

WSR 15-01-069
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed December 11, 2014, 5:05 p.m., effective January 11, 2015]

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

Purpose: New legislation regarding crisis residential centers, resource and assessment centers, prudent parent legislation, extended foster care and recommendations from the committee on the severe abuse of adopted children, require new rules for licensed foster homes, child-placing agencies, adoption centers and group care facilities. Improvements to the rules include:

- A plain-talk format to improve content and accessibility.
- A restructured sequence of specific rules to provide a logical flow to content.
- A division of specific license types to improve clarity of rules for each license category.

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
Chapter 388-145 WAC				
WAC 388-145-0010	What is the purpose of this chapter?	388-145-1300	NA	NA
WAC 388-145-0020	What definitions apply to this chapter?	388-145-1305	NA	NA
WAC 388-145-0030	What is an emergency respite center?	388-145-1305 388-145-2010	NA	NA
WAC 388-145-0040	What services may be provided or arranged for by the emergency respite center?	388-145-1305	NA	NA
WAC 388-145-0050	Are there services an emergency respite center may not provide?	388-145-2025	NA	NA
WAC 388-145-0060	What age children may a center serve?	388-145-2010	NA	NA
WAC 388-145-0070	Who may place children at a center?	388-145-2015	NA	NA
WAC 388-145-0080	Is a license required?	388-145-1310	NA	NA
WAC 388-145-0090	How old do I have to be to apply for a license?	388-145-1320	NA	NA
WAC 388-145-0100	What personal characteristics must a person have to provide care to children at a center?	388-145-1330	NA	NA
WAC 388-145-0110	What personal information may I be required to provide to be licensed?	388-145-1325	NA	NA
WAC 388-145-0120	How do I apply for a license?	388-145-1325	NA	NA
WAC 388-145-0130	What is required to document completed background checks on staff?	388-145-1510 (1)(m)	NA	NA
WAC 388-145-0140	What first aid and cardiopulmonary resuscitation (CPR) training is required?	388-145-1500	NA	NA
WAC 388-145-0150	What HIV/AIDS and bloodborne pathogens training is required?	388-145-1505	NA	NA
WAC 388-145-0160	How long do I have to complete the licensing application packet?	388-145-1340	NA	NA
WAC 388-145-0170	Does the department need to approve the program I offer?	388-145-1335	NA	NA
WAC 388-145-0180	May a facility have more than one type of license?	388-145-1380 388-145-2000	NA	NA
WAC 388-145-0190	What hours may a center be open?	388-145-1305	NA	NA
WAC 388-145-0200	How does the department decide how many children a center may serve?	388-145-1365	NA	NA
WAC 388-145-0210	Will the department grant exceptions to the licensing requirements?	388-145-1395	NA	NA
WAC 388-145-0220	Does the department issue probationary licenses?	388-145-1415	NA	NA
WAC 388-145-0230	When is a license denied, suspended or revoked?	388-145-1390	NA	NA
WAC 388-145-0240	Are there any other reasons that could potentially cause me to lose my license?	388-145-1390	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-145-0250	What happens when a licensor is notified that a licensee has received a noncompliance support order from the division of child support?	NA	NA	NA
WAC 388-145-0260	How will the department notify me if my license is denied, suspended, or revoked?	388-145-1400(2)	NA	NA
WAC 388-145-0270	What may I do if I disagree with the department's decision to deny, suspend or revoke my license?	388-145-1405	NA	NA
WAC 388-145-0280	Where do I post my license?	388-145-1335 (2)(g)	NA	NA
WAC 388-145-0290	What changes to my center must I report to my licensor?	388-145-1550	NA	NA
WAC 388-145-0300	Must I comply with the requirements of the Washington state patrol fire protection bureau to receive a license?	388-145-1335(3)	NA	NA
WAC 388-145-0310	Do I need to notify the local fire department of the location of my center?	388-145-1665 (1), (7) 388-145-1550 (1)(a) 388-145-1555(8)	NA	NA
WAC 388-145-0320	Are local ordinances part of the licensing requirements?	388-145-1555(8)	NA	NA
WAC 388-145-0330	Are there other fire safety requirements for inside a center?	388-145-1600 388-145-1665 388-145-1555(5)	NA	NA
WAC 388-145-0340	What are the requirements for smoke detectors?	388-145-1675	NA	NA
WAC 388-145-0350	What are the requirements for a fire evacuation plan?	388-145-1670 388-145-1700(1)	NA	NA
WAC 388-145-0360	What fire prevention measures must I take?	388-145-1665	NA	NA
WAC 388-145-0370	What are the requirements for fire drills?	388-145-1685	NA	NA
WAC 388-145-0380	What fire safety procedures do center staff need to know?	388-145-1685	NA	NA
WAC 388-145-0390	What are the requirements for fire sprinkler systems?	388-145-1665(1)	NA	NA
WAC 388-145-0400	Does an ERC need approval from the department of health to operate?	388-145-1335(3)	NA	NA
WAC 388-145-0410	What are the physical structure safety requirements for a center?	388-145-1665 388-145-1555	NA	NA
WAC 388-145-0420	What are the requirements for the location of a center?	388-145-1555	NA	NA
WAC 388-145-0430	What are the requirements for emergency aid vehicle access to my center?	388-145-1555(8)	NA	NA
WAC 388-145-0440	What steps must I take to ensure children's safety around outdoor bodies of water?	388-145-1590	NA	NA
WAC 388-145-0450	What measures must I take for pest control?	388-145-1555(4)	NA	NA
WAC 388-145-0460	What are the requirements regarding pets and animals at a center?	388-145-1645	NA	NA
WAC 388-145-0470	Are alcoholic beverages allowed at a center?	388-145-1650	NA	NA
WAC 388-145-0480	Is smoking permitted around children?	388-145-1655	NA	NA
WAC 388-145-0490	May I have firearms at a center?	388-145-1660	NA	NA
WAC 388-145-0500	May I use wheeled baby walkers?	388-145-1555(14)	NA	NA
WAC 388-145-0510	Are there requirements for the storage of medications?	388-145-1850	NA	NA
WAC 388-145-0520	Are there requirements for storing dangerous chemicals or other substances?	388-145-1580	NA	NA
WAC 388-145-0530	Are first-aid supplies required?	388-145-1640	NA	NA
WAC 388-145-0540	What are the requirements for medical policies and procedures for a center?	388-145-1635 (6), (7)	NA	NA
WAC 388-145-0550	Must all children accepted for care have current immunizations?	388-145-1835(3)	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-145-0560	What must I do to prevent the spread of infections and communicable diseases?	388-145-1635	NA	NA
WAC 388-145-0570	How do I manage medications for children?	388-145-1855	NA	NA
WAC 388-145-0580	May I accept medicine from a child's parent or guardian?	388-145-1875	NA	NA
WAC 388-145-0590	When may children take their own medicine?	388-145-1880	NA	NA
WAC 388-145-0600	Are there general menu requirements?	388-145-1790	NA	NA
WAC 388-145-0610	How often must I feed children at a center?	388-145-1795	NA	NA
WAC 388-145-0620	How do I handle a child's special diet?	388-145-1790(7) 388-145-1800	NA	NA
WAC 388-145-0630	Do you have special requirements for serving milk?	388-145-1805	NA	NA
WAC 388-145-0640	What home canned foods may I use?	388-145-1790(3)	NA	NA
WAC 388-145-0650	What requirements must I meet for feeding babies?	388-145-1805 388-145-1810	NA	NA
WAC 388-145-0660	Are there room requirements?	388-145-1335(2) 388-145-1555 388-145-1570	NA	NA
WAC 388-145-0670	What does the room temperature at a center need to be?	388-145-1555(2) 388-145-1595 (1)(e)	NA	NA
WAC 388-145-0680	What are the kitchen requirements?	388-145-1555(3) 388-145-1790(4)	NA	NA
WAC 388-145-0690	May I use the kitchen for activities for children?	NA	NA	NA
WAC 388-145-0700	May a room be used for more than one purpose?	388-145-1595 (1)(a) (in part)	NA	NA
WAC 388-145-0710	What are the general requirements for bedrooms?	388-145-1600	NA	NA
WAC 388-145-0720	What are the requirements for beds?	388-145-1610	NA	NA
WAC 388-145-0730	Are there requirements for the use of cribs?	388-145-1610(4)	NA	NA
WAC 388-145-0740	What are the requirements for diapers and diaper-changing areas?	388-145-1620	NA	NA
WAC 388-145-0750	What are the requirements for bathing facilities?	388-145-1565	NA	NA
WAC 388-145-0760	Do I need a telephone?	388-145-1555(10)	NA	NA
WAC 388-145-0770	What are the lighting requirements?	388-145-1555 (2) and (6)	NA	NA
WAC 388-145-0780	What are the requirements for ventilation?	388-145-1555 (2) and (12)	NA	NA
WAC 388-145-0790	What are the requirements about drinking water?	388-145-155[5] (3) and (4)	NA	NA
WAC 388-145-0800	What are the requirements for sewage and liquid wastes?	388-145-1585 (1) and (2)	NA	NA
WAC 388-145-0810	What are the requirements for laundry facilities?	388-145-1615	NA	NA
WAC 388-145-0820	What are the requirements for washing clothes?	388-145-1615 (2)(f)	NA	NA
WAC 388-145-0830	Do I need a housekeeping sink?	388-145-1560(3)	NA	NA
WAC 388-145-0840	What are the requirements for handwashing sinks?	388-145-1565	NA	NA
WAC 388-145-0850	What are the requirements for toilets?	388-145-1560	NA	NA
WAC 388-145-0860	Must a center have toilet training equipment for children?	388-145-1560 (1)(d)	NA	NA
WAC 388-145-0870	What are the requirements for indoor play areas?	388-145-1570	NA	NA
WAC 388-145-0880	What are the requirements for an outdoor play area?	388-145-1575	NA	NA
WAC 388-145-0890	What are the size requirements for an outdoor play area?	388-145-1575	NA	NA
WAC 388-145-0900	What are the requirements for playground equipment?	NA	NA	NA
WAC 388-145-0910	Are there requirements to follow when I transport children?	388-145-1755	NA	NA
WAC 388-145-0920	What does the department require for keeping client records?	388-145-1520	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-145-0930	What written information is needed before a child is admitted to a center?	388-145-2020	NA	NA
WAC 388-145-0940	What are the requirements for protecting a child under my care from abuse or neglect?	388-145-1390 (1)(g)	NA	NA
WAC 388-145-0950	What are the nondiscrimination requirements?	388-145-1710	NA	NA
WAC 388-145-0960	Do I have to admit or retain all children at the center?	388-145-1370	NA	NA
WAC 388-145-0970	Do I have responsibility for a child's personal hygiene?	388-145-1780	NA	NA
WAC 388-145-0980	Do I have responsibility for a child's personal items at the center?	388-145-1615(2)	NA	NA
WAC 388-145-0990	What requirements must I follow when disciplining children?	388-145-1815	NA	NA
WAC 388-145-1000	What types of disciplinary practices are forbidden?	388-145-1815 (8) and (9)	NA	NA
WAC 388-145-1010	Does the department require a written statement describing my discipline methods?	388-145-1815(1)	NA	NA
WAC 388-145-1020	What types of physical restraint are acceptable?	388-145-1820	NA	NA
WAC 388-145-1030	What types of physical restraint are not acceptable for children?	388-145-1820(3)	NA	NA
WAC 388-145-1040	What must I do following an incident that involved using physical restraint?	388-145-1825	NA	NA
WAC 388-145-1050	What incidents involving children must I report?	388-145-1535	NA	NA
WAC 388-145-1060	What is the ratio of child care staff to children at a center?	388-145-2005	NA	NA
WAC 388-145-1070	What are the requirements for supervision of children at a center?	388-145-1750	NA	NA
WAC 388-145-1080	What are the responsibilities of the director?	388-145-1425(1) (director) and 388-145-1430(1) (program director)	NA	NA
WAC 388-145-1090	Are there general qualifications for all staff in an emergency respite center?	388-145-1470(3)	NA	NA
WAC 388-145-1100	What are the minimum qualifications and training requirements for center staff?	Qualifications: 388-145-1425 (director), 388-145-1430 (program manager), 388-145-1440 (case manager), 388-145-1445 (direct care staff, formerly child care staff), 388-145-1475 (volunteers). Training: 388-145-1490 (preservice) and 388-145-1495 (in-service), 388-145-1500 (first aid/CPR), 388-145-1505 (HIV/AIDS). TB test: 388-145-1335(4). Food handler's permit: 388-145-1790(4). Background check: 388-145-1325(2).	NA	NA
WAC 388-145-1110	May one person hold two positions at a center?	388-145-1470	NA	NA
WAC 388-145-1120	Who must be on the premises while children are in care at a center?	388-145-1430(1) 388-145-1435 388-145-2005	NA	NA
WAC 388-145-1130	Are child care assistants allowed to provide care to a group of children without supervision?	NA-Child care assistants no longer identified in WAC.	NA	NA
WAC 388-145-1140	Are volunteers allowed to provide child care to children without supervision?	388-145-145 (1)(b)	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-145-1150	Do volunteers count in the staff-to-child ratio respite center?	NA-Volunteers meet the definition of direct care staff.	NA	NA
WAC 388-145-1160	Are professional consultants and case managers needed?	388-145-1460 (consultants) and 388-145-1440 (case management staff).	NA	NA
WAC 388-145-1170	What clerical, accounting and administrative services do I need?	388-145-1465(1)	NA	NA
WAC 388-145-1180	What support and maintenance staff do I need?	388-145-1465(2)	NA	NA
WAC 388-145-1190	Is in-service training required for staff?	388-145-1495	NA	NA
WAC 388-145-1200	What are the requirements for an activity program?	388-145-1735(1)	NA	NA
WAC 388-145-1210	What activities must I provide to children?	388-145-1735(2)	NA	NA
WAC 388-145-1220	What types of toys must I provide?	388-145-1735(1)	NA	NA
Chapter 388-147 WAC				
WAC 388-147-0010	What authority does the department of social and health services have to license residential programs for pregnant and parenting teens and their children?	388-145-1300	NA	NA
WAC 388-147-0020	What is the purpose of this chapter?	388-145-1300	NA	NA
WAC 388-147-0030	What definitions do I need to know to understand this chapter?	388-145-1305	NA	NA
WAC 388-147-0040	Is a license required to provide care to pregnant and parenting teens and their children?	388-145-1310	NA	NA
WAC 388-147-0050	How old do I have to be to apply for a license?	388-145-1320	NA	NA
WAC 388-147-0060	What personal characteristics are needed to be licensed?	388-145-1330	NA	NA
WAC 388-147-0070	What is required when completing an application for licensing?	388-145-1325 388-145-1335	NA	NA
WAC 388-147-0080	How long does an applicant have to complete the licensing application packet?	388-145-1340	NA	NA
WAC 388-147-0090	Will the department license or continue to license a facility if the facility does not meet the licensing requirements?	388-145-1390	NA	NA
WAC 388-147-0100	Does the department issue a probationary license?	388-145-1415	NA	NA
WAC 388-147-0110	When is a license denied, suspended or revoked?	388-145-1390(1)	NA	NA
WAC 388-147-0120	Are there any other reasons that might cause me to lose my license?	388-145-1390(2)	NA	NA
WAC 388-147-0130	When is an employee or volunteer disqualified from having unsupervised access to a child or youth in a licensed facility?	388-145-1400	NA	NA
WAC 388-147-0140	How is the applicant or licensee notified if the department decides to modify, deny, suspend, or revoke a license?	388-145-1390(3)	NA	NA
WAC 388-147-0150	What may an applicant or licensee do if he or she disagrees with the department's decision to modify, deny, suspend or revoke the license?	388-145-1405	NA	NA
WAC 388-147-0160	Does the department need to approve the program offered for pregnant and parenting teens?	388-145-2125	NA	NA
WAC 388-147-0170	Is a program description required as part of the license application?	388-145-1335(1)	NA	NA
WAC 388-147-0180	What must be included in a pregnant and parenting teen program?	388-145-2120(2)	NA	NA
WAC 388-147-0190	What independent living skills may be offered?	388-145-2120(3)	NA	NA
WAC 388-147-0200	Is a residential facility for pregnant and parenting teens required to provide childcare?	388-145-2120(5)	NA	NA
WAC 388-147-0210	What are the requirements about nondiscrimination?	388-145-1710	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-147-0220	Is participation in the program conditional on a teen's decision about keeping or relinquishing her child?	388-145-2125(2)	NA	NA
WAC 388-147-0230	What are your requirements for keeping client records?	388-145-1520	NA	NA
WAC 388-147-0240	What personnel policies must a program have?	388-145-1420 (1)(d) 388-145-1510 (1)(m)	NA	NA
WAC 388-147-0250	Must the facility license be posted?	388-145-1345	NA	NA
WAC 388-147-0260	What are the qualifications for an executive director?	388-145-1425	NA	NA
WAC 388-147-0270	Is a supervisor or case consultant needed?	388-145-1460	NA	NA
WAC 388-147-0280	What are the qualifications of a case manager?	388-145-1440	NA	NA
WAC 388-147-0290	What are the responsibilities of the case manager?	388-145-1440(1)	NA	NA
WAC 388-147-0300	What are the required ratios of case management staff to youth?	388-145-1480	NA	NA
WAC 388-147-0310	Is an on-site facilities manager required?	388-145-1430(1)	NA	NA
WAC 388-147-0320	What are the qualifications for an on-site facilities manager?	388-145-1430(3)	NA	NA
WAC 388-147-0330	What are the responsibilities of the on-site facilities manager?	388-145-1430(1)	NA	NA
WAC 388-147-0340	What clerical, accounting and administrative services are needed?	388-145-1465(1)	NA	NA
WAC 388-147-0350	What support and maintenance staff are needed?	388-145-1465(2)	NA	NA
WAC 388-147-0360	What first aid and cardiopulmonary resuscitation (CPR) training is required?	388-145-1500	NA	NA
WAC 388-147-0370	What HIV/AIDS and bloodborne pathogens training is required?	388-145-1505	NA	NA
WAC 388-147-0380	What steps must be taken to prevent the spread of infections and communicable diseases?	388-145-1635	NA	NA
WAC 388-147-0390	Is in-service training required?	388-145-1495	NA	NA
WAC 388-147-0400	What types of disciplinary practices are forbidden at a facility?	388-145-1815 (8) and (9)	NA	NA
WAC 388-147-0410	What are the reporting requirements?	388-145-1535	NA	NA
WAC 388-147-0420	What changes to a facility must the licensee report to the licensor?	388-145-1550	NA	NA
WAC 388-147-0430	How is the capacity determined for a facility?	388-145-1365	NA	NA
WAC 388-147-0440	Are there general food service requirements?	388-145-1790	NA	NA
WAC 388-147-0450	What are the requirements for managing medications?	388-145-1855	NA	NA
WAC 388-147-0460	What are the requirements for transporting children and youth?	388-145-1755	NA	NA
WAC 388-147-0470	What are the requirements for beds?	388-145-1610	NA	NA
WAC 388-147-0480	May wheeled baby walkers be used?	388-145-1555(14)	NA	NA
WAC 388-147-0490	What health and safety requirements are there?	388-145-1335(3)	NA	NA
WAC 388-147-0500	Are local ordinances part of the licensing requirements?	388-145-1355	NA	NA
WAC 388-147-0510	What are the requirements regarding the location of a facility?	388-145-1555(11)	NA	NA
WAC 388-147-0520	What physical structure safety requirements must a facility meet?	388-145-1555(1)	NA	NA
WAC 388-147-0530	What measures are required for pest control?	388-145-1555(4)	NA	NA
WAC 388-147-0540	What are the requirements regarding pets and animals in a facility?	388-145-1645	NA	NA
WAC 388-147-0550	Are alcoholic beverages or illegal drugs allowed at a facility?	388-145-1[6]50	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-147-0560	Is smoking permitted around children or youth?	388-145-1655	NA	NA
WAC 388-147-0570	Are firearms allowed at a facility?	388-145-1660	NA	NA
WAC 388-147-0580	What are the requirements for storing dangerous chemicals or other substances?	388-145-1580	NA	NA
WAC 388-147-0590	What first-aid supplies are needed?	388-145-1640	NA	NA
WAC 388-147-0600	Is a telephone required at the facility?	388-145-1555(10)	NA	NA
WAC 388-147-0610	What are the lighting requirements for the facility?	388-145-1555(2)	NA	NA
WAC 388-147-0620	What are the requirements for laundry facilities?	388-145-1615(3)	NA	NA
WAC 388-147-0630	What are the requirements for toilets, sinks, and bathing facilities?	388-145-1560	NA	NA
WAC 388-147-0640	What are the requirements about drinking water?	388-145-1585(3)	NA	NA
WAC 388-147-0650	What are the requirements for sewage and liquid wastes?	388-145-1585 (1) and (2)	NA	NA
WAC 388-147-0660	Is a disaster plan required?	388-145-1670	NA	NA
WAC 388-147-0670	What fire safety procedures do case management and facility staff need to know?	388-145-1665(3)	NA	NA
WAC 388-147-0680	What fire safety requirements must the licensee follow?	388-145-1665(1)	NA	NA
WAC 388-147-0690	What other requirements must I follow for smoke detectors?	388-145-1675	NA	NA
WAC 388-147-0700	What fire safety instruction is required for children and youth residing in a facility?	388-145-1685 388-145-1670 (2)(a)	NA	NA
WAC 388-147-0710	What are the requirements for a fire or other emergency evacuation plan?	388-145-1670	NA	NA
WAC 388-147-0720	Are there different construction and fire safety requirements for facilities that have multiple licenses in the same building?	388-145-1695	NA	NA
Chapter 388-148 WAC				
WAC 388-148-0005	What is the purpose of this chapter?	388-145-1300	388-147-1300	388-148-1300
WAC 388-148-0010	What definitions do I need to know to understand this chapter?	388-145-1305	388-147-1305	388-148-1305
WAC 388-148-0015	Am I required to have a license to provide care to children?	388-145-1310	388-147-1310	388-148-1310
WAC 388-148-0020	When is a license not required if I provide care to children?	388-145-1310	388-147-1310	388-148-1310
WAC 388-148-0025	How do you decide how many children I may serve in my home or facility?	388-145-1365	388-147-1390(2)	388-148-1385
WAC 388-148-0030	How old do I have to be to apply for a license to provide care to children?	388-145-1320	388-147-1320	388-148-1365(1)
WAC 388-148-0035	What personal characteristics do I need to provide care to children?	388-145-1330(4)	388-147-1330(4)	388-148-1365
WAC 388-148-0040	What first-aid and cardiopulmonary resuscitation (CPR) training is required?	388-145-1500	388-147-1510	388-148-1375 (2)(a) and (b)
WAC 388-148-0045	What HIV/AIDS and bloodborne pathogens training is required?	388-145-1505	388-147-1515	388-148-1375 (2)(c)
WAC 388-148-0050	How do I apply for a license?	388-145-1325	388-147-1325	388-148-1315
WAC 388-148-0055	How long do I have to complete the licensing application packet?	388-145-1340	388-147-1340	388-148-1315(1) 388-148-1340
WAC 388-148-0058	May I receive more than one in-home family license?	388-145-1380	388-147-1375	388-148-1330
WAC 388-148-0060	May my relative or I be certified by a child-placing agency to be a foster parent and be an employee of that same agency?	NA	NA	388-148-1355
WAC 388-148-0065	When may I be certified to provide care to children?	388-145-1385	NA	388-148-1360

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-0070	Is there a difference between licensing and certification?	NA	388-147-1345 388-147-1350	388-148-1350
WAC 388-148-0075	May I be licensed with the department and certified by a child-placing agency at the same time?	NA	NA	388-148-1350(2)
WAC 388-148-0080	What may I do if I disagree with the decision of a child-placing agency that I do not meet the licensing requirements?	NA	NA	388-148-1350
WAC 388-148-0085	Will the department license or continue to license a home or facility if the home or facility does not meet the licensing requirements?	388-145-1395	388-147-1415	388-148-1630
WAC 388-148-0090	Does the department issue [a] probationary license?	388-145-1415	388-147-1435	388-148-1655
WAC 388-148-0095	When are licenses denied, suspended or revoked?	388-145-1390 388-145-1350	388-147-1410 388-147-1360	388-148-1625 388-148-1345
WAC 388-148-0098	When is an employee or volunteer disqualified from having unsupervised access to a child in a licensed home, facility, or agency?	388-145-1400	388-147-1420	388-148-1635
WAC 388-148-0100	Are there any other reasons that might cause me to lose my license?	388-145-1390	388-147-1410	388-148-1640
WAC 388-148-0105	How do you notify me if you have modified, denied, suspended, or revoked my license?	388-145-1390(3)	388-147-1410(3)	388-148-1635(2)
WAC 388-148-0110	What may I do if I disagree with your decision to modify, deny, suspend or revoke my license?	388-145-1390(3)	388-147-1410(3)	388-148-1645
WAC 388-148-0115	May I appeal the decision of the office of administrative hearings' administrative law judge?	388-145-1405 388-145-1410	388-147-1425 388-147-1430	388-148-1645 388-148-1650
WAC 388-148-0120	What incidents involving children must I report?	388-145-1535	388-147-1540	388-148-1420
WAC 388-148-0123	What are my reporting responsibilities when a child is missing from care?	388-145-1540	388-147-1545	388-148-1425
WAC 388-148-0125	What are your requirements for keeping client records?	388-145-1520 388-145-1525	388-147-1525 388-147-1530 388-147-1655(6) 388-147-1720	388-148-0405 [1405]
WAC 388-148-0127	What are the requirements for information kept in facility logs for staffed residential homes and group care programs?	388-145-1515	NA	NA
WAC 388-148-0130	What information may I share about a child or a child's family?	388-145-1530	388-147-1535	388-148-1410
WAC 388-148-0135	What changes to my home or facility must I report to my licensor?	388-145-1550	388-147-1550	388-148-1430
WAC 388-148-0140	What personnel policies must I have?	388-145-1420 (1)(d) 388-145-1510 (1)(m) 388-145-1335 (1)(c)	388-147-1520	NA
WAC 388-148-0145	Where do I post my license?	388-145-1345(3) 388-145-1335 (2)(g)	388-147-1335 (2)(f)	388-148-1325(3)
WAC 388-148-0150	Are local ordinances part of the licensing requirements?	388-145-1355	388-147-1365	388-148-1440(8)
WAC 388-148-0155	What physical structure safety requirements must my home or facility meet?	388-145-1555	388-147-1555	388-148-1440
WAC 388-148-0160	What measures must I take for pest control?	388-145-1555(4)	NA	388-148-1440 (2)(b)
WAC 388-148-0165	What are the requirements regarding the location of my home or facility?	388-145-1555 (7), (8), (9)	388-147-1555 388-147-1375(2) 388-147-1550 (1)(a)	388-148-1465(9) 388-148-1440(7)
WAC 388-148-0170	What steps must I take to ensure children's safety around outdoor bodies of water?	388-145-1590	NA	388-148-1455
WAC 388-148-0175	What are your requirements regarding pets and animals in my home or facility?	388-145-1645	NA	388-148-1480
WAC 388-148-0180	Are alcoholic beverages or illegal drugs allowed at my home or facility?	388-145-1650	388-147-1565	388-148-1485

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-0185	Is smoking permitted around children?	388-145-1655	388-147-1570	388-148-1495
WAC 388-148-0190	May I have firearms in my home or facility?	388-145-1660	388-147-1575	388-148-1500
WAC 388-148-0195	What are your requirements for storing dangerous chemicals or other substances?	388-145-1580	NA	388-148-1440 (2)(c) and (3)
WAC 388-148-0200	Do I need first-aid supplies?	388-145-1640	388-147-1625 (3)(c)	388-148-1550(7)
WAC 388-148-0205	What requirements are there for the storage of medications?	388-145-1850	NA	388-148-1565 388-148-1570
WAC 388-148-0210	What requirements do I need to follow when I transport children?	388-145-1755	388-147-1625	388-148-1510
WAC 388-148-0215	May I use wheeled baby walkers?	388-145-1555(14)	NA	388-148-1450(4)
WAC 388-148-0220	What fire safety requirements must I follow to qualify for a license?	388-145-1665	388-147-1580	388-148-1465
WAC 388-148-0225	What fire safety requirements are there for exits?	388-145-1665 388-145-1600(3) 388-145-1555(5)	NA	388-148-1465(2)
WAC 388-148-0230	Are there other fire safety requirements for inside a foster home or staffed residential home licensed for five or fewer children?	388-145-1600	NA	NA
WAC 388-148-0235	What are the requirements for smoke detectors for foster homes and staffed residential homes licensed for five or fewer children?	388-145-1675(1)	388-147-1580 (1)(b)	388-148-1465(6)
WAC 388-148-0240	What are the requirements for fire extinguishers in homes and facilities?	388-145-1690	388-147-1580(2)	388-148-1465(7)
WAC 388-148-0245	What fire escape measures must be taken for multi-level homes and facilities?	388-145-1665 (1), (4)(d)	NA	388-148-1465(2)
WAC 388-148-0250	What fire safety instructions must I give to children residing in a home or staffed residential home licensed for five or fewer children?	388-145-1665(2)	NA	388-148-1460(4)
WAC 388-148-0255	What are the requirements for a fire evacuation plan?	388-145-1670 388-145-1685	388-147-1585	388-148-1460
WAC 388-148-0260	What are the general requirements for bedrooms?	388-145-1600 388-145-2105	NA	388-148-1470
WAC 388-148-0265	What are additional requirements for bedrooms for more than one person?	388-145-1605	NA	388-148-1475
WAC 388-148-0270	What are the requirements for beds?	388-145-1610 388-145-2105	NA	388-148-1470
WAC 388-148-0275	Do I need a telephone at my home or facility?	388-145-1335 (2)(b) 388-145-1555(10)	388-147-1335 (2)(b) 388-147-1555(1)	388-148-1450(3)
WAC 388-148-0280	What are the lighting requirements for my home or facility?	388-145-1555 (2)(6)	388-147-1555(1)	388-148-1440(1)
WAC 388-148-0290	What does the room temperature for my home or facility need to be?	388-145-1555(2) 388-145-1595 (1)(e)	388-147-1555(1)	388-148-1440(1)
WAC 388-148-0300	How must I ventilate my home or facility?	388-145-1615 (1)(e) 388-145-1555(2)	388-147-1555(1)	388-148-1440(1)
WAC 388-148-0305	What are the requirements for laundry facilities?	388-145-1615	388-147-1555(1)	388-148-1440(4)
WAC 388-148-0310	What are the requirements for washing clothes?	388-145-1615 (3)(f)	388-147-1555(1)	388-148-1440(4)
WAC 388-148-0315	What are the requirements for toilets, sinks, and bathing facilities?	388-145-1560 388-145-1565	388-147-1555(1)	388-148-1440(1)
WAC 388-148-0320	What are the requirements about drinking water?	388-145-1585	388-147-1555(1)	388-148-1445(2) 388-148-1520(9)
WAC 388-148-0325	What are the requirements for sewage and liquid wastes?	388-145-1585	388-147-1555(1)	388-148-1445(1)
WAC 388-148-0330	Am I required to obtain a child's health history?	388-145-1835 388-145-1520 (3)(e)	388-147-1525 388-147-1630	388-148-1415
WAC 388-148-0335	When must I get an EPSDT exam for a child under my care?	388-145-1840	388-147-1640	388-148-1550(3)

