child, facilitate a multidisciplinary record review of the client's progress, hold a family conference, or request a second opinion before recommending continued ABA services. Services will continue pending recertification.

(d) When completing recertification responsibilities, the agency may retroactively authorize dates of service. Services will continue pending recertification.

(5) Basis for denial or reduction of services includes, but is not limited to, the following:

(a) Lack of medical necessity, for example:

(i) Failure to respond to ABA services, even after trying different ABA techniques and approaches, if applicable; or

(ii) Absence of meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family disruption, change of residence), if applicable. For changes to be meaningful they must be:

(A) Confirmed through data;

(B) Documented in charts and graphs;

(C) Durable over time beyond the end of the actual treatment session; and

(D) Generalizable outside of the treatment setting to the client's residence and the larger community within which the client resides; or

(b) Noncompliance as demonstrated by a pattern of failure of the family to:

(i) Keep appointments;

(ii) Attend treatment sessions;

(iii) Attend scheduled family training sessions;

(iv) Complete homework assignments; and

(v) Apply training as directed by the therapy assistant or LBAT. Absences that are reasonably justified (e.g., illness) are not considered a pattern.

NEW SECTION

WAC 182-531A-1200 Applied behavior analysis (ABA)—Services provided via telemedicine. Telemedicine, as defined in WAC 182-531-1730, may be used to provide the following authorized services:

- (1) Program supervision when the client is present; and
- (2) Family training, which does not require the client's presence.