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-0340	What are the requirements for immunizations for children?	388-145-1885	388-147-1525 (4)(e) and (f)	388-148-1555
WAC 388-148-0345	What must I do to prevent the spread of infections and communicable diseases?	388-145-1635	388-147-1560	388-148-1505
WAC 388-148-0350	What are the requirements for obtaining consent for medical care for children under my care?	388-145-1845	388-147-1645	388-148-1560
WAC 388-148-0352	What are the requirements for the management of medication for children in my care?	388-145-1855 388-145-1860 388-145-1865 388-145-1870	388-147-1635 (1)(b)	388-148-1565 388-148-1570 388-148-1575 388-148-1585 388-148-1590
WAC 388-148-0355	May I accept medicine from a child's parent or guardian?	388-145-1875	388-147-1650	388-148-1595
WAC 388-148-0365	When may children take their own medicine?	388-145-1880	NA	388-148-1580
WAC 388-148-0370	What food and meal guidelines must I follow?	388-145-1790	NA	388-148-1515
WAC 388-148-0375	How often must I feed children?	388-145-1795	NA	388-148-1515(1)
WAC 388-148-0380	How do I handle a child's special diet?	388-145-1800 388-145-2075	NA	388-148-1515(4)
WAC 388-148-0385	Are there special requirements for serving milk?	388-145-1805	NA	388-148-1515 (5) - (7)
WAC 388-148-0390	What home-canned foods may I use?	388-145-1790(3)	NA	388-148-1515(3)
WAC 388-148-0395	What requirements must I meet for feeding babies?	388-145-1805 (3), (4), (5)	NA	388-148-1520(3)
WAC 388-148-0400	What are the requirements for diapers and diaper-changing areas?	388-145-1620	NA	388-148-1415(1)
WAC 388-148-0405	Do I have responsibility for a child's clothing?	388-145-1615	NA	388-148-1470 388-148-1520(9)
WAC 388-148-0410	May a child take personal belongings after being discharged from a home or facility?	388-145-1775	NA	388-148-1545
WAC 388-148-0415	Do I have responsibility for a child's personal hygiene?	388-145-1780	NA	388-148-1520(9)
WAC 388-148-0420	What are the requirements for protecting a child under my care from abuse and neglect?	388-145-1300(1) 388-145-2010	388-147-1300(1)	388-148-1300(1) 388-148-1520(1)
WAC 388-148-0422	What are the requirements for privacy for children in out-of-home placements?	388-145-1785 388-145-1600 388-145-1790(7)	NA	388-148-1540
WAC 388-148-0425	What are the requirements about nondiscrimination?	388-145-1710	388-147-1595	388-148-1520(6)
WAC 388-148-0430	May I take a foster child to church services, temple, mosque or synagogue?	388-145-1705	NA	388-148-1520(8)
WAC 388-148-0435	Do I have to admit or retain all children?	388-145-1370	388-147-1395	388-148-1395
WAC 388-148-0440	What must I consider in assigning work to children in my home or facility?	388-145-1765	NA	388-148-1530(4)
WAC 388-148-0445	What toys and activities must I provide to children?	388-145-1735	NA	388-148-1520 (2)(d) and (9)
WAC 388-148-0455	Do I need permission to travel on an overnight trip or out-of-state with my foster child?	388-145-1760	NA	388-148-1435
WAC 388-148-0460	What requirements do you have for supervising children?	388-145-1750	388-147-1620	388-148-1610
WAC 388-148-0465	What requirements must I follow when disciplining children?	388-145-1815	NA	388-148-1615
WAC 388-148-0470	What types of disciplinary practices are forbidden?	388-145-1815 (7), (8), (9)	NA	388-148-1615(4)
WAC 388-148-0475	Do you require a written statement describing my discipline methods?	388-145-1815(1)	NA	388-148-1615(7)
WAC 388-148-0480	When may a child be restrained?	388-145-1820	NA	388-148-1620
WAC 388-148-0485	What types of physical restraint are not acceptable for children?	388-145-1820(3)	NA	388-148-1620(2)

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-0487	Are there requirements for time-out or quiet rooms?	388-145-1830	NA	388-148-1615 (4)(d)
WAC 388-148-0488	Are time-delay mechanisms allowed on windows and doors of a facility or staffed residential home licensed for six?	388-145-1630	NA	NA
WAC 388-148-0490	What must I do following an incident that involved using physical restraint?	388-145-1825	NA	388-148-1620(3)
WAC 388-148-0505	What services must a foster parent be able to provide?	NA	NA	388-148-1520
WAC 388-148-0510	What educational support must I provide to children under my care?	388-145-1730	NA	388-148-1525
WAC 388-148-0515	What is the minimum age to be a foster parent?	NA	NA	388-148-1365(1)
WAC 388-148-0520	What are the training requirements for foster parents and prospective foster parents?	NA	NA	388-148-1375 388-148-1380
WAC 388-148-0525	How many children may my foster home serve?	NA	NA	388-148-1385
WAC 388-148-0530	May I be employed if I am a foster parent?	NA	NA	388-148-1365(2) 388-148-1370 (1)(d)
WAC 388-148-0535	Do I need to have income separate from foster care payments?	NA	NA	388-148-1365(2)
WAC 388-148-0540	When may I use respite care?	NA	NA	388-148-1600(2)
WAC 388-148-0541	Excluding respite care, who may provide care to a foster child in the foster home when the foster parent is away from the home?	NA	NA	388-148-1605
WAC 388-148-0542	May a foster child be supervised by someone under eighteen in the foster home?	NA	NA	388-148-1605(5)
WAC 388-148-0545	May I place my foster child with another family temporarily?	NA	388-147-1400	388-148-1395(2)
WAC 388-148-0550	May my foster children participate in routine activities without a licensed provider supervising the activity?	NA	NA	388-148-1530
WAC 388-148-0555	Do I need a social summary for children under my care?	388-145-1720	388-147-1600	NA
WAC 388-148-0560	Do I need a treatment plan for children under my care?	388-145-1725	388-147-1605	388-148-1400(1)
WAC 388-148-0565	Do you need to approve the program that I offer for children under my care?	388-145-1335	388-147-1330(7) 388-147-1335	NA
WAC 388-148-0570	What education and vocational instruction must I provide to the children under my care?	388-145-1730	NA	388-148-1525
WAC 388-148-0575	What medical policies and procedures must I have?	388-145-1635	NA	NA
WAC 388-148-0580	What nursing services must I provide?	388-145-2065	NA	NA
WAC 388-148-0585	What social service staff do I need?	388-145-1440	388-147-1455	NA
WAC 388-148-0590	What clerical, accounting and administrative services do I need for my home or facility?	388-145-1465	388-147-1480	NA
WAC 388-148-0595	What support and maintenance staff do I need for my home or facility?	388-145-1465	388-147-1480	NA
WAC 388-148-0600	Do I need professional consultants for my program?	388-145-1460	388-147-1470	NA
WAC 388-148-0605	Is in-service training required?	388-145-1495	388-147-1505	NA
WAC 388-148-0610	What are the required ratios of social service staff to children under care?	388-145-1480 388-145-1470 388-145-2090 388-145-2140 388-145-2160 388-145-2195	388-147-1495	NA
WAC 388-148-0620	What safety features do I need for hazardous areas?	388-145-1335(3) 388-145-1675(3)	388-147-1555	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-0625	What other requirements must I follow for smoke detectors?	388-145-1675(2)	NA	NA
WAC 388-148-0640	What fire safety procedures do staff of a group care facility and a staffed residential home licensed for six children need to know?	388-145-1665	NA	NA
WAC 388-148-0645	What are the requirements for fire drills and testing smoke detectors?	388-145-1685	388-147-1580	NA
WAC 388-148-0655	Are there different construction and fire safety requirements for facilities that have multiple licenses in the same building?	388-145-1695	388-147-1375	NA
WAC 388-148-0660	Do mealtimes need to be established?	388-145-1790	NA	NA
WAC 388-148-0665	Do you have general menu requirements?	388-145-1395	NA	NA
WAC 388-148-0670	What types of group care programs are licensed to provide care to children?	388-145-1300	NA	NA
WAC 388-148-0680	What basic elements must a group care program include?	388-145-1745	NA	NA
WAC 388-148-0685	Who may a group care program provider serve?	388-145-1360	NA	NA
WAC 388-148-0690	What services must I provide if I have a group care license?	388-145-1300(2)	NA	NA
WAC 388-148-0695	Must I give a child an allowance?	388-145-1770	NA	NA
WAC 388-148-0700	What are the qualifications for an executive director for a group care program or child-placing agency?	388-145-1425	388-147-1445	NA
WAC 388-148-0705	Do I need an on-site program manager or social service staff at each group care facility?	388-145-1430(1)	388-147-1450	NA
WAC 388-148-0710	What are the responsibilities of the on-site program manager or social service staff for a group care facility?	388-145-1430(1) 388-145-1435	388-147-1450(1)	NA
WAC 388-148-0715	What qualifications must the on-site program manager, or social service staff for a group care program or a CPA program manager have?	388-145-1430 (2) - (6) 388-145-1470	388-147-1450 (2) - (6) 388-147-1485	NA
WAC 388-148-0718	What are the responsibilities for child care staff at a group care program?	388-145-1445	NA	NA
WAC 388-148-0720	What are the qualifications for child care staff and case aides?	388-145-1445	388-147-1460	NA
WAC 388-148-0722	What are the qualifications for health care staff for a group care program or a child-placing agency caring for medically fragile children?	388-145-1455	388-147-1465	NA
WAC 388-148-0725	What is the ratio of child care staff to children in group care facilities?	388-145-1480	388-147-1495	NA
WAC 388-148-0730	Are there room requirements for group care facilities?	388-145-1595 388-145-1570(4) 388-145-2145	388-147-1335(2)	NA
WAC 388-148-0740	What are the kitchen requirements?	388-145-1555 (1)(d) 388-145-1600(5) 388-145-1615 (1)(d)	NA	NA
WAC 388-148-0745	Who may provide maternity services?	388-145-1300(2)	388-147-1315(3)	388-148-1505(4)
WAC 388-148-0750	What maternity services must I provide?	388-145-2120	388-147-1315(3)	388-148-1505(4)
WAC 388-148-0755	How are maternity services delivered?	388-145-2125	388-147-1315(3)	388-148-1505(4)
WAC 388-148-0760	Do you need to approve daily activities that I offer to expectant or new mothers?	388-145-2125(1)	388-147-1315(3)	388-148-1505(4)
WAC 388-148-0765	What types of health education must I offer expectant and new mothers?	388-145-2130	388-147-1315(3)	388-148-1505(4)
WAC 388-148-0770	Is a group care program required to provide child care?	388-145-2120 (3)(n), (5)	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-0775	Do expectant and new mothers need to be under a physician's care?	388-145-2120 (1)(d)	388-147-1315(3)	388-148-1505(4)
WAC 388-148-0780	What are my responsibilities if a specialist is required?	388-145-2120 (1)(f)	388-147-1315(3)	388-148-1505(4)
WAC 388-148-0785	What is the proper ratio of staff to children in home or group care facilities offering maternity services?	388-145-2140	NA	NA
WAC 388-148-0790	Do you have room requirements for facilities offering maternity services?	388-145-2135 388-145-1595 388-145-2145	NA	388-148-1475(2)
WAC 388-148-0795	How is capacity determined for a maternity services facility?	388-145-2135(1)	NA	388-148-1385(5)
WAC 388-148-0800	What is the purpose of day treatment programs?	388-145-1305	NA	NA
WAC 388-148-0805	What staff must my day treatment program have?	388-145-1995	NA	NA
WAC 388-148-0810	What consultants must my day treatment program have?	388-145-1995(1)	NA	NA
WAC 388-148-0815	What is the ratio of counselor and teaching staff to children in a day treatment program?	388-145-1990	NA	NA
WAC 388-148-0820	What type of care is offered for medically fragile children and children with severe developmental disabilities?	388-145-2065	388-147-1315(3)	388-148-1400 388-148-1505(4)
WAC 388-148-0825	Who provides services for medically fragile children and children with severe developmental disabilities?	388-145-2065(2)	388-147-1315	388-148-1400
WAC 388-148-0830	What services must be provided for medically fragile children and children with severe developmental disabilities?	388-145-2065(2)	388-147-1315 388-147-1655	388-148-1400
WAC 388-148-0835	Do I need to have a multidisciplinary care plan for medically fragile children and children with severe developmental disabilities?	388-145-2065(2)	NA	NA
WAC 388-148-0840	What must the multidisciplinary care plan for a medically fragile child or a child with severe developmental disabilities include?	388-145-2065	NA	NA
WAC 388-148-0845	What are the requirements for nurses in programs who care for medically fragile children or children with severe developmental disabilities?	388-145-2065		388-148-1505(4)
WAC 388-148-0850	When do I use a nurse?	388-145-2065(2)		388-148-1505(4)
WAC 388-148-0855	Do I need to provide a therapy room for children with severe developmental disabilities?	388-145-1570(3)	NA	NA
WAC 388-148-0860	Are there room requirements for group care facilities for medically fragile children less than age six?	388-145-1570(4) 388-145-1595	NA	NA
WAC 388-148-0865	What food requirements exist for medically fragile children and children with severe developmental disabilities?	388-145-2075	NA	388-148-1400
WAC 388-148-0870	What additional recordkeeping requirements exist for medically fragile children and children with severe developmental disabilities?	388-145-2070	NA	388-148-1400
WAC 388-148-0875	What types of crisis residential centers may be licensed?	388-145-1890	NA	NA
WAC 388-148-0880	What levels of secure CRCs exist?	388-145-1890	NA	NA
WAC 388-148-0885	What are the requirements for a level-one secure CRC?	388-145-1915 388-145-1920 (removed levels for secure CRCs)	NA	NA
WAC 388-148-0890	What are the requirements for a level-two secure CRC?	388-145-1915 388-145-1920 (removed levels for secure CRCs)	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-0892	What are the requirements for a level three secure CRC?	388-145-1915 388-145-1920 (removed levels for secure CRCs)	NA	NA
WAC 388-148-0895	May a juvenile detention center operate as a separate secure CRC program?	388-145-1925	NA	NA
WAC 388-148-0900	What youth may a CRC serve?	388-145-1900 388-145-1905	NA	NA
WAC 388-148-0905	Can law enforcement officers place youth in secure CRCs?	388-145-1905 (1)(b)	NA	NA
WAC 388-148-0910	What hours do CRCs have to be open?	388-145-1985	NA	NA
WAC 388-148-0915	What steps must be taken after a youth is admitted into a CRC?	388-145-1930	NA	NA
WAC 388-148-0920	What if a youth seems unlikely to remain in a regular CRC?	388-145-1930(3)	NA	NA
WAC 388-148-0925	What happens when no space exists at a secure CRC?	388-145-1945	NA	NA
WAC 388-148-0930	How is a youth transferred from one type of CRC to another?	388-145-1940(3) 388-145-1950	NA	NA
WAC 388-148-0940	What does a youth's orientation to a CRC need to include?	388-145-1700	NA	NA
WAC 388-148-0945	What intervention services must be provided or arranged for by the CRC?	388-145-1955	NA	NA
WAC 388-148-0950	What behavior management practices are required for a CRC?	388-145-1490 (1)(k) 388-145-1495 388-145-1820	NA	NA
WAC 388-148-0955	What is the purpose of a multidisciplinary team in a CRC?	388-145-1965	NA	NA
WAC 388-148-0960	When may a multidisciplinary team be requested?	388-145-1970	NA	NA
WAC 388-148-0965	How is a multidisciplinary team convened?	388-145-1975	NA	NA
WAC 388-148-0970	May a parent disband the multidisciplinary team?	388-145-1980	NA	NA
WAC 388-148-0975	What qualifications must a crisis residential center executive director have?	388-145-1425	NA	NA
WAC 388-148-0980	Do I need a program manager on-site at each facility?	388-145-1430	NA	NA
WAC 388-148-0985	What qualifications must the on-site program manager for a crisis residential program have?	388-145-1430(3)	NA	NA
WAC 388-148-0990	What additional qualifications must the crisis residential center youth care staff have?	388-145-1450	NA	NA
WAC 388-148-0995	What are the ratio requirements of youth care staff to youth in crisis residential centers?	388-145-1910	NA	NA
WAC 388-148-1000	What training must staff at a crisis residential center have?	388-145-1490 388-145-1495 388-145-1500 388-145-1505	388-147-1500 388-147-1505 388-147-1510 388-147-1515	NA
WAC 388-148-1005	What recordkeeping is required for crisis residential centers?	388-145-1515	NA	NA
WAC 388-148-1010	What additional recordkeeping requirements exist for secure crisis residential centers?	388-145-1960	NA	NA
WAC 388-148-1015	What is the purpose of a staffed residential home?	388-145-1305	NA	NA
WAC 388-148-1025	What must be included in a written program description for a staffed residential home?	388-145-1335	NA	NA
WAC 388-148-1030	What services must a staffed residential home provide?	388-145-1755 388-145-1750 388-145-1570 388-145-1575	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-1035	Who must be on the premises when children are under care at a staffed residential home?	388-145-1480 388-145-2195	NA	NA
WAC 388-148-1040	What are the qualifications for staff at a staffed residential home?	388-145-1420 388-145-1425 388-145-1430 388-145-1445	NA	NA
WAC 388-148-1045	What is the ratio of child care staff to children in staffed residential homes?	388-145-1480 388-145-2195	NA	NA
WAC 388-148-1050	How many children may I serve in my staffed residential home?	388-145-2190	NA	NA
WAC 388-148-1055	Are there room requirements for staffed residential homes?	388-145-1555 388-145-1570 388-145-1595	NA	NA
WAC 388-148-1060	What services may a child-placing agency provide?	NA	388-147-1315 (2) and (3) 388-147-1590 388-147-1655	NA
WAC 388-148-1066	What written information is needed before a child is accepted for care by a child-placing agency?	NA	388-147-1400	NA
WAC 388-148-1070	What health histories need to be provided to foster or adoptive parents?	NA	388-147-1670(3)	NA
WAC 388-148-1075	When may child-placing agencies from outside the state place children in this state?	NA	Eliminated, already covered in ICPC agreements	NA
WAC 388-148-1076	What are the qualifications for an executive director, a program manager/social service staff, and a consultant for a child-placing agency?	NA	388-147-1445	NA
WAC 388-148-1077	What are the qualifications for a case aide for a child-placing agency program?	NA	388-147-1460	NA
WAC 388-148-1078	What are the qualifications for health care staff hired or contracted by a child-placing agency to provide services to children in care?	NA	388-147-1465	NA
WAC 388-148-1079	What are the qualifications for the foster home licensor for a child-placing agency?	NA	388-147-1475	NA
WAC 388-148-1080	Are child-placing agencies required to have office space?	NA	388-147-1335(2)	NA
WAC 388-148-1085	How may my child-placing agency certify a foster home for licensing by the department?	NA	388-145-1350	NA
WAC 388-148-1090	What children may child-placing agency foster homes accept?	NA	388-145-1385	NA
WAC 388-148-1095	May different child-placing agencies share eligible foster parents for placement?	NA	388-147-1385	NA
WAC 388-148-1100	What do I need to consider in making foster care placements?	NA	388-147-1400	NA
WAC 388-148-1105	May I share information about the child with the foster parents?	NA	388-147-1405	NA
WAC 388-148-1110	How often should the case manager contact the foster child and family?	NA	388-147-1610	NA
WAC 388-148-1115	What are the requirements for providing adoptive services?	NA	388-147-1670	NA
WAC 388-148-1120	What is the process for adoptions?	NA	388-147-1700	NA
WAC 388-148-1125	What requirements exist for specialized adoptive services?	NA	388-147-1705	NA
WAC 388-148-1130	Must my child-placing agency retain the records of adopted children?	NA	388-147-1720	NA
WAC 388-148-1135	What happens to the adopted children's records if my agency closes?	NA	388-147-1720	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-148-1205	What is a group receiving center?	388-145-1305	NA	NA
WAC 388-148-1210	What age children may a center serve?	388-145-2040	NA	NA
WAC 388-148-1215	What hours must a center be open?	388-145-2050	NA	NA
WAC 388-148-1220	What services are provided or arranged for by a group receiving center?	388-145-2055	NA	NA
WAC 388-148-1225	Is a center required to provide an orientation for a child placed?	388-145-1700	NA	NA
WAC 388-148-1230	Does each child need space for personal items at the center?	388-145-1615(2)	NA	NA
WAC 388-148-1235	What staff training is required?	388-145-1490 388-145-1495	NA	NA
WAC 388-148-1240	What is the ratio of child care staff to children at a center?	388-145-2045	NA	NA
WAC 388-148-1245	What are the requirements for supervision of children at a center?	388-145-2060	NA	NA
WAC 388-148-1250	Who must be on the premises while children are in care at a center?	388-145-2045 (1)(a)	NA	NA
WAC 388-148-1255	What are the requirements for an activity program?	388-145-1575(2)	NA	NA
WAC 388-148-1260	What activities must I provide to children?	388-145-1735	NA	NA
WAC 388-148-1265	What are the requirements for indoor recreation areas?	388-145-1570	NA	NA
WAC 388-148-1270	What are the requirements for an outdoor recreation area?	388-145-1575	NA	NA
WAC 388-148-1275	What are the size requirements for an outdoor recreation area?	388-145-1575(2)	NA	NA
WAC 388-148-1280	What are the requirements for playground equipment?	388-145-1555(1)	NA	NA
Chapter 388-160 WAC				
WAC 388-160-0005	Authority.	388-145-1300	NA	NA
WAC 388-160-0015	What is the purpose of overnight youth shelters?	388-145-2080 and defined in 388-145-1305	NA	NA
WAC 388-160-0025	What definitions apply to this chapter?	388-145-1305	NA	NA
WAC 388-160-0035	What services must be offered at a shelter?	388-145-2100	NA	NA
WAC 388-160-0045	What must I include in the assessment when a youth first enters a shelter?	388-145-2095	NA	NA
WAC 388-160-0055	How does the department decide how many youth I may serve in my overnight youth shelter?	388-145-1365(2)	NA	NA
WAC 388-160-0065	How old do I have to be to apply for a shelter license?	388-145-1320	NA	NA
WAC 388-160-0075	What qualifications does a person need to care for youth at an overnight youth shelter?	388-145-1330	NA	NA
WAC 388-160-0085	Who must be on the premises when youth are present at an overnight youth shelter?	388-145-1430(1) 388-145-1435 388-145-2090	NA	NA
WAC 388-160-0095	What qualifications must a program supervisor have in order to work in a shelter?	388-145-1430 (now called program manager)	NA	NA
WAC 388-160-0105	What qualifications must a lead counselor have in order to work in a shelter?	388-145-1445 (now called direct care staff)	NA	NA
WAC 388-160-0115	What minimum qualifications must child care staff, lead counselors, interns, and volunteers have in order to work in a shelter?	388-145-1445 (direct care staff) 388-145-1475 (volunteers and interns)	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-160-0125	What training is required for overnight youth shelter staff, lead counselors, interns and volunteers?	388-145-1490 (preservice) 388-145-1495 (in-service) 388-145-1500 (first aid/ CPR) 388-145-1505 (HIV/AIDS)	NA	NA
WAC 388-160-0135	What is the required ratio of staff to youth in a shelter?	388-145-2040	NA	NA
WAC 388-160-0145	How do I apply or reapply for a license?	388-145-1325	NA	NA
WAC 388-160-0155	May I receive more than one type of group care license at the same physical location?	388-145-1380	NA	NA
WAC 388-160-0165	Does the department put limitations or conditions on a person who is licensed?	Eliminated, covered by 388-145-1365	NA	NA
WAC 388-160-0175	Does the department allow exceptions to the licensing requirements?	388-145-1395	NA	NA
WAC 388-160-0185	Does the department issue probationary licenses?	388-145-1415	NA	NA
WAC 388-160-0195	When must the department deny, suspend or revoke a license?	388-145-1390(1)	NA	NA
WAC 388-160-0205	Are there other reasons the department must suspend my overnight youth shelter license?	Eliminated, in consultation with the AGO. We would just cite the statute.	NA	NA
WAC 388-160-0215	When may the department suspend or revoke my overnight youth shelter license?	388-145-1390(2)	NA	NA
WAC 388-160-0225	How does the department notify me if my license is modified, denied, suspended or revoked?	388-145-1390(3)	NA	NA
WAC 388-160-0235	What may I do if I disagree with the department's decision to modify, deny, suspend or revoke my license?	388-145-1405	NA	NA
WAC 388-160-0245	What incidents involving youth must I report?	388-145-1535	NA	NA
WAC 388-160-0255	Are there other reporting requirements?	388-145-1635 288-145-1885(3)	NA	NA
WAC 388-160-0265	Do I need to report runaway youth who stay at the shelter?	388-145-2095	NA	NA
WAC 388-160-0275	What changes to my overnight youth shelter must I report to my licensor?	388-145-1550	NA	NA
WAC 388-160-0285	What are the department's requirements for keeping client records?	388-145-1520	NA	NA
WAC 388-160-0295	Do I need a citizens' board for my overnight youth shelter?	388-145-2115	NA	NA
WAC 388-160-0305	What personnel policies must I have?	388-145-1420 (1)(d) 388-145-1510 (1)(m)	NA	NA
WAC 388-160-0315	What personnel records must I keep?	388-145-1510	NA	NA
WAC 388-160-0325	Where must I post my license?	388-145-1345	NA	NA
WAC 388-160-0335	What other information must I keep readily available?	388-145-1430(2) 388-145-1515(2)	NA	NA
WAC 388-160-0345	Are local ordinances part of our licensing requirements?	388-145-1355	NA	NA
WAC 388-160-0355	What fire safety requirements must I follow to qualify for a license?	388-148-1665	NA	NA
WAC 388-160-0365	Where may my shelter be located?	388-145-1555(9)	NA	NA
WAC 388-160-0375	May I have firearms in my overnight youth shelter?	388-145-1660	NA	NA
WAC 388-160-0385	What substances are prohibited at overnight youth shelters?	388-145-1655 388-145-1650	NA	NA
WAC 388-160-0395	What are your requirements for storing dangerous items?	388-145-1580	NA	NA
WAC 388-160-0405	Do I need to have first-aid supplies?	388-145-1640	NA	NA

PREVIOUS WAC		NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC		388-145	388-147	388-148
WAC 388-160-0415	What structural safety requirements must my facility meet?	388-145-1555	NA	NA
WAC 388-160-0425	What measures must I take for pest control?	388-145-1555(4)	NA	NA
WAC 388-160-0435	What are your requirements for kitchens?	388-145-1555(3)	NA	NA
WAC 388-160-0445	What are the requirements for bedrooms in shelters?	388-145-2105	NA	NA
WAC 388-160-0455	What are your requirements for bedding?	388-145-2110	NA	NA
WAC 388-160-0465	What telephone requirements must I follow?	388-145-1555(10)	NA	NA
WAC 388-160-0475	What are the lighting requirements for my overnight youth shelter?	388-145-1555(2)	NA	NA
WAC 388-160-0485	What are the requirements about drinking water?	388-145-1585(3)	NA	NA
WAC 388-160-0495	What are your requirements for laundry facilities?	388-145-1615	NA	NA
WAC 388-160-0505	What are the requirements for washing clothes?	388-145-1615 (3)(f)	NA	NA
WAC 388-160-0515	What are the requirements for toilets, sinks, and bathing facilities in shelters?	388-145-1560	NA	NA
WAC 388-160-0525	Do overnight youth shelters require a housekeeping sink?	388-145-1560(3)	NA	NA
WAC 388-160-0535	What are the requirements for sewage and liquid wastes?	388-145-1585 (1) and (2)	NA	NA
WAC 388-160-0545	What health and emergency policies and procedures must I have?	388-145-1635(5)	NA	NA
WAC 388-160-0555	How must I manage medications for youth at my shelter?	388-145-1855	NA	NA
WAC 388-160-0565	What must I do to prevent the spread of infections and communicable diseases?	388-145-1635	NA	NA
WAC 388-160-0575	What nutritional guidelines must I follow?	388-145-1790(1)	NA	NA
WAC 388-160-0585	What are your requirements for protecting a youth under my care from child abuse and neglect?	388-145-1390 (1)(g)	NA	NA
WAC 388-160-0595	What are the requirements about nondiscrimination?	388-145-1710	NA	NA
WAC 388-160-0605	What religious activities are allowed in overnight youth shelters?	388-145-1705	NA	NA
WAC 388-160-0615	How much supervision is required for child care staff and volunteers?	388-145-1460	NA	NA
WAC 388-160-0625	What requirements must I follow when disciplining youth?	388-145-1815	NA	NA
WAC 388-160-0635	What types of disciplinary practices are forbidden?	388-145-1815 (8) and (9)	NA	NA
WAC 388-160-0645	What types of physical restraint are acceptable for youth in overnight youth shelters?	388-145-1820 (1) and (2)	NA	NA
WAC 388-160-0655	What types of physical restraint are not acceptable in overnight youth shelters?	388-145-1820(3)	NA	NA
WAC 388-160-0665	Do I need to document instances when physical restraint is used?	388-145-1825	NA	NA
NEW WAC CONTENT - NOT IN PREVIOUS WAC		388-145	388-147	388-148
When will the department grant me a license?		388-145-1315		
What happens when licensing requirements differ from contract requirements?		388-145-1375	388-147-1370	388-148-1335
When may I be certified to provide care to children?		388-145-1385		
What are the requirements for volunteers working directly with children/youth at my facility?		388-145-1475	388-147-1490	
What are the requirements for volunteers working directly with children/youth?			388-147-1490	
What are my reporting requirements in my licensed facility serving runaway or homeless youth?		388-145-1545		

PREVIOUS WAC	NEW WAC		
Chapters 388-145, 388-147, 388-148, and 388-160 WAC	388-145	388-147	388-148
What are the requirements for the use of electronic monitors to monitor children?	388-145-1625		
What requirements must be followed for carbon monoxide detectors?	388-145-1680		
What are additional considerations in service to Native American children?	388-145-1715		
Can children in my care receive services through the extended foster care program?	388-145-1740	388-147-1615	388-148-1535
What is the purpose of the resource and assessment center?	388-145-2150		
What must I demonstrate to be licensed for an [a] RAC?	388-145-2155		
What is the ratio of direct care staff/volunteers to children at an [a] RAC?	388-145-2160		
Who are the residents at my RAC?	388-145-2165		
How long can a child stay at an [a] RAC?	388-145-2170		
When am I required to be available for services?	388-145-2175		
Who may place children at an [a] RAC?	388-145-2180		
What services are provided or arranged for at an [a] RAC?	388-145-2185		
How long is my license valid?		388-147-1355	
Who shall have access to my agency?		388-147-1360	
What must be included in a home study completed by my agency?		388-147-1380	
What is the preservice training requirement for staff and volunteers having direct care responsibility to children/youth?	388-145-1490	388-147-1500	
What is the in-service training requirement for staff and volunteers having responsibility to provide care to children/youth?	388-145-1495		
What is the requirement for staff in-service training?		388-147-1505	
What qualifications must adoption services staff meet?		388-147-1660	
What staff training must I provide?		388-147-1665	
Do I need to provide potential adoptive families with a program description?		388-147-1675	
What information regarding fees must I share with my applicants?		388-147-1680	
What are the requirements regarding contacts with each adoptive placement prior to adoption?		388-147-1685	
What steps must I take prior to entering into a contract with an adoptive applicant?		388-147-1690	
What must I include in an adoption home study?		388-147-1695	
How will the department process a complaint against my agency?		388-147-1710	
Are there additional requirements for international adoptions?		388-147-1715	
What training must I provide prospective adoptive parents?		388-147-1725	
What must I include in a post placement report?		388-147-1730	

Licensed foster parents, child-placing agencies, adoption centers, and group care facilities may be impacted by these requirements. Group care facilities include semi-secure and secure crisis residential centers, emergency respite centers, group homes, group receiving centers, overnight youth shelters, resource and assessment centers, and staffed residential homes. Services provided by these license types include services to medically fragile and intellectual and developmental disabilities (formerly severe developmental disabilities), pregnant and parenting youth and maternity services, and day treatment services.

Reasons Supporting Proposal: Foster home requirements are currently combined with other types of licensing requirements, such as requirements for child-placing agencies, adoption centers and group care facilities. New chapters are specific to license type, providing foster parents a stand-alone chapter specific to foster home licensing. Single clearly-defined chapters for foster homes, child-placing agencies and

adoption centers, and group care facilities will assist stakeholders with accessing requirements specific to their license type.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-145-0010, 388-145-0020, 388-145-0030, 388-145-0040, 388-145-0050, 388-145-0060, 388-145-0070, 388-145-0080, 388-145-0090, 388-145-0100, 388-145-0110, 388-145-0120, 388-145-0130, 388-145-0140, 388-145-0150, 388-145-0160, 388-145-0170, 388-145-0180, 388-145-0190, 388-145-0200, 388-145-0210, 388-145-0220, 388-145-0230, 388-145-0240, 388-145-0250, 388-145-0260, 388-145-0270, 388-145-0280, 388-145-0290, 388-145-0300, 388-145-0310, 388-145-0320, 388-145-0330, 388-145-0340, 388-145-0350, 388-145-0360, 388-145-0370, 388-145-0380, 388-145-0390, 388-145-0400, 388-145-0410, 388-145-0420, 388-145-0430, 388-145-0440, 388-145-0450, 388-145-0460, 388-145-0470, 388-145-0480, 388-145-0490, 388-145-0500, 388-145-0510, 388-145-0520, 388-145-0530, 388-145-0540,

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 388-160-0525, 388-160-0535, 388-160-0545, 388-160-0555,
 388-160-0565, 388-160-0575, 388-160-0585, 388-160-0595,
 388-160-0605, 388-160-0615, 388-160-0625, 388-160-0635,
 388-160-0645, 388-160-0655, and 388-160-0665.

Statutory Authority for Adoption: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030.

Other Authority: Chapter 105, Laws of 2013 (HB 1261).

Adopted under notice filed as WSR 14-17-128 on August 20, 2014.

Changes Other than Editing from Proposed to Adopted Version:

WAC	Proposed Rule	Adopted Rule	Reason
<p>388-145-1335 (4), (5), (6)</p>	<p>(a) We may grant an exception to the test requirement, in consultation with a licensed health care provider.</p> <p>(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.</p> <p>(5) If you are being licensed to care for children under the age of two, you, your employees and volunteers are required to provide documentation verifying you have current pertussis and influenza vaccinations. We recommend (but do not require) these immunizations for you, your employees and volunteers when you serve children age two and older.</p>	<p>(a) We may grant an exception to the <u>TB</u> test requirement, in consultation with a licensed health care provider.</p> <p>(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.</p> <p>(5) If you are being licensed to care for children under the age of two, you, your employees and volunteers <u>working in the facility caring for children under the age of two</u> are required to provide documentation verifying you have current pertussis and influenza vaccinations. We recommend (but do not require) these immunizations for you, your employees and volunteers when you serve children age two and older.</p> <p><u>(6) You must have proof of current immunizations for any children living on the premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exceptions to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA or ARNP).</u></p>	<p>In consideration of recommendations from the department of health and in consultation with the children's administration regional medical consultants.</p>
<p>388-145-1475 (1)(b)</p>	<p>(b) Be supervised at all times by at least one paid staff member or designated volunteer meeting the qualifications of a program manager, working on-site. (This designated volunteer meeting program manager qualifications may provide direct care unsupervised.); and</p>	<p>(b) Be supervised at all times by at least one paid staff member or designated volunteer meeting the qualifications of a program manager, working on-site. (This designated vVolunteers meeting program manager qualifications may provide direct care unsupervised.); and</p>	<p>For clarity; as a result of comments received.</p>
<p>388-145-1490(1)</p>	<p>(1) Prior to having unsupervised contact with children, staff and volunteers must have a minimum of sixteen hours of preservice training, including policies and procedures, job responsibilities and facility administration. This requirement is in addition to required first aid and cardiopulmonary training (CPR) in WAC 388-145-1500 and required HIV/AIDS/blood borne pathogen training in WAC 388-145-1505.</p>	<p>(1) Prior to having unsupervised contact with children, staff and volunteers must have a minimum of sixteen hours of preservice training, including policies and procedures, job responsibilities and facility administration. This requirement is in addition to required first aid and cardiopulmonary training (CPR) in WAC 388-145-1500 and required HIV/AIDS/blood borne pathogen training in WAC 388-145-1505. Pre-</p>	<p>Changed to allow facilities to have flexibility in preservice training curriculum requirements specific to their program services.</p>

WAC	Proposed Rule	Adopted Rule	Reason
	Preservice training should include the following:	service training should <u>must be relevant to the type of children and families and the program services you provide. Preservice training will usually</u> include the following:	
388-145-1495(2)	(2) Staff must complete a minimum of twenty-four hours of on-going education and in-service training annually. Training must include:	(2) Staff must complete a minimum of twenty-four hours of on-going education and in-service training annually. Training must <u>be relevant to the problems experienced by the children you serve, which usually will</u> include:	Changed to allow facilities to have flexibility in preservice training curriculum requirements specific to their program services.
388-145-1515 (3)(d)	(d) Written documentation or staff briefings between shifts regarding the whereabouts of any child or youth currently off-site; and	(d) <u>Except for overnight youth shelters,</u> Written documentation or staff briefings between shifts regarding the whereabouts of any child or youth currently off-site; and	In consideration of comments; excludes overnight youth shelters from requirement.
388-145-1520(2)	(2) During a child's placement, the child's record must be kept secure at the site and contain, at a minimum, the following:	(2) During a child's placement, the child's record must be kept secure at the site. <u>Your facility must attempt to obtain the following information for the child's record, as appropriate to your program and contain at a minimum, the following:</u>	For clarity; as a result of comments received.
388-145-1530(2)	(2) You may discuss information about the child, the child's family and the case plan only with:	(2) <u>For children placed by the department,</u> You may discuss information about the child, the child's family and the case plan only with:	For clarity; this requirement applies only for children placed by the department.
388-145-1535 (1)(d)	(d) Any disclosure of sexual or physical abuse by a child in care;	(d) Any disclosure <u>by a child in care</u> of sexual or physical abuse by a child in care;	For clarity; as a result of comments received.
388-145-1535(2)	(2) You must report the following incidents related to a child in care as soon as possible or in no instance later than forty-eight hours, to the child's DSHS worker:	(2) You must report the following incidents related to a child <u>with an assigned DSHS worker</u> in care as soon as possible or in no instance later than forty-eight hours, to the child's DSHS worker <u>(if any):</u>	For clarity; as a result of comments received.
388-145-1540 Question	What are my reporting responsibilities when a child is missing from care?	What are my reporting responsibilities when a child is missing from care <u>(except for overnight youth shelters)?</u>	In consideration of comments; excludes overnight youth shelters from requirement.
388-145-1730 Question and (1)	What are the educational and vocational instruction requirements for children (except interim facilities)? (1) You must meet the following requirements for providing education and vocational instruction to the children. For each child you must:	What are the educational and vocational instruction requirements for children <u>placed by the department</u> (except interim facilities)? (1) You must meet the following requirements for providing education and vocational instruction to the children <u>placed by the department.</u> For each child you must:	For clarity; this requirement applies only for children placed by the department.

WAC	Proposed Rule	Adopted Rule	Reason
388-145-1835	(1) After a child is admitted to your program you must ensure that a child receives an initial health screen or physical exam as soon as possible but no later than five days after entering your program. The initial health screen involves a review of the child for any health needs requiring immediate attention. You do not need to take a child to get this screen if you received the children directly from a hospital, pediatric interim care, or the child is receiving services through a child advocacy center or sexual assault clinic.	(1) After a child is admitted to your program <u>(other than overnight youth shelters)</u> you must ensure that a child receives an initial health screen or physical exam as soon as possible but no later than five days after entering your program. The initial health screen involves a review of the child for any health needs requiring immediate attention. You do not need to take a child to get this screen if you received the children directly from a hospital, pediatric interim care, or the child is receiving services through a child advocacy center or sexual assault clinic.	In consideration of comments; excludes overnight youth shelters from requirement.
388-145-1840	Children who are in out-of-home care must receive an early and periodic screening, diagnosis and treatment (EPSDT) exam within thirty days, unless they have had an EPSDT exam in the previous thirty days, except for children placed by DDA through a voluntary placement agreement. Children also receive subsequent periodic EPSDT exams; information on these required exams may be obtained from the child's DCFS worker.	Children who are in out-of-home care must receive an early and periodic screening, diagnosis and treatment (EPSDT) exam within thirty days, unless they have had an EPSDT exam in the previous thirty days, except for <u>overnight youth shelters</u> and children placed by DDA through a voluntary placement agreement. Children also receive subsequent periodic EPSDT exams; information on these required exams may be obtained from the child's DCFS worker.	In consideration of comments; excludes overnight youth shelters from requirement.
388-145-1855(4)	(4) You must not reduce or stop a child's prescribed medication without the written approval of the child's physician. You must report this information to the child's DSHS worker. In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's social worker. The social worker may need to obtain consent from the child age thirteen or older, the parent, or the court.	(4) You must not reduce or stop a child's prescribed medication without the written approval of the child's physician. You must report this information to the child's DSHS worker. In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's social worker <u>to determine what consent is needed</u> . The social worker may need to obtain consent from the child age thirteen or older, the parent, or the court.	For clarity; as a result of comments received.
388-145-1885	(2) If a child who has not received all recommended immunizations is placed in your care, you must take the child to a health care provider as soon as medically possible for catch-up immunizations according to the ACIP/CDC catch-up schedule.	(2) <u>Except for overnight youth shelters</u> , if a child who has not received all recommended immunizations is placed in your care, you must take the child to a health care provider as soon as medically possible for catch-up immunizations according to the ACIP/CDC catch-up schedule.	In consideration of comments; excludes overnight youth shelters from requirement.

WAC	Proposed Rule	Adopted Rule	Reason
388-147-1335(2)	(2) You must have a site inspection by your DLR licensor or someone designated by DLR who can verify that your premises have:	(2) You must have a site inspection by your DLR licensor or someone designated by DLR who can verify that your <u>Washington state</u> premises have:	For clarity; to ensure physical location of agency is in Washington state.
388-147-1335	(3) You and your staff are required to submit a negative tuberculosis test or an X-ray. (a) We may grant an exception to this requirement, in consultation with a licensed health care provider.	(3) You and your staff are required to submit a negative tuberculosis test or an X-ray. (a) We may grant an exception to this requirement <u>the TB test</u> , in consultation with a licensed health care provider.	For clarity; as a result of comments received.
388-147-1350	(4) The department has the final approval of licenses for a foster parent applicant.	(4) The department has the final approval of licenses for a foster parent applicant.	This is a duplicate of 388-147-1345(4).
388-147-1490 (1)(b)	(b) Be supervised at all times by at least one paid staff member or a designated volunteer meeting the qualifications of a program manager, working on-site. (This designated volunteer meeting program manager qualifications may provide direct care unsupervised); and	(b) Be supervised at all times by at least one paid staff member or a designated volunteer meeting the qualifications of a program manager, working on-site. (This designated v <u>Volunteers</u> meeting program manager qualifications may provide direct care unsupervised); and	For clarity; as a result of comments received.
388-147-1500(1)	(1) Prior to having responsibility for direct care, staff and volunteers must have a minimum of sixteen hours of the following preservice training, including policies and procedures, job responsibilities and facility administration. This is in addition to the first aid and cardiopulmonary resuscitation training (CPR) in WAC 388-147-1510 and the HIV/AIDS/blood borne pathogen requirements in WAC 388-147-1515. Preservice training should include the following:	(1) Prior to having responsibility for direct care, staff and volunteers must have a minimum of sixteen hours of the following preservice training, including policies and procedures, job responsibilities and facility administration. This is in addition to the first aid and cardiopulmonary resuscitation training (CPR) in WAC 388-147-1510 and the HIV/AIDS/blood borne pathogen requirements in WAC 388-147-1515. Preservice training should <u>must be relevant to the type of children and families and the program services you provide.</u> <u>Preservice training will usually</u> include the following:	Changed to allow agencies to have flexibility in preservice training curriculum requirements specific to their program services.
388-147-1525(3)	(3) During a child's placement, the child's record must be maintained include the following:	(3) During a child's placement, the child's record must be maintained and include the following <u>you must attempt to obtain the following information for the child's record, as appropriate to your program:</u>	For clarity; as a result of comments received.
388-147-1535 (2)(b) 388-148-1410 (1)(b) 388-145-1530 (2)(b)	(b) A representative of the department of health and the office of the state fire marshal:	(b) A representative of the department of health and <u>the office of the state fire marshal and the office of the family and children's ombuds;</u>	In consideration of comments from the office of the family and children's ombuds.

WAC	Proposed Rule	Adopted Rule	Reason
388-147-1540 (1)(d)	(d) Any disclosure of sexual or physical abuse by a child in care;	(d) Any disclosure <u>by a child in care</u> of sexual or physical abuse by a child in care ;	For clarity; as a result of comments received.
388-147-1665 (2)(b)	(b) The adoption laws of any Convention country where your agency provides adoption services;	(b) The adoption laws of any Con- vention country where your agency provides adoption services;	For clarity; as a result of comments received.
388-148-1320(4), (5), (6)	(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the tuberculosis test, or have had a negative tuberculosis test in the previous twelve months.	(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the <u>TB tuberculosis</u> test, or have had a negative <u>TB tuberculosis</u> test in the previous twelve months. <u>(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA and ARNP).</u> <u>(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home.</u>	For clarity; as a result of comments received.
388-148-1555(3)	(3) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home.	(3) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home.	This section was placed into WAC 388-148-1320(6).
388-148-1590(2)	(2) In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's social worker. The social worker may need to obtain consent from the child age thirteen and older, the parent, or the court.	(2) In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's social worker <u>to determine what consent is needed</u> . The social worker may need to obtain consent from the child age thirteen and older, the parent, or the court.	For clarity; as a result of comments received.

A final cost-benefit analysis is available by contacting Randy Roberts, 1115 Washington Street, Olympia, WA 98504-5710, phone (360) 902-7872, fax (360) 902-7903, e-mail roberrrm@dshs.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 339, Amended 0, Repealed 508.

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 339, Amended 0, Repealed 508.

Date Adopted: December 11, 2014.

Kevin Quigley
Secretary

Chapter 388-145 WAC

~~((EMERGENCY RESPITE CENTERS))~~ LICENSING REQUIREMENTS FOR GROUP CARE FACILITIES AND SERVICES

Purpose and Definitions

NEW SECTION

WAC 388-145-1300 What is the purpose of this chapter? 1) This chapter contains licensing requirements for generalized group care facilities, group homes, crisis residential centers, emergency respite centers, group receiving centers, overnight youth shelters, staffed residential homes, and resource and assessment centers. These licensing regulations are designed to ensure children in group care facilities are safe, healthy and protected from all forms of child abuse and neglect according to RCW 26.44.020(1) and chapter 388-15 WAC.

2) These separately licensed programs may provide specialized services such as day treatment services, services to pregnant and parenting youth (maternity services), HOPE beds, responsible living skills programs and services to medically fragile children and children with intellectual and developmental disabilities. You must hold a group care license to provide the specialized services outlined in this chapter. These services can be provided through your own program or by using community resources.

NEW SECTION

WAC 388-145-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

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

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

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"CA" means children's administration.

"Capacity" means the age range, gender and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and/or cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter 388-145 WAC.

"Child", "children" or "youth" for this chapter, means a person who is one of the following:

- (1) Under eighteen years old;
- (2) Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;
- (3) Up to twenty-one years of age and participating in the extended foster care program;
- (4) Up to twenty-one years of age with intellectual and developmental disabilities;
- (5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family and/or in need of emergency placement.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"De-escalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care staff" means persons who provide daily supervision and direct care to group care children and youth.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies and licensed group care facilities.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse and/or neglect per RCW 74.15.020(d). ERCs may choose to be open up to twenty-hour hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an Overnight Youth Shelter, Emergency Respite Center or a Resource and Assessment Center.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or assigned DSHS worker. This does not include children in dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.

"Non-ambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or runaway youth in need of emergency sleeping arrangements.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

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

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staffed residential home" means a licensed facility that provides twenty-four hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or

guardian, and identifies the treatment goals and strategies for achieving those goals.

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

"Volunteer" means a person who provides direct care services without compensation, for your facility.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

Licensing Process

NEW SECTION

WAC 388-145-1310 Am I required to have a license to provide care to children? You must be licensed if you provide care on a twenty-four hour basis to a child who is not related to you. Exceptions to this rule are listed in RCW 74.15.020 or by order of the court under chapter 26.10 RCW or RCW 13.34.065.

NEW SECTION

WAC 388-145-1315 When will the department grant me a license? (1) We issue you a group care license to care for children on a twenty-four hour basis when you, your staff and volunteers, property and premises meet the licensing regulations contained in this chapter, and all required documents are in the licensing file.

(2) Additional requirements specific to your program can be found in WAC 388-145-1890 to 388-145-2200.

NEW SECTION

WAC 388-145-1320 How old do I have to be to apply for a license to provide care to children? You must be at least twenty-one years old to apply for a license to provide care to children.

NEW SECTION

WAC 388-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the division of licensed resources, children's administration.

(2) You must submit the following for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06 WAC:

(a) Completed background authorization form; and
(b) FBI fingerprint check if the individual over eighteen years of age has lived out of state during any portion of the previous three years.

(3) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until a full and satisfactory background check is completed and returned to you, qualifying the individual for unsupervised access. If your employee requires FBI fingerprints, they are allowed to

work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540.

NEW SECTION

WAC 388-145-1330 How does the department determine my suitability to become a licensed provider? (1)

The department determines your suitability as a licensed provider after receiving your application, background authorization(s) for those listed in WAC 388-145-1325(2), and all required documentation outlined in this chapter.

(2) You, your employees and volunteers must not have had a license or contract denied or revoked from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's safety, well-being and long-term stability.

(3) You, your employees and volunteers must not have been found to have committed abuse or neglect of a child or vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You must demonstrate that you, your employees and volunteers have:

(a) The understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under your care; and

(b) The ability to furnish children with a nurturing, respectful, and supportive environment.

(5) At any time, we may require you or your employees and volunteers to give us additional information. We may also require an evaluation of your facility or property, or of a staff person working for your facility or agency, by an evaluator we recommend. Any evaluation requested by the department will be at your expense. The evaluator must be given written permission to share information with us prior to and throughout the evaluation process.

(6) Any employee, intern, or volunteer who is found to have misrepresented or provided fraudulent information may be disqualified.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe environment for children and to provide the quality of care needed by children placed in your care. Your licensor will also determine that you meet training requirements.

NEW SECTION

WAC 388-145-1335 What additional steps must I complete prior to licensing? (1) You must submit to your licensor a detailed written program description for DLR approval. In the description you must outline:

(a) Your mission and goals;
(b) A description of the services you will provide to children and their families;

(c) Your written policies covering qualifications, duties and on-going training for developing and upgrading staff skills; and

(d) A description of your agency's policies and procedures.

(e) For staffed residential facilities in family homes, you must provide a written plan to the child's DSHS worker for the supervision of children in your care if you work outside of your staffed residential home.

(2) You must have a site inspection by your DLR licensor or someone designated by DLR who can verify that your premises have:

- (a) Adequate storage for staff and client files;
- (b) A land-line working telephone;
- (c) Adequate space for privacy when interviewing parents and children;
- (d) Room or area used for administrative purposes;
- (e) Adequate space for visitation;
- (f) Appropriate furnishings for the children in your facility; and
- (g) Your license clearly posted (if inspection is for a renewal license).

(3) All facilities described in this chapter, (except for staffed residential homes for five or fewer children), are required to meet the health requirements to receive a certificate of compliance from the Washington state department of health (DOH) and the fire safety requirements from the Washington state patrol fire protection bureau (WSP/FPB).

(4) You, your employees and volunteers are required to submit a negative tuberculosis test or an X-ray.

(a) We may grant an exception to the TB test requirement, in consultation with a licensed health care provider.

(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.

(5) If you are being licensed to care for children under the age of two, you, your employees and volunteers working in the facility caring for children under the age of two are required to provide documentation verifying you have current pertussis and influenza vaccinations. We recommend (but do not require) these immunizations for you, your employees and volunteers when you serve children age two and older.

(6) You must have proof of current immunizations for any children living on the premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exceptions to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA or ARNP).

NEW SECTION

WAC 388-145-1340 How long do I have to complete the licensing application process? (1) You must complete your licensing application and submit all DLR required documents within ninety days of submitting the application and background authorization forms to the department.

(2) If you do not meet this ninety-day deadline, your licensor may withdraw your application.

(3) As a courtesy, a renewal notification and renewal materials will be sent one hundred and twenty days prior to your license expiration date. If you do not receive this renewal notice it is your responsibility to contact your licensor.

(4) You must send the renewal application and all required background authorization forms to your licensor at least ninety days prior to the expiration of your current license.

NEW SECTION

WAC 388-145-1345 How long is my license valid? (1)

Your license is issued for a three-year period.

(2) Your license is valid only for the person or organization named on the license and only for the specific address listed on the license.

(3) Your license must be posted where the public can easily view it.

NEW SECTION

WAC 388-145-1350 Who shall have access to my facility? The department must have access to your facility, staff, and the children in your care at any time. You must allow us to meet privately with staff or children in your care, at our request. We must also have access to the documents related to your program.

NEW SECTION

WAC 388-145-1355 Am I required to comply with local ordinances? You are responsible for following all local and state regulations such as zoning regulations, community covenants, local building codes and fire codes. The department may require you to provide proof that you are complying with local regulations.

NEW SECTION

WAC 388-145-1360 What children may I serve in my group care program? (1) You may serve children who are at least six years of age and meet one of the following conditions:

- (a) Have behaviors that cannot be safely or effectively managed in foster care;
 - (b) Need temporary placement awaiting a more permanent placement;
 - (c) Need emergency placement during a temporary disruption of a current placement;
 - (d) Have emotional, physical, or mental disabilities;
 - (e) Need a transitional living setting;
 - (f) Need respite care from a licensed provider; or
 - (g) Are age sixteen or older and need to acquire independent living skills.
- (2) Your program may serve children younger than six years of age if it meets the following criteria:
- (a) Provides services to children with intellectual and developmental disabilities;
 - (b) Provides services to medically fragile children;
 - (c) Provides services to expectant mothers or parenting youth;
 - (d) Is licensed as a group receiving center;
 - (e) Is licensed as an emergency respite center;
 - (f) Is licensed as a resource and assessment center; or

(g) Is a facility approved and certified under chapter RCW 74.15.020 (2)(m).

NEW SECTION

WAC 388-145-1365 How does the department decide which children will be placed in my care? (1) The department is responsible for the safety and well-being of the children placed in its custody by the parents or the courts, and we will place children according to their best interest.

(2) We evaluate your ability to care for children. We specify the maximum number, age range, and gender of children on your license. We may base this on the skills and number of caretakers, the physical accommodations of your facility, and the children placed in your facility.

(3) Based on the evaluation, we may license you for the care of fewer children than you normally would serve in your category of care.

(4) Except for a staffed residential home for five or fewer children, the certification of occupancy from the Washington state department of health will be considered in deciding the number of children you may serve.

NEW SECTION

WAC 388-145-1370 Do I have to admit or retain all children? (1) You have the right to refuse to admit or retain a child in a program. The exceptions to this requirement are the individual programs that have contracts that specify a child cannot be denied admission.

(2) A joint decision may be made by the provider, the agency placing the child, and us to serve the child elsewhere, for the health and safety of the child or others.

NEW SECTION

WAC 388-145-1375 What happens when licensing requirements differ from contract requirements? You may hold a contract with the state to provide services. If you provide services as a group care facility you must also meet the licensing requirements outlined in this chapter. When contract or other statutory requirements differ from licensing, you must meet the highest standard.

NEW SECTION

WAC 388-145-1380 May a group care facility be issued more than one type of license? (1) A group care facility may not be licensed by DLR for more than one type of license in the same building (A group care facility and a CPA for example), unless the department determines that care of one type of client does not interfere with the care of another type of client, and you have approval from the DLR administrator. We may require separation of resident populations between the programs. You must meet the requirements for both licenses.

(2) If you have multiple licenses from different agencies in the same location, you must obtain approval from DLR prior to providing services and accepting placements.

NEW SECTION

WAC 388-145-1385 When may I be certified to provide care to children? (1) When you meet the licensing requirements, you may apply to us for certification of your facility, rather than a license, if the following conditions apply:

(a) You are exempt from needing a license (per chapter 74.15 RCW), and you wish to serve department-funded children; or

(b) You are licensed by authority of an Indian tribe within the state under RCW 74.15.190.

Rule Violations and Corrective Actions

NEW SECTION

WAC 388-145-1390 Will you license or continue to license me if I violate licensing regulations? (1) We may modify, deny, suspend or revoke your license when you, your employees or volunteers:

(a) Do not meet the licensing regulations in this chapter; or

(b) Have not met the background check requirements; or

(c) Have been determined by us to have abused or neglected a child; or

(d) Are unable to manage your property and financial responsibilities; or

(e) Tried to get a license by deceitful means, such as making false statements or omitting critical information on the application; or

(f) Knowingly allowed employees or volunteers who made false statements or omitted critical information on their applications to work at your agency; or

(g) Cannot provide for the safety, health and well-being of the child(ren) in your care.

(2) We may suspend or revoke your license if you have children in your facility for whom you are not licensed, without approval by your DLR licensor. This includes having more children, or children of different ages or gender than the license allows.

(3) We will send you a certified letter informing you of the decision to modify, deny, suspend or revoke your license. In the letter, we will also tell you what you need to do if you disagree with the decision.

(4) The department has jurisdiction over all licenses issued by DLR and over all holders of and applicants for licenses as provided in RCW 74.15.030(5). Such jurisdiction is retained even if an applicant requests to withdraw the application, or you surrender or fail to renew your license.

NEW SECTION

WAC 388-145-1395 Are there exceptions made if I do not meet the licensing regulations? (1) We may make exceptions and license or continue to license you if you do not meet the minimum licensing regulations. We may allow this if you can demonstrate that you can provide for the safety, health and well-being of children in your care.

(2) In addition, we may limit or restrict your license and/or require you to enter into a compliance agreement to ensure the safety and well-being of the children in your care.

(3) You must keep a copy of the approved exception to the licensing regulations in your files.

(4) You do not have appeal rights if the department denies your request for an exception to the licensing regulations.

NEW SECTION

WAC 388-145-1400 Can employees, volunteers and subcontractors be disqualified from having access to the children in my facility? (1) The department must disqualify employees, volunteers or subcontractors if they do not meet the regulations of chapter 388-145 WAC, or cannot have unsupervised access to children because of their background check as outlined in chapter 388-06 WAC.

(2) We will notify you if a person in your facility is disqualified from having unsupervised access to children. This could also lead to denial, suspension or revocation of your license.

NEW SECTION

WAC 388-145-1405 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check? (1) You have the right to request an administrative hearing if you disagree with any of these actions. You must request this hearing within twenty-eight calendar days of receiving a certified letter with our decision (see chapter 34.05 RCW). To request a hearing you must send a letter to the office of administrative hearings, P.O. Box 42489, Olympia, Washington 98504-2456, 1-800-583-8271. The letter must have the following:

(a) A specific statement indicating why you disagree with our decision and any laws you believe are related to your claim; and

(b) A copy of the certified letter we sent to modify, revoke, suspend, or deny your license or to disqualify your background check.

NEW SECTION

WAC 388-145-1410 How do I appeal the decision of the office of administrative hearings' administrative law judge? (1) The decision of the administrative law judge is the final decision of the department unless you or the department files a petition for review with DSHS board of appeals within twenty-one calendar days after the administrative law judge's decision is mailed to the parties.

(2) The procedure for requesting or responding to a petition for review with the board of appeals is described in WAC 388-02-0560 through WAC 388-02-0635.

(3) We will not appeal decisions made by the board of appeals.

(4) If you disagree with the board of appeals, you may file a petition in superior court and ask for further review (RCW 34.05.510 to 34.05.598).

NEW SECTION

WAC 388-145-1415 Can I be issued a probationary license? (1) We may issue a probationary license in order to correct a deficiency.

(2) We will consider the following when deciding whether a probationary license will be issued:

(a) An intentional or negligent violation of licensing regulations;

(b) A history of violation of licensing regulations;

(c) A current violation of licensing regulations;

(d) Whether you are making a good faith effort to comply; and

(e) Any other factors relevant to the specific situation.

(3) A probationary license may be issued for up to six months. At our discretion, we may extend the probationary license for an additional six months. You may not appeal our decision to not issue a probationary license.

Staff Qualifications and Requirements

NEW SECTION

WAC 388-145-1420 Who must I employ at my facility? (1) You must employ sufficient numbers of qualified staff to meet the physical, safety, health, and emotional needs of the children placed in your care, appropriate for their age and developmental level. Employers and caregivers must:

(a) Demonstrate competency, good judgment, and self-control in the presence of children and when performing duties;

(b) Report suspected abuse, neglect, and exploitation to the children's administration intake and to the designated administrator or supervisor;

(c) Know and comply with rules established in this chapter as well as all other applicable laws; and

(d) Comply with federal and state anti-discrimination laws related to personnel policies and procedures.

(2) Staff, volunteers, and others caring for children at your facility must provide children with:

(a) Appropriate adult supervision;

(b) Emotional support;

(c) Personal attention; and

(d) Structured daily routines and living experiences.

NEW SECTION

WAC 388-145-1425 What are the qualifications of an executive director or administrator? (1) You must have an executive director or administrator who is available telephonically during business hours and meets the qualifications to:

(a) Manage the financial and administrative operations of the program;

(b) Ensure that the program complies with the licensing rules contained in this chapter;

(c) Effectively communicate to the department the roles, expectations, and purposes of the program;

(d) Assume responsibility for safety of children in your facility; and

(e) Work with representatives of other agencies.

(2) An executive director or administrator must have:

- (a) Appropriate education relevant to the specific program; and
- (b) Four years of successful experience with similar duties and responsibilities for the administrative oversight, program and fiscal management of an agency.

NEW SECTION

WAC 388-145-1430 What are the requirements of an on-site program manager? (1) On days your facility is operational, you must have an on-site program manager at your facility during business hours when youth are present. Staffed residential facilities licensed for five or fewer are required to have an on-site program manager during business hours when youth are present if the focus of the program is behavioral and a child's behavior poses a risk. The on-site program manager must meet the qualifications to:

- (a) Coordinate the day-to-day operations of the program;
- (b) Supervise the case management and direct care staff; and
- (c) Have the responsibility to ensure the completion of each child's plan of care and treatment.
- (2) When youth are not present and the program manager is not on-site, s/he must be available by telephone.
- (3) An on-site program manager must have:
 - (a) A master's degree in social services or a closely related field from an accredited school and one year of experience working with children or youth; or
 - (b) A bachelor's degree in social services or a closely related field from an accredited school and two years of experience working with children or youth; or
 - (c) Five years of successful full-time experience in a relevant field; and
 - (i) Supervisory abilities that promote effective staff performance; and
 - (ii) Relevant experience, training and demonstrated skills in each area that s/he will be managing or supervising.
- (4) An on-site program manager must not provide clinical oversight to case management staff unless they meet the supervision requirements in WAC 388-145-1440(3).
- (5) A case management staff or person with equivalent training and experience of an on-site program manager may satisfy this requirement.
- (6) For overnight youth shelters, the required prior experience must be in working with adolescents.

NEW SECTION

WAC 388-145-1435 What if my on-site program manager must be off-site temporarily when youth are present? The on-site program manager must leave a competent designated staff person in charge who meets the on-site program manager qualifications, if the manager must be temporarily absent.

NEW SECTION

WAC 388-145-1440 What are the requirements of case management staff? (1) Case management staff will provide individualized case management and coordination of services.

(2) Case management staff must have a master's or bachelor's degree in social services or a closely related field from an accredited school.

(3) Case management staff who has only a bachelor's degree must consult with a person with a master's degree in social services or closely related field. One hour of consultation must occur every twenty hours the employee works.

- (4) Case managers must maintain:
 - (a) Training, experience, knowledge, and demonstrated skills in each area s/he will be supervising;
 - (b) Skills and understanding needed to effectively manage cases; and
 - (c) The ability to monitor staff development and training.
- (5) You may use case management staff provided by another agency if these staff meet the educational qualifications and you have a written agreement with the agency describing the scope of services to be provided.

NEW SECTION

WAC 388-145-1445 What are the qualifications of direct care staff? (1) Each direct care staff must:

- (a) Be at least twenty-one years of age, unless they meet the requirements in subsection (2) of this section;
- (b) Have a high school diploma or high school or equivalency course of study (GED/HSEC);
- (c) Have one year of experience working directly with children. Two years of social services education may be substituted for the required experience;
- (d) Have the skills and ability to work successfully with the special needs of children in care; and
- (e) Have effective communication and problem-solving skills.
- (2) Direct care staff may be between eighteen and twenty-one years of age if enrolled in an internship or practicum program with an accredited college or university and can provide sufficient documentation.
- (3) Direct care staff under twenty-one years of age must be supervised by staff at least twenty-one years of age.
- (4) You must maintain sufficient direct care staff who meet the education and training requirements defined in this chapter.
- (5) Case aides must meet the requirements for direct care staff.

NEW SECTION

WAC 388-145-1450 What additional qualifications must the crisis residential center direct care staff have?

- (1) At least 50 percent of the direct care staff at a CRC must have completed:
 - (a) A bachelor's degree; or
 - (b) At least two years of college and one year of work in a group residential program for adolescents; and
 - (c) Direct care staff at a CRC may substitute experience for education on a year-for-year basis.
- (2) The remaining direct care staff at a CRC must have a minimum of a high school diploma or high school equivalency course of study (GED/HSEC) and one of the following:
 - (a) One year of successful experience working with youth in a group setting; or

(b) One year of successful experience as a foster parent; and

(c) Two years of college may be substituted for the required experience.

(3) The primary duties of the direct care staff at a crisis residential center are the care, supervision, and behavioral management of youth.

NEW SECTION

WAC 388-145-1455 If I have health care staff, what qualifications are required? (1) If your program requires health care staff, they must:

(a) Meet the full professional competency requirements in their respective field; and

(b) Maintain their certification or licensure as required.

(2) Applicants with current and active medical licenses or certificates (nurses, physicians and EMS personnel) may submit their licenses or certificates to satisfy the first aid requirement.

NEW SECTION

WAC 388-145-1460 Do I need to employ consultants at my facility? (1) You must have case management consultants available as needed to work with your staff, the children you serve, and the children's families. Other consultants may be used for program support.

(2) A case management consultant is responsible to:

(a) Review treatment, case plans, or adoption home studies as appropriate;

(b) Provide one hour of consultation/supervision to case management staff for every twenty hours a person works. Staff consultations shall be documented and available to staff on an as-needed basis; and

(c) Monitor staff's skill development in order to effectively manage their cases.

(3) Each case management consultant must have:

(a) A master's degree in social services or a closely related field from an accredited school;

(b) The training, experience, knowledge and demonstrated skills for each area in which s/he will be supervising or advising;

(c) The ability to ensure staff develop their skills, are adequately trained and have the understanding needed to effectively manage cases; and

(d) Knowledge of mandatory child abuse and neglect reporting requirements.

(4) Consultants may be hired as staff or operate under a contract and must meet the full professional competency requirements and academic training in their respective fields.

(5) If you have consultants working in emergency respite centers, they must also have training and experience in early childhood education.

NEW SECTION

WAC 388-145-1465 What additional supports do I need for my group care facility? (1) You must have sufficient clerical, accounting and administrative services to maintain proper records and carry out your program.

(2) You must have sufficient support and maintenance services to maintain and repair your facility, and to prepare and serve meals.

NEW SECTION

WAC 388-145-1470 Can one staff person have different responsibilities? (1) The same person may have multiple staff roles and responsibilities as long as they meet the staff qualifications for each position and you maintain the required staffing ratios.

(2) The executive director/administrator may:

(a) Serve as the program manager when qualified for both positions; and

(b) Serve as direct care staff when the role does not interfere with the director's management and supervisory responsibilities.

NEW SECTION

WAC 388-145-1475 What are the requirements for volunteers working directly with children/youth at my facility? (1) These volunteers must meet the licensing requirements listed in this chapter, including meeting the qualifications for direct care staff and must:

(a) Be at least twenty-one years of age unless they are between eighteen and twenty-one years of age in an internship or practicum as per WAC 388-145-1445;

(b) Be supervised at all times by at least one paid staff member or designated volunteer meeting the qualifications of a program manager, working on-site. (Volunteers meeting program manager qualifications may provide direct care unsupervised.); and

(c) Receive the facility's pre-service training that addresses the needs of the population of children in care.

NEW SECTION

WAC 388-145-1480 What are the general ratios of staff to children under care? (1) You must have at least one case manager providing case management services for every twenty-five children in care.

(2) If you provide care as a group receiving center, emergency respite center, or a resource and assessment center, you must have at least one case manager for every fifteen children in care.

(3) If you provide care as a secure, semi-secure and regular crisis residential center, you must have one case manager at a minimum, and must maintain a ratio of one case manager for every 6 children in care.

(4) Staffing ratios specific to your program are outlined in WAC 388-145-1890 through 388-145-2200.

(5) If you have both a license and a contract for services, you must adhere to the most stringent staffing ratios.

(6) To keep the proper ratio of staff to children, the executive director, health care staff, on-site program manager, support staff and maintenance staff may serve temporarily as direct care staff if they meet all other direct care staff qualifications and training.

(7) You must have relief staff so that all staff can have the equivalent of two days off a week. This is not required for

family members if you have a staffed residential facility in a family residence.

(8) Children must be supervised during sleeping hours by at least one awake staff when:

(a) There are more than six children in care; and

(b) The major focus of the program is behavioral rather than the development of independent living skills such as a teen parent program or responsible living skills program; or

(c) The behavior of at least one of the youth poses a risk to self or others.

(9) Staffing ratios may be higher than the minimum listed if necessary for the health and safety of children and/or staff, or per contract requirement.

(10) You must have one back-up or on-call person available at all times to report to the facility as soon as possible but no later than thirty minutes.

NEW SECTION

WAC 388-145-1485 May I have more than one licensed program at my facility? If you have more than one program in a building you must submit a plan to your licensor detailing how you plan to manage each of the programs.

Training and Professional Development

NEW SECTION

WAC 388-145-1490 What is the pre-service training requirement for staff and volunteers having direct care responsibility to children/youth? (1) Prior to having unsupervised contact with children, staff and volunteers must have a minimum of sixteen hours of pre-service training, including policies and procedures, job responsibilities and facility administration. This requirement is in addition to required first aid and cardiopulmonary training (CPR) in WAC 388-145-1500 and required HIV/AIDS/blood borne pathogen training in WAC 388-145-1505. Pre-service training must be relevant to the type of children and families and the program services you provide. Pre-service training will usually include the following:

(a) Child abuse and neglect identification and reporting requirements;

(b) Incident reporting;

(c) Accessing community resources;

(d) Client confidentiality;

(e) Family dynamics and family intervention techniques;

(f) Licensing regulations specific to your facility;

(g) Child development;

(h) Grief and loss;

(i) Cultural needs of children in care;

(j) Sexually exploited youth;

(k) Behavior management and crisis intervention techniques;

(l) Conflict resolution or problem solving skills;

(m) Substance abuse;

(n) Sexually aggressive and physically aggressive/assaultive training;

(o) Effects of trauma on children;

(p) Youth supervision requirements; and

(q) Fire safety and emergency planning.

(2) New staff and volunteers must work shifts with fully trained staff until the new staff and volunteers have completed all required training.

NEW SECTION

WAC 388-145-1495 What is the in-service training requirement for staff and volunteers having responsibility to provide care to children/youth? (1) If you have employees in your agency, you must offer in-service training programs for developing and upgrading staff skills. If you have five or more employees or volunteers, your training plan must be in writing.

(2) Staff must complete a minimum of twenty-four hours of on-going education and in-service training annually. Training must be relevant to the problems experienced by the children you serve, which usually will include:

(a) Crisis intervention techniques, including verbal de-escalation, positive behavior support, and physical response/restraint training as approved by the department;

(b) Behavior management techniques;

(c) Substance abuse;

(d) Suicide prevention, assessment and intervention;

(e) Family intervention techniques;

(f) Indian child welfare and working with Native American children

(g) Cultural diversity;

(h) Mental health issues and interventions;

(i) Mediation skills;

(j) Conflict management/problem-solving skills;

(k) Child abuse and neglect;

(l) Characteristics and management of sexually aggressive or otherwise predatory behavior and physically assaultive behavior;

(m) Emergency procedures;

(n) HIV/AIDS/Blood Borne Pathogens; and

(o) Fire safety and emergency planning.

(3) You must discuss with your staff updated policies and procedures as well as the rules contained in this chapter.

(4) Your training on behavioral management must be approved by DLR and must include nonphysical, age-appropriate methods of redirecting and controlling behavior.

(5) You must document all training including a description of the training provided and the date of the training. This information must be kept in each employee's file or in a separate training file.

NEW SECTION

WAC 388-145-1500 What first aid and cardiopulmonary resuscitation (CPR) training is required? (1) You or any of your staff who provide supervision or direct care to children, must have basic standard first aid and age-appropriate cardiopulmonary resuscitation (CPR) training.

(a) The CPR training is not required for staff/volunteers with a statement from their physician that the training is not advised for medical reasons as long as another on-site staff person meets this training requirement.

(b) Training must be department-approved and be accredited according to nationally recognized standards.

NEW SECTION

WAC 388-145-1505 What HIV/AIDS and blood borne pathogens training is required? (1) You or any of your staff who provide supervision or direct care to children, must have training on HIV/AIDS, and blood borne pathogens, including infection control standards.

(2) You must use infection control requirements and educational material consistent with the current approved curriculum published by the department of health, office on HIV/AIDS.

(3) Staff providing direct care to children must use universal precautions when coming in contact with the bodily fluids of a child.

Managing Records and ReportingNEW SECTION

WAC 388-145-1510 What personnel records must I keep at my facility? (1) You must keep personnel records on file for each staff person who is employed or volunteers at your facility. You must keep the following:

- (a) An employment or volunteer application, including work and education history;
- (b) Education documentation;
- (c) Job description of the position at your facility;
- (d) Signed confidentiality statement;
- (e) Signed mandated reporter statement;
- (f) A record of participation in the program's orientation and/or pre-service training and in-service training;
- (g) Behavior management training documentation;
- (h) First aid/CPR/HIV/AIDS/blood borne pathogens training documentation;
- (i) A copy of a food handlers permit, if applicable;
- (j) A copy of a valid driver's license for staff transporting clients or employees;
- (k) A copy of a government issued photo ID;
- (l) A copy of current auto insurance (if using private vehicle to transport);
- (m) A log with background check information, containing dates of request and completion of the checks on all staff, interns, volunteers, and service contractors;
- (n) A record of a negative Mantoux, tuberculin skin tests results, X-ray, or a medical exemption to the skin test or X-ray; and
- (o) A record of required staff immunizations.

(2) You must maintain a written record of case consultation by a master's level consultant as defined in WAC 388-145-1460 for case managers with a bachelor's degree.

NEW SECTION

WAC 388-145-1515 What are the requirements for information kept in facility shift logs for group care facilities? (1) You must document the following information during each shift:

- (a) Any serious child health or safety issues;
- (b) Any dates and illnesses or accidents while in care;
- (c) Any medications and treatments given with the child's name; and

(d) Names of staff or volunteers with direct care responsibility during the shift.

(2) You must also have telephone numbers of the after-hours supervisor, on-call and relief staff clearly identified and available for staff personnel during each shift.

(3) In addition, you must keep the following information current at all times:

- (a) Incident logs, including a copy of any suspected child abuse and/or neglect referrals made to children's administration and all incident reports;
- (b) Any identified child-specific supervision needs;
- (c) Daily or shift logs;
- (d) Except for overnight youth shelters, written documentation or staff briefings between shifts regarding the whereabouts of any child or youth currently off-site; and
- (e) Verification of weekly inspections of any security and/or safety devices, such as door and window alarms.

NEW SECTION

WAC 388-145-1520 What are the requirements for children's records? (1) Any identifying and personal information about a child and the child's family must be kept confidential as required by chapter 26.33 RCW. These records must be kept in a secure place inaccessible to clients, unauthorized staff and the public.

(2) During a child's placement, the child's record must be kept secure at the site. Your facility must attempt to obtain the following information for the child's record, as appropriate to your program:

- (a) The child's name, birth date, and legal status;
- (b) Name and telephone number of the child's DSHS worker and/or case manager for each child in care, if appropriate;
- (c) Written consent, if any, for providing medical care and emergency surgery (unless that care is authorized by a court order);
- (d) Names, addresses, and telephone numbers of persons authorized to take the child in care out of the facility;
- (e) Copies of the current legal authority to place, if any;
- (f) Current case plans;
- (g) Social summary;
- (h) Documentation of a child's treatment provided by your staff with the signature of the person making the entry to the progress notes;
- (i) Information related to suspected child abuse and/or neglect referrals made to children's administration, including the concern, date and person taking the report;
- (j) Intake procedures completed including an assessment of the youth's likelihood to stay in your facility;
- (k) Date and time of Orientation;
- (l) A log and written report that identifies all incidents requiring physical restraints for a child;
- (m) Any incident reports involving youth; and
- (n) A copy of any discharge summaries and family assessments in the child's case record.

(3) In addition, your records must contain the following information if available:

- (a) Names, address and telephone numbers of parents or persons to be contacted in case of emergency;

- (b) Information on specific cultural needs of the child;
 - (c) Medical history including any medical problems, name of doctor, type of medical coverage and provider, date of any illnesses or accidents while at the facility;
 - (d) Mental health history and any current mental health, chemical dependency, and behavioral issues, including medical and psychological reports when available;
 - (e) Other pertinent information related to the child's health, including basic medical information, such as current prescription medications, immunizations, allergies, dental records and/or eye exams;
 - (f) Child's school records, report cards, school pictures, and Individual Education Plans (IEP);
 - (g) Special instructions including supervision requirements and suggestions for managing problem behavior;
 - (h) Inventory of the child's personal belongings at the time of placement;
 - (i) Approved list of individuals the child may have contact with;
 - (j) The child's visitation plan; and
 - (k) For pregnant and parenting youth, information on the mother/father of the youth's child, if available.
- (4) If a child's placement extends beyond seventy-two hours, you must obtain the child's immunization records. If the child is not current with immunizations, they must be updated as soon as medically possible. Immunization records are not required to be current for children placed in:
- (a) Interim facilities;
 - (b) Group receiving centers; or
 - (c) Crisis residential centers.
- (5) If you are unable to obtain this information from the department you must document your attempt to obtain the requested information in the child's file.

NEW SECTION

WAC 388-145-1525 How long should my facility keep the child records? (1) If you have client files with information not returned to the department, you must keep them for six years following the termination or expiration of any license or contract you have with the department.

(2) If your facility closes then you must return all client file information to the department for each child(ren) who are/were in the custody of the department and whose records were not previously destroyed according to subsection (1) above.

(3) You must inform DLR and your regional licenser about the closure of your facility and where the files will be kept.

NEW SECTION

WAC 388-145-1530 What information can be shared about a child or a child's family? (1) Information about a child or the child's family is confidential and must only be shared with people directly involved in the case plan for a child.

(2) For children placed by the department, you may discuss information about the child, the child's family and the case plan only with:

- (a) A representative of the department, including staff from DCFS, DLR and DDA;
 - (b) A representative of the department of health, the office of the state fire marshal and the office of the family and children's ombuds;
 - (c) A group residential program staff;
 - (d) The child's attorney;
 - (e) The child's assigned guardian ad litem or court-appointed special advocate; and/or
 - (f) Others designated by the child's DSHS worker.
- (3) You may check with your child's DSHS worker for guidance about sharing information with the child's teacher, counselor, doctor, respite care provider, any other professional, or others involved in the case plan.

NEW SECTION

WAC 388-145-1535 What incidents involving children must I report? (1) You must report the following incidents immediately and in no instance later than forty-eight hours to your local children's administration intake staff and the child's DSHS worker:

- (a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;
- (b) Any time you suspect physical or sexual abuse, neglect, or exploitation of a child as required under chapter 26.44 RCW;
- (c) Sexual contact between two or more children that is not considered typical play between preschool age children;
- (d) Any disclosure by a child in care of sexual or physical abuse;
- (e) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;
- (f) Any use of physical restraint that is alleged to have been improperly applied or excessive;
- (g) Physical assault between two or more children that result in injury requiring off-site medical attention or hospitalization;
- (h) Physical assault of an employee, volunteer or others by children in care that results in injury requiring off-site medical attention or hospitalization;
- (i) Any medication that is given or consumed incorrectly and requires off-site medical attention; or
- (j) Property damage that is a safety hazard and is not immediately corrected or may affect the health and safety of children.

(2) You must report the following incidents related to a child with an assigned DSHS worker in care as soon as possible or in no instance later than forty-eight hours, to the child's DSHS worker (if any):

- (a) Suicidal/homicidal thoughts, gestures, or attempts that do not require professional medical treatment;
- (b) Unexpected health problems outside the usual range of reactions caused by medications, that do not require professional medical attention;
- (c) Any incident of medication incorrectly administered or consumed;

(d) Physical assault between two or more children that results in injury but did not require professional medical treatment;

(e) Physical assault of a foster parent, employee, volunteer or others by children that results in injury but did not require professional medical treatment;

(f) Drug and/or alcohol use by a child in your care;

(g) Any inappropriate sexual behavior by or toward a child; or

(h) Use of prohibited physical restraints for behavior management.

(3) You must maintain a written record of these notifications with the date, time and staff person making the report.

(4) Programs providing care to medically fragile children who have nursing care staff on duty may document the incidents described in subsection (2)(b) and (c) in this section in the facility daily logs, rather than contacting the DSHS worker or case manager, if agreed to in the child's case plan.

NEW SECTION

WAC 388-145-1540 What are my reporting responsibilities when a child is missing from care (except for overnight youth shelters)? (1) As soon as you or your staff have reason to believe a child in your care is missing as defined in WAC 388-145-1305 or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:

(a) The child's assigned DSHS worker, as appropriate;

(b) CA intake, if the DSHS worker is not available or it is after normal business hours.

(2) You are required to contact local law enforcement within six hours if the child is missing. However, if one or more of the following factors present, you must contact law enforcement immediately:

(a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained or removed by another person;

(b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age thirteen or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily will place the child at severe risk;

(e) The child is pregnant or parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal thoughts) that if not treated will place the child at severe risk;

(g) The child has an intellectual and developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

(3) After contacting local law enforcement, you must also contact the Washington state patrol's (WSP) missing

children clearinghouse to report that the child is missing from care. The telephone number for the clearinghouse is 1-800-543-5678.

(4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's DSHS worker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsections (2)(a) through (i) of this section are present, you and the child's DSHS worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.

(5) You must provide the following information to law enforcement and to the child's DSHS worker when making a missing child report, if available:

(a) When the child left;

(b) Last known location of the child;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have caused the child's departure;

(e) Possible places where the child may go;

(f) Special physical or mental health conditions or medications that affect the child's safety;

(g) Known companions who may be aware or involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) Recent photo of the child.

(6) You must ask law enforcement for the missing person report number and provide it to the CA DSHS worker or staff.

(7) At any time after making an initial report you learn of a missing child's whereabouts, you must report that information to the child's DSHS worker.

(8) If a child is returned to your care, it is your responsibility to cancel the run report and notify all persons you have informed of the child's run.

(9) Youth participating in the extended foster care (EFC) program are exempt from these requirements. You must follow all other reporting requirements as defined in WAC 388-145-1535.

NEW SECTION

WAC 388-145-1545 What are my reporting requirements in my licensed facility serving runaway or homeless youth? (1) If you are licensed as an overnight youth shelter or are otherwise licensed to provide residential services for runaway or homeless youth, and you learn that a youth staying in your facility does not have parental permission to be there, you or your staff must:

(a) Within seventy-two hours (preferably twenty-four hours), notify the parent by telephone or other reasonable means unless compelling reasons exist. You must provide the youth's whereabouts, give a description of the youth's physical and emotional condition, and report the circumstances surrounding the youth's contact with your facility. You must document this notification in the youth's file.

(b) If compelling reasons exist, you must notify children's administration intake. This includes reason to believe

notifying the youth's parents will result in abuse or neglect of the youth as defined in RCW 26.44.020.

(c) You or your staff must also review the public information on missing youth made available by the Washington state patrol at least once every eight hours while a youth is present at your facility. If a youth is listed as missing, you must immediately notify children's administration intake with the information listed in (1)(a) above.

NEW SECTION

WAC 388-145-1550 What changes must I report to my licensor? (1) You must immediately report to your licensor changes in the original licensing application. You must report:

(a) Changes in your location, including address or phone number;

(b) Changes in your program description or population served, including the maximum number, age ranges, and sex of children you wish to serve;

(c) Changes in the structure of your facility or premises from events causing damage, such as a fire, or from remodeling;

(d) Additional staff, employees, interns, contractors or volunteers, who might have unsupervised contact with the children in care;

(e) Significant changes in the physical condition of you or your staff affecting the ability to provide care in your facility;

(f) Staff arrests or convictions of which you are aware that occur between the date of your license and the expiration date of your license;

(g) Any staff changes including the executive director, program manager, or master's level consultants;

(h) Death, retirement, or incapacity of the person who holds the license;

(i) Changes in the name of your licensed corporation, or the name by which your facility is commonly known and/or your articles of incorporation and bylaws.

Environment, Space and Equipment

NEW SECTION

WAC 388-145-1555 What does the department require for my buildings and property? (1) You must maintain your buildings, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair. You must furnish your facility appropriately, based on the age and activities of the children in your care. You must:

(a) Provide handrails for steps, stairways, and ramps if required by the department;

(b) Have emergency lighting devices available and in operational condition;

(c) Provide appropriate furnishings, based on the age and activities of the children in your care;

(d) Have washable, water-resistant floors in bathrooms, kitchens, and other rooms exposed to moisture. Washable short-pile carpeting may be approved in kitchen areas if kept clean and sanitary;

(e) Provide tamper-proof or tamper-resistant electrical outlets or blank covers installed in areas accessible to children under the age of six or other persons with limited capacity or who might be endangered by access to them; and

(f) Have easy access to rooms occupied by children in case an emergency arises.

(2) You must have adequate indoor and outdoor space, ventilation, toilet and bathing facilities, light and heat to ensure the health and comfort of all members of the household.

(3) The cleanliness and care of your premises must meet generally accepted health standards for the storage and preparation of food.

(4) You must make reasonable attempts to keep the premises free from pests, such as rodents, flies, cockroaches, fleas, and other insects using the least toxic methods.

(5) People must be able to easily open doors from the inside and outside in all areas of the facility that are occupied. This includes closets, bathrooms, and bedrooms. You must also have easy access to the outside in case of an emergency.

(6) Facilities must have non-breakable light fixture covers or shatter-resistant light bulbs or tubes in food preparation and dining areas. DLR will review your facility to determine other areas that may be a concern for the safety of children.

(7) You must have an immediate plan to address hazardous conditions on your property or in your facility. The department may remove children from your care if hazardous conditions are not immediately remedied.

(8) Your facility must be accessible to emergency vehicles and your address must be clearly visible on your facility or mailbox so that first responders can easily find your location.

(9) Your facility must be located on a well-drained site, free from hazardous conditions. You must discuss with your licensor any potential hazardous conditions, considering the children's ages, behaviors and abilities.

(10) You must have a working landline telephone at all times. Individuals calling your facility must be able to leave a message at all times.

(11) You must post emergency numbers and the physical address of the facility in an easily visible location near the telephone. This must include the Washington state poison control number (1-800-222-1222).

(12) Utility rooms with mop sinks that do not have windows opening to the outside must be ventilated with a mechanical exhaust fan to the outside of the building.

(13) The use of window blinds or other window coverings with pull cords capable of forming a loop and posing a risk of strangulation to children are prohibited per RCW 43.215.360.

(14) Infants/toddlers are not allowed to use wheeled baby walkers.

NEW SECTION

WAC 388-145-1560 What toilet and bathing facilities are required? (1) You must meet the following requirements for toilets, sinks, and bathing facilities:

(a) Provide toilet, urinals, and hand-washing sinks appropriate to the height for the children served, or have a

safe and easily cleaned step stool or platform that is water-resistant;

(b) Provide soap and clean towels, disposable towels or other approved hand-drying devices to the children in your care;

(c) Provide adequate grab-bars, convenient for children;

(d) Provide appropriate toilet training equipment for children. You must regularly maintain this equipment and keep it in sanitary condition. You must place toilet-training

equipment on washable, water-resistant surfaces and disinfect toilet training equipment after each child's use.

(2) If you care for children under the age of six, or children with intellectual and developmental disabilities, you must monitor the use of bathtub, shower, or other bathing facilities while in use.

(3) If you operate a group care facility for six or more children you must have a housekeeping sink or department of health approved method of drawing clean mop water and disposing of the wastewater.

NEW SECTION

WAC 388-145-1565 What is the ratio of persons normally on the premises to bathrooms at my facility? (1) You must maintain the following ratio of toilets, hand-washing sinks, and bathing facilities:

FACILITY	TOILETS (flush-type)	HAND-WASHING (hot and cold running water)	BATHING FACILITIES (hot and cold running water)
Group residential programs licensed for 5 or fewer	1 minimum	1 minimum	1 minimum
Group residential for 6 or more	2 minimum 1:8 ratio	2 minimum 1:8 ratio	1 minimum 1:8 ratio

(2) In programs providing care to expectant mothers, all sleeping areas must have at least one toilet and hand washing sink on the same floor.

(3) Children eighteen months of age or younger and other children who do not use a toilet need not be included when determining the number of required flush-type toilets.

(4) All sleeping areas must have at least one toilet and hand-washing sink on the same floor.

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

NEW SECTION

WAC 388-145-1570 What are the requirements for indoor recreation areas? (1) You must provide indoor recreational areas appropriate to children's age and developmental levels.

(2) If you provide group care to more than 12 children you must have at least one separate indoor recreation area with a size and location that is suitable for recreational and informal educational activities. Depending on the number and age range of children served, you must provide:

(a) Adequate area for child play; and

(b) Sufficient space to house a developmentally appropriate program.

(3) If you care for children with intellectual and developmental disabilities you must provide them with a room for physical and occupational therapy, if a physician prescribes these services. The room must be adequate for storing equipment used during therapy sessions. If you do not have a room for physical and occupational therapy, you must arrange for these therapies outside of your facilities.

(4) If you operate a group care program that serves medically fragile children younger than age six, you must follow these additional room requirements:

(a) If you care for infants, and are licensed to care for more than twelve children you must provide separate safe play areas for children less than one year or children not walking. The department must approve the rooms or areas;

(b) Children less than one year must be cared for in rooms or areas separate from older children;

(c) No more than eight children younger than one year of age may be in the room at a time; and

(d) Hand-washing facilities must be available nearby.

NEW SECTION

WAC 388-145-1575 What are the requirements for outdoor recreation areas? (1) If you care for children under the age of twelve you must provide a safe and securely-fenced or department-approved, enclosed outdoor recreation area appropriate to a child's age and developmental level. The recreation area must:

(a) Prevent the child's access to roadways and other dangers;

(b) Protect the play area from unauthorized exit or entry. Any fence or enclosure must be designed to discourage climbing; and

(c) Directly adjoin the indoor premises or be reachable by a safe route.

(2) If you are a group receiving center or an emergency respite center you must have an outside recreation area that is suitable for the number of children you are serving. If not all of the children are using the outdoor recreation area at the same time, you may reduce the size to the number of children normally using the area at one time.

(3) If you are licensed as a secure CRC, you must maintain a recreational area within the secure facility or on the

property of the facility that can support the youth's daily activity. A non-scalable fence must surround the recreational area.

NEW SECTION

WAC 388-145-1580 What are your requirements for storing dangerous chemicals or other substances? (1) You must store the following items in a place that is not accessible to preschool children or other persons with limited capacity or who might be endangered by access to these products:

- (a) Cleaning supplies;
- (b) Toxic or poisonous substances;
- (c) Aerosols; and
- (d) Items with warning labels.

(2) When containers are filled with toxic substances from a stock supply, you must clearly label those containers.

(3) Toxic substances must be stored separately from food items.

NEW SECTION

WAC 388-145-1585 What are the requirements for water, garbage, and sewer? (1) You must maintain adequate sewage and garbage facilities.

(2) Your facility must be connected to a public sewer system or have an on-site sewage system permitted by the local health department or the Washington state department of health.

(3) You must have access to a public water supply approved by the local health authority or tribal authority unless you have a private water supply tested by the local health authority or a private water-testing laboratory approved by the Department of Public Health. Testing is required at the time of licensing, re-licensing and at any time the department deems necessary.

(4) Running water must not exceed one hundred twenty degrees Fahrenheit.

(5) You must provide paper cups, individual drinking cups or glasses, or drinking fountains.

NEW SECTION

WAC 388-145-1590 How must I keep children safe around bodies of water? (1) You must ensure children in your care are safe around bodies of water. You must:

(a) Keep all swimming pools and other bodies of water fenced with a locking gate or other DLR-approved safety device;

(b) Lock hot tubs when not in use;

(c) Make all potential water hazards, including wading pools, inaccessible to children when not in use.

(2) All swimming pools and other bodies of water must comply with state and local regulations. You must work with your licensor to establish a plan for the bodies of water based on the development level and behaviors of the children in your facility.

(3) You must ensure age and developmentally appropriate supervision of any child that uses hot tubs, swimming pools, spas, and around man-made and natural bodies of

water. A supervision plan may be necessary for children with specific behaviors.

(4) You must observe the following when foster children are swimming in pools or outdoor bodies of water:

(a) Swim only in designated swimming areas; or

(b) Require all children age 13 and under to wear U.S. Coast-Guard-approved personal floatation devices when swimming outside the supervision of a lifeguard.

(5) If you have any water-based recreation devices, you must use and maintain them according to manufacturer's recommendations. All children and youth who ride in a water-based recreation device must wear a U.S. Coast Guard-approved personal floatation device at all times.

(6) Except for staffed residential homes licensed for five or fewer children, you must have a person with current life-saving certification on-duty when children are swimming in any swimming pool or outdoor body of water.

(7) For staffed residential licensed for five or fewer children, an adult with current age-appropriate first aid and CPR or a person with current life-saving certification must supervise children swimming under age twelve. The supervising adult must know how to, and be able to use rescue equipment, and be able to see and hear the children at all times.

(8) Children under the age of five must be within touching distance of a supervising adult or the child's birth parent at all times.

NEW SECTION

WAC 388-145-1595 Are there room requirements for a group care facility? (1) You must meet the following room requirements to operate a group care facility:

(a) Provide rooms that are ample in size and properly furnished for the number of children you serve;

(b) Have a dining room area that is ample in size and suitably furnished for your residents;

(c) Provide a room or area that is used as an administrative office. In addition, suitable offices must be provided for case management staff. In facilities caring for fewer than thirteen children, these offices may be combined with the administrative office;

(d) Provide a space that can be used as a visiting area; and

(e) Maintain the temperature within your facility at a reasonable level when occupied. You must consider the age and needs of the children under your care in determining appropriate temperature.

NEW SECTION

WAC 388-145-1600 What are the general requirements for bedrooms? (1) Each child shall have or share a bedroom, approved by the licensor, with privacy and space that is appropriate and adequate to meet the child's developmental needs.

(2) For facilities licensed after December 31, 1986, bedrooms must have:

(a) Adequate ceiling height for the safety and comfort of the occupants. Normally this would be seven and a half feet; and

(b) A window that can open to the outside, allowing natural light into the bedroom and permitting emergency access or exit.

(3) Each bedroom must have unrestricted direct access to outdoors as well as one direct access to common use areas such as hallways, corridors, living rooms, day rooms, or other such common use areas.

(4) You must not use hallways, kitchens, living rooms, dining rooms, and unfinished basements as bedrooms.

(5) Common areas of the facility such as hallways, kitchens, living rooms, and dining rooms must not be used as bedrooms for anyone in the household without permission of the DLR licensor and DSHS worker, if applicable.

(6) An adult must be on the same floor or within easy hearing distance and access to where children under six years of age are sleeping.

NEW SECTION

WAC 388-145-1605 What are the requirements for sharing bedrooms? (1) Shared bedrooms must provide enough floor space for the safety and comfort of children.

(2) When a teen parent and his/her infant sleep in the same room, the room must contain at least eighty square feet of usable floor space. You must allow only one parent and infant(s) to occupy a bedroom.

(3) No more than four children shall sleep in the same room, with the exception of interim facilities as outlined in the additional program-specific requirements in this WAC. This includes foster children and any other children.

(4) You must not allow a child over one year of age to share a bedroom with an adult who is not the child's parent.

(5) Foster children must not share the same bedroom with a child of another gender unless all children are under age six.

(6) A youth placed in the Extended Foster Care program may not share a bedroom with a child under ten years of age who is not a sibling, without approval from the child's DSHS worker.

(7) An exception may be granted to subsection (3) though (6) in this section with an administrative approval if it is supported by the licensor (and the child(ren)'s DSHS worker, as appropriate) and is in the best interest of the child.

NEW SECTION

WAC 388-145-1610 What are the requirements for beds in a facility? (1) You must provide an appropriately-sized separate bed for each child, with clean bedding and a mattress in good condition.

(2) Some children may soil the bed, and you may need to plan accordingly. You must provide waterproof mattress covers or moisture-resistant mattresses if needed. Each child's pillow must be covered with waterproof material or be washable.

(3) A mat may be used for napping but not as a substitute for a bed.

(4) You must provide an infant with a crib that ensures the safety of the infant, and complies with chapter 70.111 RCW, Consumer Product Safety Improvement Act of 2008. These regulations include:

(a) A maximum of 2 3/8" between vertical slats of the crib;

(b) Cribs, infant beds, bassinets, and playpens must have clean, firm, snug-fitting mattresses covered with waterproof material that can be easily disinfected and be made of wood, metal, or approved plastic with secure latching devices; and

(c) You must not use crib bumpers, stuffed toys and pillows when sleeping infants unless advised differently by the child's physician.

(5) You must place infants on their backs for sleeping, unless advised differently by the child's physician.

(6) You must not allow children to use loft style beds or upper bunks of beds if using them could hurt them because of children's age, development or condition. Examples: Preschool children, expectant mothers, and children with a disability.

NEW SECTION

WAC 388-145-1615 What are the requirements for laundering and storage of clothing and linen? (1) You must assure that children have access to clean clothing that is appropriate to their age.

(2) You must provide for separate and safe storage of children's clothing and personal possessions.

(3) The department has specific requirements for laundering:

(a) You must have separate and adequate facilities for storing soiled and clean linen;

(b) You must provide adequate laundry and drying equipment, or make other arrangements for getting laundry done on a regular basis;

(c) You must locate laundry equipment in an area separate from the kitchen and child care areas;

(d) If you care for children under the age of five, you must make laundry equipment inaccessible;

(e) Laundry dryers must be ventilated to the outside; and

(f) You must use an effective way to sanitize laundry.

NEW SECTION

WAC 388-145-1620 What are the requirements for diapers and diaper-changing areas? (1) You must separate diaper-changing areas from food preparation areas.

(2) You must disinfect diaper-changing areas and toilet-training equipment between each use or you must use a non-absorbent, disposable covering that is discarded after each use.

(3) For cleaning children, you must use either disposable towels or clean cloth towels that have been laundered between each use.

(4) You must use disposable diapers, a commercial diaper service, or reusable diapers supplied by the child's family.

(5) You and your staff must wash hands before and after diapering each child.

(6) Diaper-changing procedures must be posted at the changing areas.

(7) Diaper-changing areas must be adjacent to a hand-washing sink.

(8) If you are diapering a child on a diaper-changing table, you must be within arms-length of the child at all times.

NEW SECTION

WAC 388-145-1625 What are the requirements for the use of electronic monitors to monitor children? (1) CA prohibits the use of video and audio monitoring of children in a group residential facility unless all of the following are met:

(a) The DLR administrator grants approval for the use of an electronic monitoring device in your facility following a request by the child's DSHS worker;

(b) The court approves implementation of the monitoring as part of the child's case plan; and

(c) You maintain a copy of the approval.

(2) The prohibition of audio or visual monitoring does not include monitoring of the following:

(a) Infants and toddlers;

(b) Medically fragile or sick children;

(c) Video recording equipment to document actions of a child as directed in writing by the child's physician;

(d) Video recording for special events such as birthday parties or vacations; or

(e) The use of door or window alarms or motion detectors.

NEW SECTION

WAC 388-145-1630 Are time-delay mechanisms allowed on windows and doors? (1) The use of time-delay mechanisms on windows and doors of a group care facility (except for staffed residential homes licensed for five or fewer children) may be approved if:

(a) They meet the fire codes and approval of the WSP/FPB;

(b) There is an exterior door(s) that ensures escape in the event of an evacuation;

(c) The time-delay mechanism(s) automatically unlocks when the fire alarm goes off;

(d) The licensee has approval from the DLR licensor stating that the program is in compliance with the children's administration's behavior management guidelines; and

(e) The licensee has written approval of the DLR administrator.

NEW SECTION

WAC 388-145-1635 What are the requirements for the prevention of the spread of infections and communicable disease? (1) You must notify your DLR licensor if you or any adults having access to children in your care, have been exposed to someone with tuberculosis or when a health care provider recommends testing.

(2) Retesting for license renewals is not required unless the above conditions apply.

(3) Staff with a reportable communicable disease or a notifiable disease condition in an infectious stage, as defined by the department of health in chapter 246-101 WAC, must not be on duty until they have a physician's approval for returning to work.

(4) Each facility that cares for medically fragile children must have an infection control program supervised by a nurse licensed by the department of health. Staffed residential homes licensed for five or fewer children who are medically

fragile may use other methods to develop infection control procedures, such as in-home nursing services, upon approval by the department.

(5) You must promote personal hygiene to help prevent the spread of germs.

(6) You must have written policies and procedures about the control of infections. These must include, but are not limited to, the following areas:

(a) Isolation of sick children;

(b) Germ control procedures;

(c) Hygiene, including hand washing, using the toilet, diapering, and laundering;

(d) Prevention of the transmission of communicable diseases including management and reporting;

(e) First aid;

(f) Care of minor illnesses;

(g) Actions to be taken for medical emergencies;

(h) Infant care procedures when infants are under care;

and

(i) General health practices.

(7) If you are licensed to care for thirteen or more persons at once, you must arrange to have one of the following people help you develop and periodically review your medication management and your medical policies and procedures:

(a) An advisory physician;

(b) A physician's assistant; or

(c) A registered nurse.

NEW SECTION

WAC 388-145-1640 Am I required to keep first aid supplies? (1) You must keep adequate first-aid supplies and medications recommended by a child's physician, on hand for immediate use. The following first aid supplies must be available to staff at all times:

(a) Protective non-latex gloves;

(b) Bandages;

(c) Scissors;

(d) Ace bandages;

(e) Gauze; and

(f) Non-breakable and mercury-free thermometer.

NEW SECTION

WAC 388-145-1645 What are the requirements regarding pets and animals in my facility? (1) All animals on your property must be safe and cared for in a sanitary manner.

(2) You must comply with city, county, state and federal statutes and regulations regarding:

(a) Animal safety;

(b) Vaccinations; and

(c) Standard veterinary care.

(3) You may not have an animal in your facility or on your premises that is dangerous to children.

(4) The department has the discretion to limit the type and number of household pets and animals if we determine there are risks to the children in your care.

NEW SECTION

WAC 388-145-1650 Are alcoholic beverages, marijuana or illegal drugs allowed on a facility's property? (1) You must not have or consume alcohol, marijuana or illegal drugs on the premises.

(2) You must not allow staff under the influence of alcohol, marijuana or illegal drugs, to have contact with children in care.

NEW SECTION

WAC 388-145-1655 Is smoking permitted around children? (1) You must not allow smoking in the living space of your facility or motor vehicles while transporting children.

(2) You may permit adults to smoke outdoors away from children in accordance with RCW 70.160.075.

(3) These rules do not apply to traditional or spiritual Native American or religious ceremonies involving the use of tobacco.

NEW SECTION

WAC 388-145-1660 Are guns allowed on a licensed facility's property? (1) You must not permit guns, ammunition, and other weapons on the premises of your facility, with the exception of law enforcement.

(2) You may allow a child under your care to use a fire-arm only if:

- (a) The child's DSHS worker approves;
- (b) The youth has completed an approved gun safety or hunter safety course; and
- (c) Adults who have completed a gun or hunter safety course are supervising use.

Fire Safety and Emergency PracticesNEW SECTION

WAC 388-145-1665 What are the fire safety requirements for all group residential facilities? (1) You must comply with the regulations developed by the chief of the Washington state patrol through the director of the fire protection bureau (WSP/FPB). These regulations are contained in the current fire code and Washington state amendments as adopted by the state of Washington. Contact the WSP/FPB for specific requirements.

(2) If you operate a staffed residential home for five or fewer children you must meet the fire safety requirements outlined in chapter 388-148 WAC for child foster homes.

(3) You and your staff must be familiar with safety procedures related to fire prevention, including fire drill procedures.

- (4) You and your staff must be able to:
 - (a) Operate all fire extinguishers installed on the premises;
 - (b) Test smoke detectors (single station types);
 - (c) Conduct frequent inspections at your facility to identify fire hazards and take action to correct any hazards noted during the inspection;

(d) Ensure children are able to escape from every floor in your facility. In most cases, this includes a functional fire ladder available from upper stories; and

(e) Ensure windows open to the outside and are large enough for emergency personnel to enter and exit wearing rescue gear.

(5) You must have easy access to all rooms in your facility in case of emergencies.

(6) Barriers are required for fireplaces, wood stoves and other heating systems for facilities licensed for children less than six years of age. You must not leave open-flame devices unattended or use them for a purpose other than for what they were designed.

(7) Emergency vehicles must be able to access your facility. Your address and/or mailbox must be clearly visible so that emergency personnel can easily find your location.

(8) We may require you to have an inspection by WSP/FPB or the local fire authority if we have questions about fire safety, or if local ordinances or WSP/FPB require these inspections.

NEW SECTION

WAC 388-145-1670 Do I need a written emergency plan? (1) You must have a written plan on how you will evacuate children in case of fire or other emergencies such as natural disasters or unforeseen events. Evacuation plans must be developed reflective of the developmental level and behaviors of children living in your facility.

(2) You must be prepared for emergencies (such as hostile persons on the premises, fires, or earthquakes) by having a written evacuation plan prepared that identifies how you will:

- (a) Educate and familiarize your residents appropriate to their age and development level; and
 - (b) Notify the department if an incident occurs.
- (3) The emergency plan must include an evacuation floor plan, identifying exit doors and windows, and must be posted at each exit door. You must ensure that the evacuation plan includes:
- (a) Action to be taken by the person discovering a fire, including methods for sounding an alarm on the premises;
 - (b) Action to be taken following a natural disaster or emergency;
 - (c) Evacuation of the building in a manner that ensures safety for staff and children; and
 - (d) Action to be taken while waiting for the fire department.
- (4) Emergency plans should be easily viewable for staff and residents at all times.

NEW SECTION

WAC 388-145-1675 What requirements must be followed for smoke detectors? (1) Staffed residential homes licensed for five or fewer children must meet the following:

- (a) If a sleeping or napping room has a ceiling height that is at least twenty-four inches higher than its adjoining hallway, you must install a smoke detector in both the hallway and the sleeping or napping room;

(b) If a smoke detector is mounted on a wall, it must be twelve inches from the ceiling and a corner; and

(c) Smoke detectors must be tested twice a year to ensure they are in working order. You must document the date and time of the test.

(2) All other group residential facilities must meet the regulations developed by the WSP/FPB. You must also meet the following:

(a) Have smoke detectors that are UL or Factory Mutual approved in each bedroom or in areas close to where children sleep, such as a hallway;

(b) Have smoke detectors on each level/story of the dwelling to include basements and habitable attics;

(c) Have smoke detectors with a strobe and be in compliance with the Americans with Disabilities Act (ADA).

(d) Test single-station smoke detectors monthly or in a manner specified by the manufacturer. You must maintain a written record of such testing on the premises that indicates the date and time the test was completed.

(3) If questions arise concerning fire danger, the department may require that the local fire protection authority be consulted.

NEW SECTION

WAC 388-145-1680 What requirements must be followed for carbon monoxide detectors? (1) Carbon monoxide alarms must be provided with single station carbon monoxide alarms installed:

(a) In or near each separate sleeping area in the immediate vicinity of the bedrooms; and

(b) On each level of the dwelling.

(2) Carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA 720 and the manufacturer's instructions.

NEW SECTION

WAC 388-145-1685 What are the requirements for fire drills? (1) You must conduct a fire drill at least once each month at varying times of the day and night so that staff on all shifts practice the procedures.

(2) You must maintain a written record on the premises that indicates the date and time that all drills were completed.

(3) If you care for non-ambulatory children, you must consult with and follow the WSP/FPB protocol for "simulated" fire drills.

NEW SECTION

WAC 388-145-1690 What are the requirements for fire extinguishers? (1) You must have at least one approved 2A10BC-rated 5lb or larger all-purpose (ABC) fire extinguisher readily available at all times. You must maintain and service fire extinguishers according to manufacturer's specifications. Approved 2A10BC-rated means a fire extinguisher with an underwriters' laboratory label on the nameplate classifying the extinguisher as 2A10BC-rated or larger.

(2) Approved fire extinguisher(s) must be located in the area of the normal path of exiting. The maximum travel distance to an extinguisher from any place on the premises must

not exceed seventy-five feet. When the travel distance exceeds seventy-five feet, additional extinguisher(s) are required.

(3) You must have at least one fire extinguisher on each floor of a multi-level facility.

(4) Fire extinguishers must:

(a) Be mounted in a bracket or in a fire extinguisher cabinet so that the top of the extinguisher is no more than five feet above the floor; and

(b) Receive an annual maintenance certification by a licensed firm specializing in this work, based on the manufacturer's recommended schedule. Maintenance means a thorough check of the extinguisher for:

(i) Mechanical parts;

(ii) Extinguishing agent; and

(iii) Expelling means.

(5) New fire extinguishers do not need to receive an additional certification test during the first year.

(6) The department may require that additional fire extinguishers be available on the premises, in consultation with the local fire authority or WSP/FPB.

NEW SECTION

WAC 388-145-1695 Are there different construction and fire safety requirements for facilities that have multiple licenses in the same building? (1) A facility with multiple Washington state licenses or certifications for the care of children in the same building must comply with the most stringent construction and fire safety requirements for the physical structure, if children share the same space.

(2) If the same facility has multiple Washington state licenses the licensee must notify:

(a) The Washington state patrol fire protection bureau inspector; and

(b) All licensing and certification agents.

Service Planning

NEW SECTION

WAC 388-145-1700 What must I include in a child's orientation to my facility? (1) As part of admission, staff must give an orientation to all children over the age of six (as developmentally appropriate) that includes, but is not limited to:

(a) A description of the program and services;

(b) A map and/or tour of the physical facility;

(c) A review of your fire evacuation plan;

(d) The department-approved policy that states that a child may not have guns and other weapons, alcohol, tobacco, and drugs within the facility;

(e) Orientation on personal protection and personal boundaries; and

(f) The department-approved policy on client visitation that includes access to the youth's attorney and DSHS worker.

(2) Written documentation of this orientation must be kept in each child's file.

NEW SECTION

WAC 388-145-1705 How does my agency meet the religious needs of children in care? (1) You must ensure an environment of tolerance and sensitivity to a child's spiritual and religious beliefs. This includes providing adequate opportunity for spiritual and religious training and participation appropriate to the child's beliefs. You must not require any child to participate in spiritual or religious practices contrary to the child's beliefs.

(2) You must not impose consequences if a child chooses not to participate in particular spiritual or religious practices.

NEW SECTION

WAC 388-145-1710 What are the requirements about nondiscrimination? You must follow all state and federal laws regarding nondiscrimination while providing services to children in your care. You must treat foster children in your care with dignity and respect regardless of race, ethnicity, culture, sexual orientation and gender identity. You must connect a child with resources that meets a child's needs regarding race, religion, culture, sexual orientation and gender identity.

NEW SECTION

WAC 388-145-1715 Are there additional considerations in service to Native American children? You must make every effort to provide culturally relevant and sensitive child welfare services to Native American children and their families. You must follow all federal and state laws for any Native American children that you have under your care.

NEW SECTION

WAC 388-145-1720 Do I need a social summary for children under my care (except for interim facilities)? (1) You must develop a written social summary for each child accepted for care within seventy-two hours but no longer than thirty days of the child's placement. The social summary must serve as the basis of the child's admission to your care.

(2) The summary must contain the following information for the child:

(a) Available copies of psychological or psychiatric evaluations, if any, on the child under care;

(b) A narrative description of the child's background and family that identifies the immediate and extended family resources;

(c) The child's interrelationships and circumstances that have brought the child into out-of-home care;

(d) The child's primary and alternate permanency plan;

(e) Previous placement history (if any); and

(f) An evaluation of the child's need for the particular services and type of care you provide.

NEW SECTION

WAC 388-145-1725 Do I need a treatment plan for children under my care? (1) If you are providing care to children who are under the care and authority of the depart-

ment, and you have contracts or agreements to provide treatment or therapeutic services, you must assist in developing and implementing a written treatment plan for each child by the thirtieth day in care.

(2) The treatment plan must:

(a) Identify the service needs of the child, parent or guardian;

(b) Describe the treatment goals and strategies for achieving those goals;

(c) Include an ongoing account of the treatment received by the child and others involved in the treatment plan, such as any group treatment or individual counseling; and

(d) Be updated at least quarterly to show the progress toward meeting goals and list barriers to the permanent plan.

(3) A Master's level case management staff person or consultant must review and sign approving the child's treatment plan.

NEW SECTION

WAC 388-145-1730 What are the educational and vocational instruction requirements for children placed by the department (except interim facilities)? (1) You must meet the following requirements for providing education and vocational instruction to the children placed by the department. For each child you must:

(a) Follow the educational plan approved by the child's DCFS worker;

(b) Support the child in regular school attendance. If a child is absent from school you must follow the school's reporting requirements. Notify the child's DSHS worker if the child is absent from school more than three consecutive school days;

(c) Receive approval from the child's DCFS worker prior to making any changes to a child's educational plan;

(d) Support the child's educational plan by providing each child with necessary school supplies and a suitable place to study;

(e) Develop a plan for a child's transportation to and from school;

(f) Provide or arrange for independent living skills education for developing self-sufficiency for children over the age of fifteen years; and

(g) Encourage older youth to pursue a post-secondary education when appropriate.

(2) If the instruction is given on your premises, you must:

(a) Receive approval from the child's DSHS worker if the child is placed in your care by the department;

(b) Have the program certified by the Office of the Superintendent of Public Instruction (OSPI) and provide classrooms separate from the living area; and

(c) Send DLR a written description of how you will provide an educational program for children under your care.

(3) If a child is not enrolled and attending school within three consecutive school days after being placed in your care, you must contact the child's school and DSHS worker in order to develop a plan which could involve long distance learning if appropriate.

NEW SECTION

WAC 388-145-1735 What are the requirements for an activity program? (1) You must provide an activity program that includes integration of children and youth in the community. Safe and suitable materials must be designed to meet the developmental, cultural, and individual needs of the children served. A schedule of weekly activities must be posted and available to view by residents and others.

(2) Activities must be designed for the developmental stages of the children you serve, allowing a balance between:

- (a) Child-initiated and staff-initiated activities;
- (b) Free play and organized events;
- (c) Individual and group activities; and
- (d) Quiet and active experiences.

(3) Children must be grouped with similar ages to ensure their safety.

NEW SECTION

WAC 388-145-1740 Can children in my care receive services through the extended foster care program? Your facility can serve youth enrolled in the extended foster care program. You must adhere to WAC 388-25-0500 through 388-25-0548.

Daily Care, Behavior ManagementNEW SECTION

WAC 388-145-1745 What are the general well-being requirements for a group care program? You must provide a safe and healthy, age-appropriate home-like living environment that meets the medical, psychological, physical and developmental needs of the children in your care.

NEW SECTION

WAC 388-145-1750 What are the requirements for supervising children? (1) You must provide and arrange supervision that is appropriate for the child's age, and developmental level including:

- (a) Appropriate adult supervision including ongoing and periodic checks of the children in your facility;
- (b) Personal attention;
- (c) Emotional support;
- (d) Structured daily routines and living experiences; and
- (e) Additional supervision as needed and required by the department. This supervision may require auditory or visual supervision at all times.

(2) You must also ensure that:

(a) Children under five years of age and children who are vulnerable due to their disability are not left unattended in a bathtub or shower;

(b) Cribs, bassinets, cradles, playpens and swings are not used as a substitute for supervising or interactive play with infants and young children;

(c) Children who help with activities involving food preparation are supervised based on their age and skills;

(d) Children are assisted to develop self-control and judgment skills; and

(e) Children are encouraged to assume age-appropriate responsibility for their decisions and actions.

(3) Prior to placement, you must inquire if a child poses a risk to the other children in your facility or has special supervision needs by obtaining information from the parent, legal guardian, the child's DSHS worker, therapist, or previous placements. You must:

(a) Develop a plan to address those needs;

(b) Obtain approval from the child's DCFS worker if the child is under the care and authority of the department; and

(c) Inform your licensor.

(4) All high risk activities, including the use of power driven machines or other hazardous equipment, must be properly supervised by an adult. When participating in high risk activities, children must:

(a) Be instructed how to use and required to use appropriate safety equipment, such as helmets and life vests; and

(b) Be in continuous visual or auditory range at all times, unless approved by the child's DSHS worker.

NEW SECTION

WAC 388-145-1755 What requirements must I follow when I transport children? (1) Transportation you provide must be safe, reliable, and in compliance with law and contract requirements.

(2) The driver of the vehicle must:

(a) Have a valid driver's license; and

(b) Be covered under an automobile liability insurance policy.

(3) The vehicle must:

(a) Be kept in safe operating condition;

(b) Be equipped with seat belts, car seats and booster seats, and/or other appropriate safety devices for all passengers as required by law. All persons in the vehicle must use the restraint system when the vehicle is in motion; and

(c) Contain first aid supplies.

(4) There must be at least one adult other than the driver in a vehicle when:

(a) There are more than five pre-school age children in the vehicle;

(b) Staffing requirements or your contract requires a second staff person; or

(c) The child's specific needs require a second adult.

(5) Buses approved by the state patrol are not required to have seat belts.

NEW SECTION

WAC 388-145-1760 What are the travel requirements for children in care? You must get written approval from the child's DCFS worker for children in the care and custody of the department, or the child's parent or guardian for the children not in the department's care and custody prior to any travel over seventy-two hours, and any out-of-country travel.

NEW SECTION

WAC 388-145-1765 Can children be assigned work in a facility or work outside the facility? (1) Children may

do regular household tasks without payment, or may be assigned other work that is appropriate to the child's age and developmental level, with monetary compensation.

(2) It may be appropriate for some children to obtain employment when:

- (a) Laws regarding minors working are followed; and
- (b) The child's work does not interfere with school.

NEW SECTION

WAC 388-145-1770 Can a child earn allowance while in care? If a child is placed in your facility over thirty days you must give the child an allowance based on age, needs, and the child's ability to manage money. You must keep track of allowances given to children in a ledger.

NEW SECTION

WAC 388-145-1775 What belongings must be provided to a child leaving my facility? (1) You must permit a child who leaves your facility to take their personal belongings with them. This includes belongings the child brought with them or acquired in your care, such as clothing, mementos, bicycles, gifts, and any saved money.

(2) If it is not possible for the child to take their belongings at the time they leave, you are required to secure them for up to thirty days and cooperate with the child's DSHS worker to transfer them to the child, as soon as possible.

NEW SECTION

WAC 388-145-1780 Do I have responsibility for a child's personal hygiene? You must provide or arrange for children in your care to have items needed for grooming and personal hygiene. You must assist children in using these items, based on the child's developmental needs.

NEW SECTION

WAC 388-145-1785 What are the requirements for privacy for children in out-of-home placements? (1) In general, children in out-of-home placements have the right to privacy of personal mail, electronic mail and phone calls.

(2) The department and its delegates may censor the child's mail and monitor telephone calls to the extent necessary and in the manner specified by the court order for the child's safety and well-being.

NEW SECTION

WAC 388-145-1790 What are the food and meal guideline requirements? (1) Food served to children in your care must be properly stored and prepared, and meet children's nutritional, cultural and developmental needs, offering a variety of foods for meal enjoyment.

(2) You must routinely provide an opportunity during mealtimes for socialization for all children.

(3) You must not serve home-canned foods to children.

(4) You must properly store, prepare, and serve food to meet the needs of the children in your care. All food service facilities and food handling practices must comply with rules

and regulations of the state board of health governing food service sanitation. This includes a food handler's permit for all staff per chapter 246-215 WAC.

(5) You must prepare and date daily menus, including snacks, at least one week in advance. You must keep the menus on file for a minimum of six months so that we can review them.

(6) You must establish and post a schedule of mealtimes.

(7) You must ensure that staff are aware of each child's dietary restrictions, in a manner that ensures the child's privacy.

NEW SECTION

WAC 388-145-1795 How often do children need to be provided meals? You must provide all children a minimum of three meals and two snacks in each twenty-four hour period. You may vary from this guideline only if you have written approval from the child's physician and DSHS worker.

NEW SECTION

WAC 388-145-1800 What are the requirements for handling a child's special diet? You must have approval of the child's DSHS worker and written instructions by a physician, parent or guardian before serving nutrient concentrates, nutrient supplements, vitamins, and modified diets (therapeutic and allergy diets).

NEW SECTION

WAC 388-145-1805 Are there special requirements for serving milk? (1) The milk or milk products you serve must be pasteurized and follow these recommended guidelines:

(a) Children under the age of twelve months must receive formula or breast milk unless written authorization from the child's physician requires a different liquid intake; and

(b) Children between the age of twelve and twenty-four months must receive whole milk unless you have written authorization from a physician not to serve whole milk.

(2) Before serving a child breast milk you must have approval of the child's DSHS worker, physician, parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(3) When you are using bottles to feed infants you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within twenty-four hours. If more than one child is bottle-fed, the child's name and date the bottle is prepared must be on each bottle.

(4) You must hold infants, under the age of six months, for all bottle feedings. Infants who are six months of age or over who are developmentally able may hold their own bottles as long as an adult remains in the room and within sight. You must take bottles from the child when the child finishes

feeding, when the bottle is empty, or when the child falls asleep. You must not prop bottles when feeding infants.

(5) To prevent burns, formula must not be warmed in a microwave oven in the bottle that will be used for feeding the infant.

NEW SECTION

WAC 388-145-1810 Are there special requirements for infants and young children? In caring for infants and young children, you must hold infants at times other than feeding for the purposes of comfort and attention; and allow children plenty of free time outside of a swing, crib or playpen.

NEW SECTION

WAC 388-145-1815 Are written policies and procedures required describing a facility's discipline methods?

(1) You must provide a written statement with your application and re-application for licensure describing the discipline methods you use. This plan must be approved by your DLR licensor.

(2) You and authorized care providers have the responsibility for discipline; you may not delegate that responsibility to a child.

(3) You must not withhold a child's need for necessary services including contact with the child's DSHS worker, case manager, and legal representatives. You must not withhold approved contact with a child's family, without further approval from the child's DSHS worker.

(4) For additional information you may refer to the children's administration's behavior management guide.

(5) If your discipline methods change, you must immediately provide a new statement to your licensor describing your current practice.

(6) You must use positive methods of guidance and discipline that promote self-control, self-responsibility, self-direction, self-esteem and cooperation. Positive methods may include:

- (a) Redirecting children;
- (b) Giving choices when appropriate;
- (c) Time out as a method of guidance, allowing the child time to change his/her behavior;
- (d) Planning in order to prevent problems; and
- (e) Using positive reinforcement and encouraging children to express their feelings and ideas.

(7) You must use discipline that is appropriate to the child's age and level of development.

(8) You must not use corporal punishment or verbally abusive, neglectful, humiliating or frightening punishment.

(9) You must not discipline children in the following ways:

- (a) Physical punishment;
- (b) Cursing;
- (c) Threats;
- (d) Humiliation or intimidation; or
- (e) Methods that interfere with a child's basic needs, including withholding of food.

NEW SECTION

WAC 388-145-1820 When may a child be restrained? (1) You must use efforts other than physical restraint to redirect or deescalate a situation, unless the child's behavior poses an immediate risk to the physical safety of the child or another person, or of serious property damage. If restraint is necessary, it must be reasonable and necessary to:

- (a) Prevent a child from harming self or others; or
- (b) Protect property from serious damage.

(2) All staff must be trained in a DLR approved behavior management training prior to using physical restraint.

(3) You must not use physical restraint as a form of punishment or discipline. You must not use mechanical restraints unless ordered by the child's physician and approved by the department. You must not use physical restraint techniques that restrict breathing, or inflict pain as a strategy for behavior control, or is likely to cause injury that is more than temporary. These include, but are not limited to:

- (a) Restriction of body movement by placing pressure on joints, chest, heart, or vital organs;
- (b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;
- (c) Arm twisting;
- (d) Hair holds;
- (e) Choking or putting arms around the throat; or
- (f) Chemical restraints, such as pepper spray.

(4) When you have to use physical or mechanical restraints on a regular basis, you must get prior written approval from the child's DSHS worker and approval by your DLR licensor.

(5) You must develop policies and procedures, approved by the department, when your behavior management practices include use of physical restraint, including:

- (a) Who may authorize the use of physical restraint; and
- (b) The circumstances when physical restraint may be used, including time limitations, re-evaluation procedures, and supervisory monitoring.

NEW SECTION

WAC 388-145-1825 What must I do following an incident that involved using physical restraint? (1) Your executive director or program supervisor must:

(a) Review any incident with the staff who used physical restraint to ensure that the decision to use physical restraint and its application were appropriate; and

(b) Report the incident if it meets the criteria listed in WAC 388-145-1535.

NEW SECTION

WAC 388-145-1830 Are there requirements for time-out or quiet rooms? (1) Locked time-out or locked de-escalation rooms are prohibited in all facilities. In certain circumstances, facilities may have time-out rooms or de-escalation rooms that allow for securing the youth in a room, requiring a staff to be present, holding the door closed so the youth may not exit. In these cases you must meet the following requirements:

- (a) Have a window that allows for visual monitoring of all areas of the room;
- (b) Have approval from the Washington state patrol fire protection bureau or a certificate of compliance stating that the facility is in compliance with the fire codes with Washington state amendments;
- (c) Have approval from the DLR licensor stating the facility is in compliance with the children's administration's behavior management guidelines; and
- (d) Have current written approval of the DLR administrator.

Medical Safety

NEW SECTION

WAC 388-145-1835 Am I required to assess a child's need for immediate medical attention? (1) After a child is admitted to your program (other than overnight youth shelters) you must ensure that a child receives an initial health screen or physical exam as soon as possible but no later than five days after entering your program. The initial health screen involves a review of the child for any health needs requiring immediate attention. You do not need to take a child to get this screen if you received the children directly from a hospital, pediatric interim care, or the child is receiving services through a child advocacy center or sexual assault clinic.

(2) You must also make reasonable attempts to obtain the following health history:

- (a) Allergies;
- (b) All currently prescribed medications; and
- (c) Any special physical or mental health issues.

(3) If the child remains in placement beyond seventy-two hours, you must contact the child's DSHS worker, child-placing agency, parent, or legal guardian to obtain the following information:

- (a) The date of the child's last physical and dental exam;
- (b) A history of immunizations; and
- (c) Clinical and medical diagnoses and treatment plans.

(4) When a child leaves the facility, the health history of the child must be provided to the child's DSHS worker or the next caregiver.

(5) You should refer to the department of health's dental care brochure as a guide for ensuring proper dental care for children.

NEW SECTION

WAC 388-145-1840 When must I get an EPSDT exam for a child? Children who are in out-of-home care must receive an early and periodic screening, diagnosis and treatment (EPSDT) exam within thirty days, unless they have had an EPSDT exam in the previous thirty days, except for overnight youth shelters and children placed by DDA through a voluntary placement agreement. Children also receive subsequent periodic EPSDT exams; information on these required exams may be obtained from the child's DCFS worker.

NEW SECTION

WAC 388-145-1845 What are the requirements for obtaining consent for emergent and routine medical care?

(1) The department is the legal custodian for children it places in care. We have the authority to consent to emergent and routine medical services on behalf of a child under the age of eighteen. Youth in care over the age of eighteen must consent to their own medical care or have an identified person who has been granted the legal authority to consent on their behalf. We delegate some of the authority to providers. You must contact the child's DSHS worker or children's administration intake for specific information for each child.

(2) If you care for children in the custody of another agency, tribal court or other court, you must follow the direction of that agency or court regarding permission to provide consent for medical care.

(3) In case of medical emergency, contact the child's DSHS worker or children's administration intake as soon as possible.

(4) It is your responsibility to ensure that a child receives the necessary medical attention if injured or harmed. In the event of a life-threatening medical emergency, you must contact 911 prior to transporting the child to a medical facility.

NEW SECTION

WAC 388-145-1850 What requirements are there for the storage of medications? (1) Prescription and over-the-counter medications must be kept in a locked container in a manner that minimizes the risks for medication errors.

(2) Human medication and animal medication must be kept separate from each other and in locked containers.

NEW SECTION

WAC 388-145-1855 What are the general requirements for managing a child's medication? (1) Medication must not be used for behavior control, unless prescribed for that purpose by a physician or another person legally authorized to prescribe medication.

(2) Only you, a licensed foster parent, or another authorized care provider, such as a respite provider, are allowed to have access to medications for a child in your care.

(3) You must not use medication in an amount or frequency other than that prescribed by an appropriately licensed health care provider or psychiatrist.

(4) You must not reduce or stop a child's prescribed medication without the written approval of the child's physician. You must report this information to the child's DSHS worker. In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's social worker to determine what consent is needed. The social worker may need to obtain consent from the child age thirteen or older, the parent, or the court.

(5) You must follow the direction of the agency or court regarding giving or applying prescription and nonprescription medications if you care for children in the custody of another agency, tribal or other court. If this is in conflict with children's administration policy you must notify the child's DCFS worker.

(6) You must not give medications to a child that has been prescribed for someone else.

(7) You must keep a record of all prescription and non-prescription medications given to children in care. This documentation includes:

- (a) Child's name;
- (b) Time of medication;
- (c) Dosage of medication; and
- (d) Name of person administering medication.

NEW SECTION

WAC 388-145-1860 How do I manage a child's non-prescription medications? (1) You or another authorized care provider must give non-prescription medications:

- (a) Only as specified in the instructions; or
- (b) As otherwise approved by a physician or another person legally authorized to prescribe medication.

NEW SECTION

WAC 388-145-1865 Can I give a child non-prescription medications with prescription medications? You must give prescription and over the counter medications as specified on the medication label or as prescribed by persons legally authorized to prescribe medication. This includes herbal supplements and remedies, vitamins, or minerals.

NEW SECTION

WAC 388-145-1870 How do I dispose of medications? (1) You must consult with a pharmacist or other health professional on the proper disposal of medications that are no longer being taken or have expired. The disposal of any prescription medication must be documented and contain the following information:

- (a) What medication was disposed;
- (b) The name of the child for whom the medication was prescribed;
- (c) The amount disposed;
- (d) The name of the person disposing of the medication; and
- (e) The name of the person witnessing the disposal.

NEW SECTION

WAC 388-145-1875 Can I accept medication from a child's parent or guardian? (1) The only medicine you may accept from the child's parent, guardian, or responsible relative is medicine in the original container labeled with:

- (a) The child's first and last name;
- (b) The date the prescription was filled;
- (c) The medication's expiration date; and
- (d) Legible instructions for administration (manufacturer's instructions or prescription label) of the medication.

(2) You must notify the child's DSHS worker if you have any concerns about medication being provided to you by the child's parent or guardian.

NEW SECTION

WAC 388-145-1880 When may children take their own medicine? (1) You may permit children under your care to take their own medicine as long as:

- (a) They are physically and mentally capable of properly taking the medicine;
- (b) You monitor that the youth is taking the medication according to the prescription or manufacturer's instructions to ensure proper amount and frequency; and
- (c) You must keep the written approval by the child's DSHS worker in your records.

(2) When a child is taking their own medication, the medication and medical supplies must be kept locked or inaccessible to unauthorized persons.

(3) In emergency respite centers, a parent may provide written approval.

(4) In overnight youth shelters, youth may take their own prescription or non-prescription medications if you follow the requirements outlined in subsection (1)(a) and (b) in this section.

NEW SECTION

WAC 388-145-1885 What are the immunization regulations? (1) Immunization standards for all children in your facility are based on the advisory committee for immunizations practices of the Center for Disease Control (ACIP/CDC). Children placed in your care by the department are required to be immunized according to advisory committee on immunization practices as established in the recommended immunization schedule for persons Aged 0-18 Years, United States, 2012 and as amended each subsequent year, except for rotavirus and human papilloma virus.

(2) Except for overnight youth shelters, if a child who has not received all recommended immunizations is placed in your care, you must take the child to a health care provider as soon as medically possible for catch-up immunizations according to the ACIP/CDC catch-up schedule.

(3) You must contact each child's DSHS worker and your licensor if a serious infection or a communicable disease is a threat to the children in your care. The department may remove a foster child from your facility when the threat of a serious infection or communicable disease creates a risk to the health of any child placed in your facility.

LICENSED FACILITIES AND SPECIALIZED SERVICES

Crisis Residential Centers (CRC - Regular and Secure)

NEW SECTION

WAC 388-145-1890 What type of crisis residential center (CRC) facilities may be licensed? (1) You may be licensed as a semi-secure CRC or a secure CRC.

(2) Semi-secure CRCs are not locked facilities, but are operated in a way that reasonably assures that youth placed there will not run away. Regular CRCs are also known as semi-secure CRCs, as referred to in RCW 13.32A.030(16).

(3) A secure CRC is designed and operated to prevent a youth from leaving without permission of the staff, as referred to in RCW 13.32A.030(15).

NEW SECTION

WAC 388-145-1895 What hours must I be available to receive youth? You must be open and available to receive youth twenty-four hours a day, seven days a week.

NEW SECTION

WAC 388-145-1900 What residents are admitted to a semi-secure CRC? (1) Semi-secure CRCs provide emergency, temporary residence to youth ages twelve through seventeen who meet one of the following criteria:

- (a) Are beyond the control of their parents or guardians and behave in a way that endangers any person's welfare;
- (b) Need assistance getting food, shelter, health care, clothing, educational services, and/or resolving family conflicts;
- (c) Need temporary protective custody; or
- (d) Have parents who are not able or willing to continue efforts to keep the family together.

NEW SECTION

WAC 388-145-1905 What residents are admitted to a secure CRC? (1) Secure CRCs provide emergency, temporary residence to youth ages twelve through seventeen who meet one of the following criteria:

- (a) Youth ordered by the court to be placed for contempt on CHINS, ARP, or truancy orders. These youth may be ordered into a secure CRC that is co-located with a detention facility; or
- (b) Youth placed by law enforcement officers who are runaways, are in dangerous situations or are in violation of curfew.

NEW SECTION

WAC 388-145-1910 What are the ratio requirements of staff to youth in crisis residential centers? (1) **Semi-secure CRCs**

- (a) At all times, you must have at least one direct care staff on duty and must maintain a staffing ratio of one staff for every four youth in care when youth are present.
- (b) During waking hours of youth, you must have at least two awake direct care staff on duty when youth are present.
- (c) During sleeping hours of youth, at least one of your staff must be awake. One or more additional (back-up) staff must be on the premises during sleeping hours to maintain staffing ratios. Under extraordinary circumstances, the DLR director may approve an alternative back-up plan.

(2) **Secure CRCs**

- (a) At all times (including sleeping hours), you must have at least two staff on duty when youth are present.
- (b) At all times, secure crisis residential centers not co-located with a detention center must have at least one youth care staff on duty for every three youth in care.

(c) At all times, secure crisis residential centers that are located in the same facility as a detention center must have at least one awake youth care staff on duty for every four youth in care.

NEW SECTION

WAC 388-145-1915 What are the requirements for secure CRCs? (1) Secure CRCs must meet each of these requirements:

- (a) Be a free-standing facility, separate unit, or separate building within a campus;
- (b) Maintain a recreation area as outlined in WAC 388-145-1570 and 388-145-1575.

NEW SECTION

WAC 388-145-1920 What are additional physical requirements for secure CRCs? (1) Your secure CRC must ensure that no youth is kept in a locked room that isolates the youth from the general population or staff.

(2) You must also limit exit by one of the following methods:

- (a) Have windows and doors that allow exit, but have a non-scalable perimeter fence around the facility property. This fence shall be designed to not cause injury, avoiding use of electrification, razor wire or concertina wire; or
- (b) Have egress-control devices which meet or exceed current state building codes for facilities with special egress-controlled devices (rather than locking windows and doors or a perimeter fence), that prevent unauthorized exit.

NEW SECTION

WAC 388-145-1925 May a juvenile detention center operate as a separate secure CRC program? (1) A juvenile detention center may operate a separate secure crisis residential center (CRC) program. The physical facility must be operated so that no direct communication or physical contact can be made between a resident of the secure crisis residential center and a person held in the detention facility.

(2) Staff assigned to the secure crisis residential center youth must not be simultaneously assigned to the juvenile detention center residents on the same shift.

NEW SECTION

WAC 388-145-1930 What steps must be taken after a youth is admitted into any CRC? (1) You must notify the parents of the youth who has been admitted to the CRC if the youth is not under the care and authority of the department. If you are unable to contact the youth's parents within forty-eight hours, you must:

- (a) Contact the department and request that the case be reviewed for dependency filing under chapter 13.34 RCW or "child in need of services" filing under chapter 13.32A RCW; and
 - (b) Document this information in the youth's case file.
- (2) You must notify CA intake of the youth's admission to the CRC within twenty-four hours of admission.

(3) If you decide that a youth is unlikely to stay in a regular facility, you must make reasonable efforts to transfer the youth to a secure facility.

NEW SECTION

WAC 388-145-1935 What additional steps must be taken after a youth is admitted into a secure CRC? (1) You must make an assessment of the youth's risk of running, within the first twenty-four hours after admitting a youth to a secure crisis residential center, and each twenty-four hours thereafter.

(2) You must determine what type of CRC, (semi-secure or secure,) would be best for the youth.

(3) You must use the following criteria in making the decision, considering the safety, health and welfare of the youth and others:

- (a) The youth's age and maturity;
- (b) The youth's physical, mental, and emotional condition upon arrival at the center;
- (c) The circumstances that led to the youth's placement at the facility;
- (d) The youth's behavior;
- (e) The youth's history of running away;
- (f) The youth's willingness to cooperate in conducting the assessment;
- (g) The youth's need for continued assessment, protection, and intervention services in a CRC; and
- (h) The likelihood the youth will remain at a CRC.

(4) You must put the decision about the youth's status in writing in the youth's file.

(5) By the first school day after admission, the crisis residential center staff must:

- (a) Notify the youth's school district about the youth's placement; and
- (b) Assess the youth for any educational needs as a part of the assessment process for inclusion in the discharge summary.

NEW SECTION

WAC 388-145-1940 How long may a youth stay in a CRC? (1) Youth may stay in a semi-secure CRC or a secure CRC not located in a detention center, for no longer than fifteen consecutive days, including Saturdays, Sundays and holidays.

(2) Youth admitted to a secure CRC located in a juvenile detention center must remain in the facility for at least twenty-four hours after admission but for no more than five consecutive days per admission, including Saturdays, Sundays and holidays.

(3) If a youth has been transferred between secure and semi-secure Crisis Residential Centers, the total number of consecutive days spent in a secure CRC located in a detention facility may not exceed five days and the total number of consecutive days spent in all Crisis Residential Centers may not exceed fifteen days per admission.

NEW SECTION

WAC 388-145-1945 What happens when no space exists in a secure CRC? (1) If space is not available in a secure crisis residential center (CRC), you or your designee may transfer a different youth from that facility to a semi-secure CRC as long as the youth:

- (a) Has been in the secure facility for at least twenty-four hours; and
- (b) Is considered likely to remain at a semi-secure CRC facility.

NEW SECTION

WAC 388-145-1950 How is a youth transferred from one type of CRC to another? (1) After deciding that a youth needs to be transferred from one type of CRC to another, you must take the following steps:

- (a) Obtain the department's agreement with the transfer decision;
 - (b) Communicate with the CRC where the youth is being relocated;
 - (c) Make sure that space for the youth is available to support the transfer;
 - (d) Assure mutual agreement with the transfer decision; and
 - (e) Document all communication related to the transfer into the youth's file.
- (2) You must also establish and maintain transfer procedures.

NEW SECTION

WAC 388-145-1955 What intervention services must I provide or arrange for at a CRC? (1) You must provide a safe environment that supports the reduction of high-risk behaviors and an increase of stable behaviors of the youth.

(2) You must also provide or arrange, at a minimum, the following services:

- (a) Assessment of the family in order to develop a treatment plan for the youth;
- (b) Family counseling focused on communication skills development and problem solving;
- (c) Individual and/or group counseling;
- (d) School participation;
- (e) Safety and transition plans to address the youth's high-risk behaviors; and
- (f) Referrals to transition the family to community-based support services.

(3) Intervention services must be documented, in writing, in the youth's case record.

NEW SECTION

WAC 388-145-1960 What additional record keeping is required for all CRCs? (1) In addition to meeting the reporting requirements listed in WAC 388-145-1535 through WAC 388-145-1550, you must also maintain for a minimum of six years, the following:

- (a) Hourly logs of where the child is physically located;
- (b) Records of a multi-disciplinary team, if convened;

- (c) The time and date a placement is made;
 - (d) The names of the person and agency making the placement; and
 - (e) Reasons for the placement.
- (2) If the child has a DCFS worker, you must send the DCFS worker the following information within seven days of the child's discharge. The information must include a written summary that addresses the following:
- (a) Community-based referrals;
 - (b) Assessment information on the family and child;
 - (c) Family reconciliation attempts;
 - (d) Contacts with families and professionals involved;
 - (e) Medical and health related issues; and
 - (f) Any other concerns, such as legal issues and school problems.

NEW SECTION

WAC 388-145-1965 What is the purpose of a CRC multidisciplinary team? (1) The purpose of the multidisciplinary team is to evaluate the youth and the youth's family and when agreed to by the family, assist with any of the following services:

- (a) Developing a plan for accessing available social and health-related services;
 - (b) Obtaining referrals to a chemical dependency specialist and/or county-designated mental health professional;
 - (c) Recommending no further intervention because the youth and family have worked out the problems that were causing family conflicts; and
 - (d) Reconciling the youth and family.
- (2) Members of multidisciplinary teams may include:
- (a) Educators;
 - (b) Law enforcement personnel;
 - (c) Court personnel;
 - (d) Family therapists or mental health providers;
 - (e) Chemical dependency treatment providers;
 - (f) Licensed health care practitioners;
 - (g) Social service providers;
 - (h) Youth residential placement providers;
 - (i) Other family members;
 - (j) Faith-based representatives; and
 - (k) Members of the family's community.
- (3) A CRC must have multidisciplinary teams available as a service to youth and their families, if they request the service.

NEW SECTION

WAC 388-145-1970 When should I convene a CRC multidisciplinary team? (1) After a youth is admitted into a CRC, you must advise the parent or guardian and the youth of their rights to request a multidisciplinary team, and make arrangements to convene that team.

- (2) You may set up a multidisciplinary team when you believe that the youth is a "child in need of services" under RCW 13.32A.030 and the parent is unavailable or unwilling to continue efforts to maintain the family structure.

NEW SECTION

WAC 388-145-1975 How is a CRC multidisciplinary team convened? (1) You must notify the members of the multidisciplinary team of the need to convene and you must:

- (a) Tell the youth's parents or guardians about the multidisciplinary team if the parents did not make the initial request to form a team;
- (b) Advise the parents of their right to select additional members; and
- (c) Assist in getting prompt involvement of additional persons that the parent or youth have requested to be added to the multidisciplinary team.

NEW SECTION

WAC 388-145-1980 May a parent disband the CRC multidisciplinary team? (1) Parents may disband the multidisciplinary team:

- (a) Unless a dependency petition has been filed (under RCW 13.32A.140); or
 - (b) After a dispositional hearing has taken place ordering out-of-home placement for the youth.
- (2) You must advise the parents of their right to disband the multidisciplinary team within twenty-four hours after they receive notice of the team forming, excluding weekends and holidays.

Day Treatment ProgramsNEW SECTION

WAC 388-145-1985 Who is eligible to attend my day treatment program? (1) Day treatment is for children who are unable to adjust to school programs due to disruptive behavior, family stress, learning disabilities or other serious emotional disabilities; and/or

- (2) Have intensive needs, which cannot be adequately met through out-patient community mental health services.

NEW SECTION

WAC 388-145-1990 What are the required ratios of staff to children in day treatment centers? (1) There must be one counselor or teacher for every six children in a day treatment program; and

- (2) Either the executive director or on-site program manager must be on the premises while the children are in care.
- (3) Another competent person may be left in charge during the director's and/or program manager's temporary absence (two hours or less).

NEW SECTION

WAC 388-145-1995 What consultants must I use for my day treatment program? (1) You must use consultants, including psychiatrists, psychologists, teachers, and group counselors, for children under care as follows:

- (a) Receive regular consultation from a child psychiatrist; and

(b) Provide or arrange for a psychologist for psychological testing and related services if the child's school does not provide these services.

(c) Provide or arrange for teaching by certified teachers qualified by training or experience in remedial education; and

(d) Use group counselors who are qualified by training or by experience in the care of emotionally disturbed children.

Emergency Respite Centers (ERC - Crisis Nurseries)

NEW SECTION

WAC 388-145-2000 Can my emergency respite center have more than one type of license? If you are licensed by the Division of Licensed Resources (DLR) as an emergency respite center you may also be licensed as a child care center by the Department of Early Learning (DEL). You must meet the requirements for both licenses and have written approval for both licenses from DLR and DEL.

NEW SECTION

WAC 388-145-2005 What are the required ratios of staff to children in an ERC? (1) At all times, emergency respite centers must have the following minimum staffing ratios:

(a) At least two staff on duty when children are present; and

(b) One direct care staff providing visual or auditory supervision for every four children in care.

(2) The director, program manager, or case manager at an emergency respite center must normally be on the premises during daytime hours when children are in care.

(3) If temporarily absent (for two hours or less) from the center, the director and program manager must leave a competent, designated staff person in charge. This person must meet the qualifications of a direct care staff person.

(4) During evening, overnight, and weekend shifts, at least one of the staff on the premises must be a direct care worker when children are present. The other staff may be an assistant. The director, program manager, or case manager must be on-call and able to respond by telephone within fifteen minutes.

NEW SECTION

WAC 388-145-2010 Who are the residents served at my emergency respite center? (1) An emergency respite center may provide care for:

(a) Children from birth through seventeen years; and

(b) Persons eighteen through twenty years of age when the person has intellectual and developmental disabilities and admitted with a sibling who is under eighteen.

NEW SECTION

WAC 388-145-2015 Who may place children at my emergency respite center? A parent or legal guardian of a child may voluntarily place a child in an emergency respite

center to prevent abuse and neglect for up to seventy-two hours.

NEW SECTION

WAC 388-145-2020 What information must I obtain before accepting a child for care at my emergency respite center? (1) Before accepting a child for care at an emergency respite center you must obtain the following:

(a) Permission from the child's parent or guardian authorizing placement and emergency medical care or surgery on behalf of the child;

(b) Basic family information, including address, telephone numbers, and emergency contacts; and

(c) Basic medical information, including current medication, known allergies, and at-risk behaviors of the child.

NEW SECTION

WAC 388-145-2025 May services I provide at my emergency respite center substitute for other types of care? (1) The services provided by an emergency respite center may not substitute for those provided by:

(a) Crisis residential centers;

(b) HOPE centers; or

(c) Any other services required under chapter 13.32A (family reconciliation services) RCW or chapter 13.34 RCW (Juvenile court act).

NEW SECTION

WAC 388-145-2030 Are there additional bed requirements at my emergency respite center? (1) If a cot is used as a bed you must ensure the child's cot is:

(a) Sufficient in length and width, constructed to provide adequate comfort for the child to sleep; and

(b) Is made of material that can be cleaned with a detergent solution, disinfected, and allowed to dry.

Group Homes

NEW SECTION

WAC 388-145-2035 What are the required ratios of staff to children in group homes? You must have at least one direct care staff on site while children are present for every eight children in your group home. If you have both a license and a contract for services, you must adhere to the most stringent staffing ratios.

Group Receiving Centers (GRC)

NEW SECTION

WAC 388-145-2040 Who are the residents at my group receiving center? (1) You are limited to one of the following age groups:

(a) Age two through five;

(b) Six through twelve; or

(c) Thirteen through seventeen.

(2) With a DLR approved safety plan you may be licensed for more than one age group. This might include being licensed for children less than two years of age to accommodate sibling groups.

(3) If you provide care for children under age six and another age group, you may allow common activities for the children of different age groups.

NEW SECTION

WAC 388-145-2045 What are the required ratios of staff to children in group receiving centers? (1) The department has the following specific requirements for the ratio of direct care staff to children at group receiving centers:

(a) At least two staff, including at least one direct care staff person, must be on site whenever children are on the premises; and

(b) If you have at least one child under the age of six in placement, the ratio for a group receiving center is at least one direct care staff person on site during waking and sleeping hours, for every four children.

(2) The ratio for a group receiving center is at least one direct care staff person on site during waking and sleeping hours, for every six children, age six years and older. If your group receiving center is approved for more than one age group, you must maintain the staffing ratio designated for the youngest child in the group.

NEW SECTION

WAC 388-145-2050 When do I accept placements at my group receiving center? A group receiving center must accept placements twenty-four hours a day, seven days a week.

NEW SECTION

WAC 388-145-2055 What services must I provide at my group receiving center? (1) A group receiving center must provide direct receiving care and assessment of a child in terms of his or her physical, mental, social, and emotional condition.

(2) A group receiving center may provide transportation and/or family support services, such as the supervision of family visits.

(3) You must arrange or provide transportation for each school-age child in care to attend school.

NEW SECTION

WAC 388-145-2060 What are the requirements for supervision of children at my group receiving center? (1) Children must be within visual or auditory range at all times during waking hours.

(2) You must ensure that staff providing direct care and supervision of the children are free of other administrative duties at the time of care.

(3) When a child is known to have exhibited behavior that poses a safety risk to other children, you must develop a safety and supervision plan with the child's DSHS worker to address the risk.

Programs for Medically Fragile Children

NEW SECTION

WAC 388-145-2065 What services must I provide for medically fragile children? (1) Your licensed group home or staffed residential facility may also provide specialized care, to medically fragile children who need intensive personal care. The children may require skilled health care, physical therapy, or other forms of therapy.

(2) If you are serving this population as a specialty, you must ensure the following services are provided, if prescribed by a physician:

(a) An individualized treatment plan suited to the unique needs of each child in care;

(b) Care by physicians, including surgeons, general and family practitioners, and specialists in the child's particular diagnosis on either a referral, consultative, or ongoing treatment basis;

(c) Sufficient nursing staff to meet the nursing care needs of the children, including at least one registered nurse licensed with the state of Washington;

(d) Regular nursing consultation that includes at least one weekly on-site visit by a registered nurse, who initially assesses each child and updates the assessments as needed on subsequent visits. These assessments and updates must be documented. You must also keep records of the weekly on-site visits;

(e) Your nursing consultant must advise you and your staff on your infant care program (if appropriate), and develop a written agreement with you about your child health program. The consultant must also advise and assist non-medical staff at your facility in maintaining child health records, meeting daily health needs and caring for children with minor illnesses and injuries;

(f) The nurse's name and telephone number must be posted or otherwise available in your home or facility;

(g) If you care for four or more infants, you must arrange for monthly on-site visits with a registered nurse that is trained or experienced in the care of young children; and

(h) If you care for children with intellectual and developmental disabilities requiring nursing services, you must have a registered nurse on staff or under contract.

NEW SECTION

WAC 388-145-2070 What record keeping requirements exist for medically fragile children? (1) In addition to meeting standard requirements for keeping records per WAC 388-145-1520 and 388-145-1525, you must also keep the following information for medically fragile children that have been in placement for more than thirty days in your facility:

(a) Report of a physical examination and diagnosis by a physician and information about the child's daily care including treatment plans, medications, observations, medical examinations, physicians' orders, proper treatment for allergic reactions, consent authorizations, releases, diagnostic reports, and revisions of assessments;

(b) Upon discharge, a summary including diagnoses, treatments, and prognosis by the person responsible for providing care, and any instructions and referrals for continuity of care; and

(c) Evidence of meeting criteria for eligibility for services from the developmental disabilities administration, if appropriate.

NEW SECTION

WAC 388-145-2075 What are additional food requirements if I care for medically fragile children? You must follow the dietary plan for each child as prescribed by the child's physician. You must use the services of a dietitian who meets current registration requirements of the American dietetic association if offering modified diets. You must document in the child's file that staff are following the physician's order.

Overnight Youth Shelters (OYS)

NEW SECTION

WAC 388-145-2080 What age groups may I serve in my overnight youth shelter? Youth shelters may be licensed to provide care for youth from thirteen through seventeen years of age or youth sixteen through twenty years of age.

NEW SECTION

WAC 388-145-2085 How are youth admitted to my overnight youth shelter? (1) Youth are self-referred to overnight youth shelters.

(2) Foster parents may not place foster children in an overnight youth shelter.

NEW SECTION

WAC 388-145-2090 What are the required ratios of staff to children under care in overnight youth shelters?

(1) An OYS licensed for youth who are thirteen through seventeen years old must have one staff person to every eight youth.

(2) An OYS licensed for youth who are sixteen through twenty years old must have one staff person to every six youth.

(3) An OYS must maintain the staffing ratio while youth are asleep. At least one staff must remain awake while youth are asleep. Other staff may be asleep, but must be available in the shelter in case of emergency.

(4) Whenever only one staff is required to be on duty, a second staff person must be on call and available to respond within thirty minutes.

NEW SECTION

WAC 388-145-2095 What steps must I take when a youth first enters an overnight youth shelter? (1) When a youth first enters an overnight youth shelter, you must:

(a) Determine whether the parents are aware of the whereabouts of the youth;

(b) Follow reporting requirements in WAC 388-145-1545; and

(c) Notify the police or children's administration intake (either the local CPS number or toll-free 1-886-ENDHARM) of any youth twelve years of age or younger who is unaccompanied by an adult and is requesting service, and you are unable to serve the child due to his or her age.

NEW SECTION

WAC 388-145-2100 What services must be offered at an overnight youth shelter? (1) At a minimum, all overnight youth shelters must offer an intake assessment on the youth including:

(a) Emergency contacts (phone numbers);

(b) Areas of possible problems, such as medical problems, family situation and suicide evaluation;

(c) History of assault or predatory behavior; and

(d) Drug and/or alcohol involvement.

(2) You must also assess the youth's:

(a) Outstanding warrants;

(b) Physical and medical needs, including medication;

(c) School status;

(d) Immediate needs for counseling; and

(e) Options for the near future.

(3) You must also offer a youth the following:

(a) Individual crisis intervention;

(b) Assistance in accessing emergency resources, including child protective services (CPS) and emergency medical services;

(c) Resource information;

(d) Educational or vocational services;

(e) Housing information;

(f) Medical care or services;

(g) Substance abuse services;

(h) Mental health services;

(i) Information regarding other treatment agencies;

(j) Food programs;

(k) Disability services; and

(l) Other DSHS services.

(4) If the overnight youth shelter cannot directly provide these services, staff must have information for referrals to programs or organizations that would provide these services to youth.

NEW SECTION

WAC 388-145-2105 What are the additional requirements for bedrooms in overnight youth shelters? (1) In overnight youth shelters:

(a) The number of beds allowed at an overnight youth shelter or emergency respite center is established in consultation with the department of health for each facility. Youth of different genders may share common sleeping areas if a visual barrier at least five feet high separates the youth; and

(b) Youth less than eighteen years old must be separated from youth eighteen through twenty years old by having a staff or volunteer supervise open space or have a physical barrier to prevent contact.

NEW SECTION

WAC 388-145-2110 What are additional bedding requirements in my overnight youth shelter? The shelter must accept the use of sleeping and bedding equipment that is personally provided by the youth, if it is not a health or safety risk.

NEW SECTION

WAC 388-145-2115 Do I need a citizens' board for my overnight youth shelter? (1) Every overnight youth shelter must have a citizens' board that complies with laws and rules for nonprofit boards of directors. If the overnight youth shelter is part of a larger agency that has a citizens' board, that board will suffice.

(2) The shelter director must keep the following on file:

(a) A list of all members of the current citizens' board; and

(b) A copy of the articles of incorporation filed with the secretary of state verifying nonprofit status.

Pregnant and Parenting Youth Programs and Maternity Services

NEW SECTION

WAC 388-145-2120 What services shall be provided to pregnant and parenting youth? (1) Residential programs provide twenty-four hour care to expectant mothers and to new mothers with infants. Your licensed group home or staffed residential facility may provide this specialized care.

(2) You must provide or arrange for the following services:

(a) Information and referral services to every youth;

(b) Safe and stable housing;

(c) An assessment of the family's need(s);

(d) Referral to an authorized medical care provider for prenatal and postnatal medical care;

(e) Case management services; and

(f) The provision of direct services or referrals to available needed services. This includes consultation regarding prenatal care by specialists meeting their full professional qualifications when the physician requests prenatal care.

(3) You must also provide individual or group counseling sessions, if necessary, about the following topics:

(a) Pregnancy counseling;

(b) Independent living education;

(c) Infant and child care training;

(d) Living arrangements;

(e) Medical care planning;

(f) Legal issues;

(g) Vocational or educational guidance;

(h) Plans for the child;

(i) Financial, emotional or psychological problems;

(j) Relations with the child's other parent;

(k) Home management and consumer education;

(l) An expectant mother's delivery in a licensed hospital or licensed birthing facility;

(m) Postpartum medical examinations, as prescribed by a physician, to a new mother;

(n) Childcare, as needed; and

(o) Case management services.

(4) You must provide or arrange for consultation regarding prenatal care by specialists meeting their full professional qualifications when the physician requests prenatal care.

(5) You must provide or assist a parent in arranging for licensed childcare when appropriate.

NEW SECTION

WAC 388-145-2125 How are services for pregnant and parenting youth delivered? (1) The department must approve the program of daily activities that you've developed for pregnant and parenting youth.

(2) Provision of services must not be contingent upon a parent's decision to keep or relinquish a child.

(3) If you do not directly provide pregnant and parenting youth services in your facility, you must either:

(a) Arrange for these services through formal agreements with other community agencies; or

(b) Assist the clients in your program to get these services.

NEW SECTION

WAC 388-145-2130 What types of health education must a facility offer to pregnant and parenting mothers?

(1) You need to offer or arrange health education for pregnant and parenting mothers that includes the following areas:

(a) Hygiene;

(b) Suitable preparation for childbirth;

(c) The physiological changes during pregnancy;

(d) Examinations and childbirth procedures;

(e) Postnatal and pediatric care;

(f) Contraception and family planning;

(g) Nutritional requirements for mother and child;

(h) Child health and development; and

(i) Psychological and emotional changes during and after pregnancy.

NEW SECTION

WAC 388-145-2135 How is capacity determined for a facility that provides services to pregnant and parenting youth? (1) We count the number of parents and children in determining capacity.

(2) The space required for a parent and infant bedroom needs to be considered when determining the capacity of a group care facility providing pregnant and parenting youth services. This is determined by a department of health (DOH) representative.

NEW SECTION

WAC 388-145-2140 What are the required ratios of staff to children in pregnant and parenting youth programs and programs providing maternity services? (1) The minimum ratio of case management staff to youth for pregnant and parenting teen programs is one staff person to fifteen teens.

(2) When youth are on the premises, the ratio of staff to residents must be as follows:

(a) At least one residential staff member must be on duty for every eight parents.

(b) When more than eight parents are on the premises, at least two staff, including at least one direct care staff must be on duty.

NEW SECTION

WAC 388-145-2145 What are the facility and room requirements for programs offering services for pregnant and parenting youth? (1) If you have a residential program for pregnant and parenting youth with infants, you must meet the room requirements for group care facilities per WAC 388-145-1600 through 388-145-1605.

(2) If your facility offers medical clinics, you must have a separate, adequately equipped examination room with adequate nursing equipment.

Resource and Assessment Centers (RAC)

NEW SECTION

WAC 388-145-2150 What is the purpose of a resource and assessment center (RAC)? (1) The purpose of the resource and assessment center is to provide short-term emergency and crisis care for children who are:

(a) Removed from their parent's or guardian's care due to suspected abuse or neglect; and

(b) In immediate need of health care or social services.

(2) Services provided by a center may not substitute for a crisis residential center, Hope center, or any other services required under chapter 13.32A, Family reconciliation services, or 13.34 RCW, Child welfare.

NEW SECTION

WAC 388-145-2155 What must I demonstrate to be licensed for an RAC? (1) In accordance with RCW 74.15.311, you must meet the following requirements:

(a) There is a need in the local community for a RAC;

(b) Be primarily staffed with trained volunteers in order to meet staffing requirements; and

(c) You are not financially dependent upon reimbursement from the state;

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

NEW SECTION

WAC 388-145-2160 What is the ratio of direct care staff/volunteers to children at an RAC? (1) At all times, resource and assessment centers must have the following minimum staffing ratios:

(a) At least two staff/volunteers on duty when children are present; and

(b) One staff/volunteer providing visual or auditory supervision for every four children in care.

NEW SECTION

WAC 388-145-2165 Who are the residents at my RAC? A resource and assessment center is licensed to provide care for children ages birth through twelve, or for children ages thirteen through seventeen who are placed with a sibling(s) under thirteen years of age.

NEW SECTION

WAC 388-145-2170 How long can a child stay at an RAC? Children may be admitted to the resource and assessment center for up to seventy-two hours not including Saturdays, Sundays and holidays.

NEW SECTION

WAC 388-145-2175 When am I required to be available for services? You or a designated staff must be available by phone at all times when you are receiving new placements. Your resource and assessment center may limit days and times of operation, but if you accept placement of a child, you must be operational until that child is discharged. Resource and assessment centers are not required to be operational at times during which there are no children in care.

NEW SECTION

WAC 388-145-2180 Who may place children at an RAC? A DCFS worker may place a child in a resource and assessment center. These centers may not be used to address placement disruptions for children being removed from a foster home or group care facility.

NEW SECTION

WAC 388-145-2185 What services are provided or arranged for at an RAC? (1) A resource and assessment center may provide the following:

(a) Direct care of children and youth;

(b) Referral and provision of health care assessments or screening;

(c) Appropriate community service referrals, as needed; and/or

(d) Initial assessment of child functioning.

Staffed Residential Homes (SRH)

NEW SECTION

WAC 388-145-2190 How many children may be served in my staffed residential home? (1) The department may license a staffed residential home for six or fewer children. This must include the children of youth in care, as well as other children living in the facility who are not in care. The maximum number of children in your staffed residential home must not exceed six at any time to include youth eighteen or older enrolled in the Extended Foster Care program.

(2) The department may restrict the number of children in a staffed residential home according to the age and needs of the children.

(3) Except for programs for pregnant and parenting youth, you may have only two children under two years of age in your facility at a time.

(4) You must only be licensed for a maximum of three pregnant and parenting youth.

(5) The department may license a staffed residential home for up to three children with mental or physical disabilities that are severe enough to require nursing care if you meet the following conditions:

(a) You provide staff that are qualified by training and experience to provide proper care, including necessary medical procedures; and

(b) The children's treatment is under the supervision of a physician.

NEW SECTION

WAC 388-145-2195 What are the required ratios of staff to children under care in an SRH? (1) You must have at least one direct care staff for every six children during waking hours for the children placed in your home.

(2) During sleeping hours at least one staff person must be awake when:

(a) There is a written supervision agreement or a contract with the department specifying an awake staff is needed for either the program or a specific child; or

(b) A youth's behavior poses a safety risk to self and/or others; or

(c) A child's medical condition requires constant monitoring.

(3) The need for overnight supervision must be documented in each child's treatment plan, if awake supervision is necessary.

(4) When only one direct care staff is on duty, a second person must be on-call and available to respond within thirty minutes.

(5) You must have relief staff so that all staff can have the equivalent of two days off a week. This is not required for family members if the staffed residential home is a family residence.

NEW SECTION

WAC 388-145-2200 Who is eligible to manage my staffed residential home? A staffed residential home may be managed by a family residing in the facility or by staff hired to work in the facility.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-145-0010 What is the purpose of this chapter?

WAC 388-145-0020 What definitions apply to this chapter?

WAC 388-145-0030 What is an emergency respite center?

WAC 388-145-0040 What services may be provided or arranged for by the emergency respite center?

WAC 388-145-0050 Are there services an emergency respite center may not provide?

WAC 388-145-0060 What age children may a center serve?

WAC 388-145-0070 Who may place children at a center?

WAC 388-145-0080 Is a license required?

WAC 388-145-0090 How old do I have to be to apply for a license?

WAC 388-145-0100 What personal characteristics must a person have to provide care to children at a center?

WAC 388-145-0110 What personal information may I be required to provide to be licensed?

WAC 388-145-0120 How do I apply for a license?

WAC 388-145-0130 What is required to document completed background checks on staff?

WAC 388-145-0140 What first aid and cardiopulmonary resuscitation (CPR) training is required?

WAC 388-145-0150 What HIV/AIDS and bloodborne pathogens training is required?

WAC 388-145-0160 How long do I have to complete the licensing application packet?

WAC 388-145-0170 Does the department need to approve the program I offer?

WAC 388-145-0180 May a facility have more than one type of license?

WAC 388-145-0190 What hours may a center be open?

WAC 388-145-0200 How does the department decide how many children a center may serve?

WAC 388-145-0210 Will the department grant exceptions to the licensing requirements?

WAC 388-145-0220 Does the department issue probationary licenses?

WAC 388-145-0230 When is a license denied, suspended or revoked?

WAC 388-145-0240 Are there any other reasons that could potentially cause me to lose my license?

WAC 388-145-0250 What happens when a licensor is notified that a licensee has received a non-compliance support order from the division of child support?

WAC 388-145-0260 How will the department notify me if my license is denied, suspended, or revoked?

WAC 388-145-0270 What may I do if I disagree with the department's decision to deny, suspend or revoke my license?

WAC 388-145-0280 Where do I post my license?

- WAC 388-145-0290 What changes to my center must I report to my licensor?
- WAC 388-145-0300 Must I comply with the requirements of the Washington state patrol fire protection bureau to receive a license?
- WAC 388-145-0310 Do I need to notify the local fire department of the location of my center?
- WAC 388-145-0320 Are local ordinances part of the licensing requirements?
- WAC 388-145-0330 Are there other fire safety requirements for inside a center?
- WAC 388-145-0340 What are the requirements for smoke detectors?
- WAC 388-145-0350 What are the requirements for a fire evacuation plan?
- WAC 388-145-0360 What fire prevention measures must I take?
- WAC 388-145-0370 What are the requirements for fire drills?
- WAC 388-145-0380 What fire safety procedures do center staff need to know?
- WAC 388-145-0390 What are the requirements for fire sprinkler systems?
- WAC 388-145-0400 Does an ERC need approval from the department of health to operate?
- WAC 388-145-0410 What are the physical structure safety requirements for a center?
- WAC 388-145-0420 What are the requirements for the location of a center?
- WAC 388-145-0430 What are the requirements for emergency aid vehicle access to my center?
- WAC 388-145-0440 What steps must I take to ensure children's safety around outdoor bodies of water?
- WAC 388-145-0450 What measures must I take for pest control?
- WAC 388-145-0460 What are the requirements regarding pets and animals at a center?
- WAC 388-145-0470 Are alcoholic beverages allowed at a center?
- WAC 388-145-0480 Is smoking permitted around children?
- WAC 388-145-0490 May I have firearms at a center?
- WAC 388-145-0500 May I use wheeled baby walkers?
- WAC 388-145-0510 Are there requirements for the storage of medications?
- WAC 388-145-0520 Are there requirements for storing dangerous chemicals or other substances?
- WAC 388-145-0530 Are first-aid supplies required?
- WAC 388-145-0540 What are the requirements for medical policies and procedures for a center?
- WAC 388-145-0550 Must all children accepted for care have current immunizations?
- WAC 388-145-0560 What must I do to prevent the spread of infections and communicable diseases?
- WAC 388-145-0570 How do I manage medications for children?
- WAC 388-145-0580 May I accept medicine from a child's parent or guardian?
- WAC 388-145-0590 When may children take their own medicine?
- WAC 388-145-0600 Are there general menu requirements?
- WAC 388-145-0610 How often must I feed children at a center?
- WAC 388-145-0620 How do I handle a child's special diet?
- WAC 388-145-0630 Do you have special requirements for serving milk?
- WAC 388-145-0640 What home canned foods may I use?
- WAC 388-145-0650 What requirements must I meet for feeding babies?
- WAC 388-145-0660 Are there room requirements?
- WAC 388-145-0670 What does the room temperature at a center need to be?
- WAC 388-145-0680 What are the kitchen requirements?
- WAC 388-145-0690 May I use the kitchen for activities for children?
- WAC 388-145-0700 May a room be used for more than one purpose?
- WAC 388-145-0710 What are the general requirements for bedrooms?
- WAC 388-145-0720 What are the requirements for beds?
- WAC 388-145-0730 Are there requirements for the use of cribs?
- WAC 388-145-0740 What are the requirements for diapers and diaper-changing areas?
- WAC 388-145-0750 What are the requirements for bathing facilities?
- WAC 388-145-0760 Do I need a telephone?
- WAC 388-145-0770 What are the lighting requirements?
- WAC 388-145-0780 What are the requirements for ventilation?
- WAC 388-145-0790 What are the requirements about drinking water?
- WAC 388-145-0800 What are the requirements for sewage and liquid wastes?

- WAC 388-145-0810 What are the requirements for laundry facilities?
- WAC 388-145-0820 What are the requirements for washing clothes?
- WAC 388-145-0830 Do I need a housekeeping sink?
- WAC 388-145-0840 What are the requirements for hand-washing sinks?
- WAC 388-145-0850 What are the requirements for toilets?
- WAC 388-145-0860 Must a center have toilet training equipment for children?
- WAC 388-145-0870 What are the requirements for indoor play areas?
- WAC 388-145-0880 What are the requirements for an outdoor play area?
- WAC 388-145-0890 What are the size requirements for an outdoor play area?
- WAC 388-145-0900 What are the requirements for playground equipment?
- WAC 388-145-0910 Are there requirements to follow when I transport children?
- WAC 388-145-0920 What does the department require for keeping client records?
- WAC 388-145-0930 What written information is needed before a child is admitted to a center?
- WAC 388-145-0940 What are the requirements for protecting a child under my care from abuse or neglect?
- WAC 388-145-0950 What are the nondiscrimination requirements?
- WAC 388-145-0960 Do I have to admit or retain all children at the center?
- WAC 388-145-0970 Do I have responsibility for a child's personal hygiene?
- WAC 388-145-0980 Do I have responsibility for a child's personal items at the center?
- WAC 388-145-0990 What requirements must I follow when disciplining children?
- WAC 388-145-1000 What types of disciplinary practices are forbidden?
- WAC 388-145-1010 Does the department require a written statement describing my discipline methods?
- WAC 388-145-1020 What types of physical restraint are acceptable?
- WAC 388-145-1030 What types of physical restraint are not acceptable for children?
- WAC 388-145-1040 What must I do following an incident that involved using physical restraint?
- WAC 388-145-1050 What incidents involving children must I report?
- WAC 388-145-1060 What is the ratio of child care staff to children at a center?
- WAC 388-145-1070 What are the requirements for supervision of children at a center?
- WAC 388-145-1080 What are the responsibilities of the director?
- WAC 388-145-1090 Are there general qualifications for all staff in an emergency respite center?
- WAC 388-145-1100 What are the minimum qualifications and training requirements for center staff?
- WAC 388-145-1110 May one person hold two positions at a center?
- WAC 388-145-1120 Who must be on the premises while children are in care at a center?
- WAC 388-145-1130 Are child care assistants allowed to provide care to a group of children without supervision?
- WAC 388-145-1140 Are volunteers allowed to provide child care to children without supervision?
- WAC 388-145-1150 Do volunteers count in the staff-to-child ratio respite center?
- WAC 388-145-1160 Are professional consultants and case managers needed?
- WAC 388-145-1170 What clerical, accounting and administrative services do I need?
- WAC 388-145-1180 What support and maintenance staff do I need?
- WAC 388-145-1190 Is in-service training required for staff?
- WAC 388-145-1200 What are the requirements for an activity program?
- WAC 388-145-1210 What activities must I provide to children?
- WAC 388-145-1220 What types of toys must I provide?

Chapter 388-147 WAC

LICENSING REQUIREMENTS FOR ((~~PREGNANT AND PARENTING TEEN PROGRAMS AND FACILITIES~~)) CHILD PLACING AGENCY AND ADOPTION SERVICES

Purpose and Definitions

NEW SECTION

WAC 388-147-1300 What is the purpose of this chapter? (1) This chapter contains licensing requirements for all

child-placing agencies and the people who operate these programs. This chapter also includes regulations for adoption services provided by child-placing agencies. These licensing regulations are designed to ensure children who are in care are safe, healthy and protected from all forms of child abuse and neglect according to RCW 26.44.020(1) and chapter 388-15 WAC.

(2) If you are a child-placing agency that certifies foster homes, the homes you certify must meet the full licensing requirements outlined in chapter 388-148 WAC, Child foster home licensing requirements.

NEW SECTION

WAC 388-147-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

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

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

"Business hours" means hours during the day in which business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard business hours.

"CA" means children's administration.

"Care provider" means any person who is licensed or authorized to provide care for children and/or cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means a licensed child-placing agency (CPA) review that a foster home being supervised by that CPA meets licensing regulations. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-147 WAC.

"Child", "children" or "youth" for this chapter, means a person who is one of the following:

- (1) Under eighteen years old;
- (2) Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;
- (3) Up to twenty-one years of age and participating in the extended foster care program;
- (4) Up to twenty-one years of age with intellectual and developmental disabilities;
- (5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child-placing agency" or "(CPA)" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child-placing agencies, and licensed group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that your agency meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support and ser-

vices being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age under the care and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Non-ambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services without compensation, for your agency.

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

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

Licensing Process

NEW SECTION

WAC 388-147-1310 Am I required to have a license to provide care to children? You must be licensed if you provide care on a twenty-four hour basis to a child who is not related to you. Exceptions to this rule are listed in RCW 74.15.020 or by order of the court under chapters 26.10 RCW or RCW 13.34.065.

NEW SECTION

WAC 388-147-1315 When will the department grant me a license? (1) We issue you a child-placing agency license when you, your staff and volunteers, property and premises meet the regulations contained in this chapter, and all required documents are in the licensing file.

(2) If you are providing Adoption services you must meet the additional requirements in WAC 388-147-1660 to 388-147-1730.

(3) If your licensed program is providing specialized services for medically fragile children, day treatment services, or maternity services for pregnant and parenting youth, you must meet additional requirements in chapter 388-145 WAC.

NEW SECTION

WAC 388-147-1320 How old do I have to be to apply for a license to provide care to children? You must be at least twenty-one years old to apply for a license to provide care to children.

NEW SECTION

WAC 388-147-1325 What is required to apply for a child-placing agency license? (1) You must submit a completed application which is available from the division of licensed resources; and

(2) You, your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06 WAC are required to:

- (a) Submit a completed background authorization form;
- (b) Complete an FBI fingerprint check if the individual over eighteen years of age has lived out of state during any portion of the previous three years; and

(c) Ensure that no employee, volunteer or subcontractor has unsupervised access to children until a full and satisfactory background check is completed and documentation qualifying the individual for unsupervised access, has been returned to you. Your employees are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540.

NEW SECTION

WAC 388-147-1330 How does the department determine my suitability to become a licensed provider? (1) The department determines your suitability as a licensed provider after receiving your application, background authorization(s) for those listed in WAC 388-147-1325(2), and all required documentation outlined in this chapter.

(2) You, your employees and volunteers must not have had a license or contract denied or revoked from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's safety, well-being and long term stability.

(3) You, your employees and volunteers must not have been found to have committed abuse or neglect of a child or vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You must demonstrate that you, your employees and volunteers have:

- (a) The understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under your care; and

(b) The ability to furnish children with a nurturing, respectful, and supportive environment.

(5) At any time, we may require you or your employees and volunteers to give additional information. We may also require an evaluation of your facility or property, or of a staff person working for your agency, by an evaluator recommended by us. Any evaluation requested by the department will be at your expense. You must give the evaluator written permission to share information with us prior to and throughout the evaluation process.

(6) Any employee, intern, or volunteer who is found to have misrepresented or provided fraudulent information may be disqualified.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe environment for children and to provide the quality of care needed by children placed in your care. Your licensor will also determine that you meet training requirements.

NEW SECTION

WAC 388-147-1335 What additional steps must I complete prior to licensing? (1) You must submit to your licensor a detailed written program description for DLR approval. In the description you must outline:

- (a) Your mission and goals;
 - (b) A description of the services you will provide to children and their families;
 - (c) Your written policies covering qualifications, duties and on-going training for developing and upgrading staff skills; and
 - (d) A description of your agency's policies and procedures.
- (2) You must have a site inspection by your DLR licensor or someone designated by DLR who can verify that your Washington state premises have:
- (a) Adequate storage for staff and client files;
 - (b) A working telephone;
 - (c) Adequate space for privacy when interviewing parents and children;
 - (d) Room or area used for administrative purposes;
 - (e) Adequate space for visitation, if needed; and
 - (f) Your license clearly posted (if inspection is for a renewal license).

(3) You and your staff are required to submit a negative tuberculosis test or an X-ray.

(a) We may grant an exception to the TB test, in consultation with a licensed health care provider.

(b) This exception would require a statement from a licensed health care provider (MD, DO, ND, PA or ARNP) indicating that a valid medical reason exists for not having a TB test.

NEW SECTION

WAC 388-147-1340 How long do I have to complete the licensing application process? (1) You must complete your licensing application and submit all DLR required documents within ninety days of submitting the application and background authorization forms to the department.

(2) If you do not meet this ninety-day deadline, your licensor may withdraw your application.

(3) As a courtesy, a renewal notification and renewal materials will be sent one hundred and twenty days prior to your license expiration date. If you do not receive this renewal notice it is your responsibility to contact your licensor.

(4) You must send the renewal application and all required background authorization forms to your licensor at least ninety days prior to the expiration of your current license.

NEW SECTION

WAC 388-147-1345 What are the roles of the department and the CPA? (1) We license CPAs, including tribal CPAs, to supervise foster homes. You are authorized to certify to the department that a foster home meets the licensing regulations contained in chapter 388-148 WAC.

(2) You have the discretion to certify or not to certify a foster home.

(3) You may, at your discretion, have additional regulations for a foster home to become and remain a licensed foster home under your supervision.

(4) The department has the final approval for licensing a foster home that you have certified.

NEW SECTION

WAC 388-147-1350 How must I certify a foster home for licensing by the department? (1) You must use applications, home study forms, and procedures that are approved by the department.

(2) A foster home must be certified by your child-placing agency as meeting the licensing requirements in chapter 388-148 WAC in order to be licensed by the department.

(3) A social service staff person must review and sign approval for the foster home licensing application packet before the application is submitted to DLR.

NEW SECTION

WAC 388-147-1355 How long is my license valid? (1) Your license is issued for a three-year period.

(2) Your license is valid only for the person or organization named on the license and only for the specific address listed on the license.

(3) Your CPA license must be posted where the public can easily view it.

NEW SECTION

WAC 388-147-1360 Who shall have access to my agency? The department must have access to your agency, staff, foster homes, and the children in your care at any time. You must allow us to meet privately with staff or children in your care, at our request. We must also have access to the documents related to your program.

NEW SECTION

WAC 388-147-1365 Am I required to comply with local ordinances? You are responsible for following all local

and state regulations such as zoning regulations, community covenants, local building codes and fire codes. The department may require you to provide proof that you are complying with these regulations.

NEW SECTION

WAC 388-147-1370 What happens when licensing requirements differ from contract requirements? You may hold a contract with the state in order to provide services, but if you provide services as a child-placing agency you must also meet the licensing requirements outlined in this chapter. When contract or other statutory requirements differ from licensing, you must meet the highest standard.

NEW SECTION

WAC 388-147-1375 May an agency be issued more than one type of license? (1) An agency may not be licensed by DLR for more than one type of license in the same building (A group care facility and a CPA for example), unless the department determines that care of one type of client does not interfere with the care of another type of client, and you have approval from the DLR administrator. We may require separation of client populations between the programs. You must meet the requirements for both licenses.

(2) If you have multiple licenses issued by different DSHS licensing agencies in the same location, you must obtain approval from DLR prior to providing services and accepting placements.

NEW SECTION

WAC 388-147-1380 What must be included in a home study completed by my agency? (1) The home study must include the following information:

- (a) The applicant's motivation to foster or adopt;
- (b) The family's plan for honoring the child's ethnic and cultural heritage;
- (c) The education or training needs for the special needs of children;
- (d) The applicant's need for support and description of current support system;
- (e) The applicant's life experiences and challenges;
- (f) The applicant's parenting skills, child discipline practices, and beliefs and attitudes on education;
- (g) The family life of the applicant(s);
- (h) The health of all family members;
- (i) The applicant's religious or spiritual beliefs;
- (j) The physical facility and premises of the property; and
- (k) The resources and financial history of the applicant(s).

NEW SECTION

WAC 388-147-1385 What children may I serve? (1) Foster homes that you certify as meeting our licensing requirements may accept children only from:

- (a) Your child-placing agency; or

(b) A different child-placing agency or the department if there is an agreement written in advance between your child-placing agency and the other child-placing agency/department specifying the criteria and conditions for placement of the children. The written agreements must specify roles and responsibilities of each agency.

NEW SECTION

WAC 388-147-1390 How does the department decide which children will be placed in the homes I certify? (1) We are responsible for the safety and well-being of the children placed in our custody by parents or the court and will place children where we believe is in their best interest.

(2) We specify the maximum number, age range, and gender of children in each home you certify. We will base this on the skills and number of caretakers, the physical accommodations of the foster home, and the needs of children placed in a foster home. Based on this evaluation, we may license a foster home for the care of fewer than the maximum number of children.

NEW SECTION

WAC 388-147-1395 Do I have to admit or retain all children? (1) You have the right to refuse to admit or retain a child in your program. The exceptions to this requirement are individual programs that have contracts that specify a child cannot be denied admission.

(2) A joint decision may be made by the provider, the placement agency and us to serve the child elsewhere, for the health and safety of the child or others.

NEW SECTION

WAC 388-147-1400 What do I need to consider in making foster care placements? (1) In planning a foster care placement for a child, you must consider:

- (a) The child's basic right to their own home and family;
- (b) Proximity to the child's birth parents, extended family and other supports;
- (c) Each child's individual needs, including cultural, spiritual and religious background and family situation; and
- (d) The wishes and participation of each child's parent(s).

(2) Every foster care placement that you facilitate must be based on well-planned, individual preparation of the child and the child's family. In emergency situations, you may place a child in a foster home prior to preparing the child and the child's family.

(3) A child may be placed in foster care only with the written consent of the child's parent(s), or a protective custody order, or under another court order. This consent or order must include approval for emergency medical care or surgery.

NEW SECTION

WAC 388-147-1405 May I share information about the child with the foster parents? (1) You must give foster parents any information that may be shared about the child

and the child's family. Sharing information about behavioral and emotional challenges is especially important. This helps foster parents make an informed decision about whether or not to accept a child in their home and provides for safety and supervision of the child(ren).

(2) You must inform the foster parents that this information is confidential and cannot be shared with persons who are not involved with the care of the child.

(3) You must document in the child's file that you have shared this information at the time of placement.

Rule Violations and Corrective Actions

NEW SECTION

WAC 388-147-1410 Will you license or continue to license me if I violate licensing regulations? (1) We may modify, deny, suspend or revoke your license when you, your employees or volunteers:

(a) Do not meet the licensing regulations in this chapter; or

(b) Have not been cleared for unsupervised access to children; or

(c) Have been determined by us to have abused or neglected a child; or

(d) Are unable to manage your property and financial responsibilities; or

(e) Cannot provide for the safety, health and well-being of the child(ren) in your care; or

(f) Do not meet the health and safety requirements of the department of health and/or the Washington state patrol fire protection bureau (WSPFP), if required.

(2) We may suspend or revoke your license if you have children in your certified homes for whom you are not licensed, without approval of your DLR licenser. This includes having more children, or children of different ages or gender than the license allows.

(3) We will send you a certified letter telling you of the decision to modify, deny, suspend or revoke your license. In the letter, we will also tell you what you need to do if you disagree with the decision.

(4) The department has jurisdiction over all licenses issued by DLR and over all holders of and applicants for licenses as provided in RCW 74.15.030(5). Such jurisdiction is retained even if an applicant requests to withdraw the application, or you surrender or fail to renew your license.

NEW SECTION

WAC 388-147-1415 Are there exceptions made if I do not meet the licensing regulations? (1) We may make exceptions and license or continue to license you if you do not meet the minimum licensing regulations if we find that you can provide for the safety, health and well-being of children in your care.

(2) In addition, we may limit or restrict your license and/or require you to enter into a compliance agreement to ensure the safety and well-being of the children in your care.

(3) You must keep a copy of the approved exception to the licensing regulations for your files.

(4) You do not have appeal rights if the department denies your request for an exception to the licensing regulations.

NEW SECTION

WAC 388-147-1420 Can employees, volunteers and subcontractors be disqualified from having access to the children in my agency? (1) The department must disqualify employees, volunteers or subcontractors if they do not meet the regulations of chapter 388-147 WAC or cannot have unsupervised access to children because of their background check as outlined in chapter 388-06 WAC.

(2) We will notify you if a person in your agency is disqualified from having unsupervised access to children. This could also lead to denial, suspension or revocation of your license.

NEW SECTION

WAC 388-147-1425 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check? (1) You have the right to request an administrative hearing if you disagree with any of these actions. You must request this hearing within twenty-eight calendar days of receiving a certified letter with our decision (see chapter 34.05 RCW). To request a hearing you must send a letter to the office of administrative hearings, P.O. Box 42489, Olympia Washington 98504-2456, 1-800-583-8271. The letter must have the following:

(a) A specific statement why you disagree with our decision and any laws you believe are related to your claim; and

(b) A copy of the certified letter we sent to modify, revoke, suspend, or deny your license or to disqualify your background check.

NEW SECTION

WAC 388-147-1430 How do I appeal the decision of the office of administrative hearings' administrative law judge? (1) The decision of the administrative law judge is the final decision of the department unless you or the department files a petition for review with the DSHS board of appeals within twenty-one calendar days after the administrative law judge's decision is mailed to the parties.

(2) The procedure for requesting or responding to a petition for review with the board of appeals is described in WAC 388-02-0560 through WAC 388-02-0635.

(3) We will not appeal decisions made by the board of appeals.

(4) If you disagree with the board of appeals, you may file a petition in Superior Court and ask for further review (RCW 34.05.510 to 34.05.598).

NEW SECTION

WAC 388-147-1435 Can I be issued a probationary license? (1) We may issue a probationary license as part of a corrective action plan with you.

(2) We will consider the following when deciding whether a probationary license will be issued:

- (a) An intentional or negligent violation of licensing regulations;
 - (b) A history of violation of licensing regulations;
 - (c) A current violation of licensing regulations;
 - (d) Whether you are making a good faith effort to comply; and
 - (e) Any other factors relevant to the specific situation.
- (3) A probationary license may be issued for up to six months. At our discretion, we may extend the probationary license for an additional six months. You may not appeal our decision not to issue a probationary license.

Staff Qualifications and Requirements

NEW SECTION

WAC 388-147-1440 Who must I employ at my agency? (1) You must employ sufficient numbers of qualified staff to meet the physical, safety, health, and emotional needs of the children placed in your care, appropriate for their age and developmental level. Requirements for specific staff are detailed below.

- (2) Employees and caregivers must:
- (a) Demonstrate competency, good judgment, and self-control in the presence of children and when performing duties;
 - (b) Report suspected abuse, neglect, and exploitation to children's administration intake and to the designated administrator or supervisor;
 - (c) Know and comply with rules established in this chapter as well as all other applicable laws; and
 - (d) Comply with federal and state anti-discrimination laws related to personnel policies and procedures.

NEW SECTION

WAC 388-147-1445 What are the qualifications of an executive director or administrator? (1) You must have an executive director or administrator who is available telephonically during business hours and meets the qualification to:

- (a) Manage the financial and administrative operations of the program;
 - (b) Comply with the licensing rules contained in this chapter providing for the health and safety of the children in your agency's care;
 - (c) Effectively communicate to the department the roles, expectations, and purposes of the program;
 - (d) Assume responsibility for safety of children in your agency; and
 - (e) Work with representatives of other agencies.
- (2) An executive director or administrator must have:
- (a) Appropriate education relevant to the specific program; and
 - (b) Four years of successful experience with similar duties and responsibilities for the administrative oversight, program and fiscal management of an agency.

NEW SECTION

WAC 388-147-1450 What are the qualifications of a program manager? (1) You must have a program manager

available during business hours who meets the qualifications to:

- (a) Coordinate the day-to-day operations of the program;
 - (b) Supervise the case management and direct care staff; and
 - (c) Have the responsibility to ensure the completion of each child's plan of care and treatment, if applicable.
- (2) A program manager must have education and experience as follows:
- (a) A master's degree in social services or a closely related field from an accredited school and one year of experience working with children or youth; or
 - (b) A bachelor's degree in social services or a closely related field from an accredited school and two years of experience working with children or youth; or
 - (c) Five years of successful full-time experience in a relevant field.
- (3) A program manager must also have supervisory abilities that promote effective staff performance, and relevant experience, training and demonstrated skills in each area that he or she will be supervising or managing.

NEW SECTION

WAC 388-147-1455 What are the requirements of case management staff? (1) Case management staff will provide individualized case management and coordination of services.

- (2) Case management staff must have a master's or bachelor's degree in social services or a closely related field from an accredited school.
- (3) Case management staff with a bachelor's degree must consult with a person with a master's degree in social services or closely related field for one hour for every twenty hours the case management employee works.
- (4) Case managers must maintain:
- (a) Training, experience, knowledge, and demonstrated skills in each area he or she will be supervising;
 - (b) Skills and understanding needed to effectively manage cases; and
 - (c) The ability to monitor staff development and training.
- (5) You may use case management staff provided by another agency if these staff meet the educational qualifications and you have a written agreement with the agency describing the scope of services to be provided.

NEW SECTION

WAC 388-147-1460 What are the qualifications for case aide staff? (1) If you employ case aides to provide direct care, such as transporting, providing supervision, or performing other services in certified foster homes, these staff must:

- (a) Be at least twenty-one years of age,
- (b) Have a high school diploma or high school or equivalency course of study (GED/HSEC);
- (c) Have one year of experience working directly with children or two years of social services education;
- (d) Have the skill and ability to work successfully with the special needs of children in care; and

(e) Have effective communication and problem-solving skills.

(2) Case aide staff may be between eighteen and twenty-one years of age if enrolled in a social service internship or practicum program with an accredited college or university and can provide sufficient documentation.

NEW SECTION

WAC 388-147-1465 If I have health care staff, what are their qualifications? (1) If your program requires health care staff, they must:

(a) Meet the full professional competency requirements in their respective field; and

(b) Maintain their certification or licensure as required by the department of health.

(2) Applicants with current and active medical licenses or certificates (nurses, physicians and EMS personnel) may submit their licenses or certificates to satisfy the first aid requirement.

NEW SECTION

WAC 388-147-1470 Do I need to employ consultants at my agency? (1) You must have a consultant available as needed to work with your staff, the children you serve, and the children's families. Consultants may be used for case management or program support.

(2) A case management consultant is responsible to:

(a) Review treatment, case plans, or adoption home studies as appropriate;

(b) Provide one hour of consultation/clinical supervision to case management staff without a master's degree in social services or a closely related field for every twenty hours that person works. Staff consultations shall be documented and available to staff on an as-needed basis; and

(c) Monitor the staff skill development in order to effectively manage their cases.

(3) Each case management consultant must have:

(a) A master's degree in social services or a closely related field from an accredited school;

(b) The training, experience, knowledge and demonstrated skills for each area in which he or she will be supervising or advising;

(c) The ability to ensure staff develop their skills and understanding needed to effectively manage cases;

(d) The ability to monitor staff development and training; and

(e) Knowledge of mandatory child abuse and neglect reporting requirements.

NEW SECTION

WAC 388-147-1475 What are the qualifications for the foster home licensor? (1) Your foster home licensor must:

(a) Be at least twenty-one years old; and

(b) Have a bachelor's degree in social services or related field; or

(c) Four years of relevant full-time experience serving children may be substituted for the bachelor's degree with DLR administrative approval.

NEW SECTION

WAC 388-147-1480 What additional support do I need for my child-placing agency? You must have sufficient clerical, accounting, administrative and maintenance services to carry out your program.

NEW SECTION

WAC 388-147-1485 Can one staff person have different responsibilities? The same person may have multiple staff roles and responsibilities as long as they meet the staff qualifications for each position.

NEW SECTION

WAC 388-147-1490 What are the requirements for volunteers working directly with children/youth? (1) These volunteers must meet the licensing requirements listed in this chapter, including meeting the qualifications for case aide staff, and must:

(a) Be at least twenty-one years of age, unless they are between eighteen and twenty-one years of age with an internship or practicum program as per WAC 388-147-1460(2);

(b) Be supervised at all times by at least one paid staff member or a designated volunteer meeting the qualifications of a program manager, working on-site. (Volunteers meeting program manager qualifications may provide direct care unsupervised); and

(c) Receive pre-service training that addresses the needs of the population of children in care.

NEW SECTION

WAC 388-147-1495 What are the required ratios of case manager staff to children under care? (1) You must have at least one full-time case manager providing case management services for every twenty-five children in care.

(2) If you have both a license and a contract for services, you must adhere to the most stringent caseload size requirements for case managers.

Training and Professional Development

NEW SECTION

WAC 388-147-1500 What is the pre-service training requirement for staff and volunteers having direct care responsibility to children/youth? (1) Prior to having responsibility for direct care, staff and volunteers must have a minimum of sixteen hours of the following pre-service training, including policies and procedures, job responsibilities and facility administration. This is in addition to the first aid and cardiopulmonary resuscitation training (CPR) in WAC 388-147-1510 and the HIV/AIDS/blood borne pathogen requirements in WAC 388-147-1515. Pre-service training must be relevant to the type of children and families and

the program services you provide. Pre-service training will usually include the following:

- (a) Child abuse and neglect identification and reporting requirements;
 - (b) Incident reporting;
 - (c) Accessing community resources;
 - (d) Client confidentiality;
 - (e) Family dynamics and family intervention techniques;
 - (f) Child development;
 - (g) Grief and loss;
 - (h) Cultural needs of children in care;
 - (i) Sexually exploited youth;
 - (j) Behavior management and crisis intervention techniques;
 - (k) Conflict resolution or problem solving skills;
 - (l) Substance abuse;
 - (m) Sexually aggressive and physically assaultive training;
 - (n) Effects of trauma on children; and
 - (o) Youth supervision requirements.
- (2) If your agency is providing international adoption services you must also provide training that covers the Hague Convention Articles and the Hague Council on Accreditation (COA) requirements.
- (3) New staff and volunteers must work shifts with fully trained staff until the new staff has completed all required training.

NEW SECTION

WAC 388-147-1505 What is the requirement for staff in-service training? (1) If you have employees in your agency, you must offer in-service training programs for developing and upgrading staff skills. Your training plan must be in writing.

(2) You must submit an in-service training plan for staff for approval by the department, with a minimum of twelve hours of annual training for applicable case management, case aide and foster home licensing staff. This training plan must be relevant to the type of children and families you serve, and the program services you provide. You must provide information relevant to the problems experienced by the children you serve, which may include suicide prevention, substance abuse, child abuse and neglect, mental health issues, cultural sensitivity and predatory behavior.

(3) You must discuss with your staff updated policies and procedures as well as the rules contained in this chapter, including the Hague Council on Accreditation if you are providing international adoption services.

(4) Your training on behavioral management must be approved by DLR and must include nonphysical age-appropriate methods of redirecting and controlling behavior, as described in the children's administration behavior management guide.

(5) You must document all training including a description of the training provided and the date of the training. This information must be kept in each employee's file or in a separate training file.

NEW SECTION

WAC 388-147-1510 What first-aid and cardiopulmonary resuscitation (CPR) training is required? If you or any of your staff provide supervision or direct care to children, basic standard first aid and age-appropriate cardiopulmonary resuscitation (CPR) training is required. The CPR training is not required for staff/volunteers with a statement from their physician that the training is not advised for medical reasons as long as another on-site staff person meets this training requirement. Training must be department approved and accredited with nationally recognized standards.

NEW SECTION

WAC 388-147-1515 What HIV/AIDS/blood borne pathogens training is required? (1) If you or any of your staff provide supervision or direct care to children, HIV/AIDS/blood borne pathogens training is required. This training should include infection control standards.

(2) You must use infection control requirements and educational material consistent with the current approved curriculum published by the department of health, office on HIV/AIDS.

(3) Staff providing direct care to children must use universal precautions when coming in contact with the bodily fluids of a child.

Managing Records and Reporting

NEW SECTION

WAC 388-147-1520 What personnel records must I keep at my agency? (1) You must keep personnel records on file for each staff person who is employed or volunteers at your agency.

(2) For staff who will not have unsupervised access to children you must keep the following:

- (a) An employment application, including work and education history;
- (b) Education documentation;
- (c) Job description of the position at your agency;
- (d) Signed mandated reporter statement;
- (e) A record of participation in the program's orientation;

and

(f) A record of participation in ongoing staff development training.

(3) In addition you must keep the following for staff who have unsupervised access to children:

(a) A log with background check information, containing dates of request and completion of the checks on all staff, interns, volunteers, and service contractors;

(b) A record of a negative Mantoux, tuberculin skin tests results, X ray, or a medical exemption to the skin test or X ray per WAC 388-147-1335(3);

(c) First Aid/CPR/HIV/AIDS/Blood borne pathogens training documentation;

(d) A copy of government-issued photo ID;

(e) A copy of a valid driver's license for staff transporting clients or employees; and

(f) A copy of current auto insurance (if using private vehicle to transport).

(4) You must maintain a written record of case consultation by a master's level consultant as defined in WAC 388-145-1470 for case managers with a bachelor's degree.

NEW SECTION

WAC 388-147-1525 What are the requirements for children's records? (1) You must retain a record of each child placed by your agency. This record must contain all identifying legal, medical, and social information.

(2) Any identifying and personal information about a child and the child's family must be kept confidential as required by chapter 26.33 RCW. These records must be kept in a secure place inaccessible to clients, unauthorized staff and the public.

(3) During a child's placement, the child's record must be maintained and you must attempt to obtain the following information for the child's record, as appropriate to your program:

- (a) The child's name, birth date, and legal status;
- (b) Name and telephone number of the child's DSHS worker for each child in care;
- (c) Written consent, if any, for providing medical care and emergency surgery (unless that care is authorized by a court order);
- (d) A copy of the current legal authority to place;
- (e) Current case plans;
- (f) Social summary;
- (g) Documentation of a child's therapy treatment provided by your staff with the signature of the person making the entry to the therapy or progress notes;
- (h) Log of the child's placement history with your agency; and
- (i) Information related to suspected child abuse and/or neglect referrals made to children's administration, including the concern, date and person taking the report.

(4) In addition, your records must contain the following information if available:

- (a) Names, address and telephone numbers of parents or persons to be contacted in case of emergency;
- (b) Information on specific cultural needs of the child;
- (c) Medical history including any medical problems, name of doctor, type of medical coverage and provider, date of any illnesses or accidents while placed in your agency's care;
- (d) Mental health history and any current mental health, chemical dependency, and behavioral issues, including medical and psychological reports when available;
- (e) Other pertinent information related to the child's health, including basic medical information, such as current prescription medications, immunizations, allergies, dental records and/or eye exams;
- (f) Immunization records (if a child's placement extends beyond thirty days). If the child is not current with immunization, they must be updated as soon as medically possible. Immunization records are not required to be current for children placed in a foster home licensed by a child-placing

agency to provide emergency respite services on a voluntary placement agreement;

(g) Child's school records, report cards, school pictures, and individual education plans (IEP);

(h) Special instructions including supervision requirements and suggestions for managing problem behavior;

(i) Inventory of the child's personal belongings at the time of placement;

(j) Approved list of individuals with whom the child may have contact;

(k) The child's visitation plan; and

(l) For pregnant and parenting youth, information on the mother/father of the youth's child, if available.

(5) If you are unable to obtain this information from the department you must document your attempt to obtain the requested information in the child's file.

NEW SECTION

WAC 388-147-1530 How long should my agency keep the child records? (1) If you have child files with information not returned to the department, you must keep them for six years following the termination or expiration of any license or contract you have with the department.

(2) If your agency closes you must return all child file information to the department for any child who is or was in the custody of the department and whose records were not previously destroyed according to WAC 388-147-1530(1).

(3) Adoption records should be maintained according to WAC 388-147-1720(2).

(4) You must inform your DLR regional licenser about the closure of your agency and where the child files will be kept.

NEW SECTION

WAC 388-147-1535 What information can be shared about a child or a child's family? (1) Information about a child or the child's family is confidential and must only be shared with people directly involved in the case plan for a child.

(2) You may discuss information about the child, the child's family and the case plan only with:

- (a) A representative of the department, including staff from DCFS, DLR and DDA;
- (b) A representative of the department of health, the office of the state fire marshal and the office of the family and children's ombuds;
- (c) An agency program staff;
- (d) The child's attorney;
- (e) The child's assigned guardian ad litem or court-appointed special advocate; or
- (f) Others designated by the child's DSHS worker.

(3) You may check with your child's DSHS worker for guidance about sharing information with the child's teacher, counselor, doctor, respite care provider, any other professional, or others involved in the case plan.

NEW SECTION

WAC 388-147-1540 What incidents involving children must I report? (1) You must report the following incidents immediately and in no instance later than 48 hours to your local children's administration Intake staff and the child's DSHS worker:

(a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;

(b) Any time you suspect physical or sexual abuse, neglect, or exploitation of a child as required under chapter 26.44 RCW;

(c) Sexual contact between two or more children that is not considered typical play between preschool children;

(d) Any disclosure by a child in care of sexual or physical abuse;

(e) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;

(f) Any use of physical restraint that is improperly applied or excessive;

(g) Physical assault between two or more children that result in injury requiring off-site medical attention or hospitalization;

(h) Physical assault of a foster parent, employee, volunteer or others by children in care that results in injury requiring off-site medical attention or hospitalization;

(i) Any medication that is given or consumed incorrectly and requires off-site medical attention; or

(j) Property damage that is a safety hazard and is not immediately corrected or may affect the health and safety of children.

(2) You must report the following incidents related to a child in care as soon as possible or in no instance later than forty-eight hours, to the child's DSHS worker:

(a) Suicidal/homicidal thoughts, gestures, or attempts that do not require professional medical treatment;

(b) Unexpected health problems outside the usual range of reactions caused by medications, that do not require professional medical attention;

(c) Any incident of medication incorrectly administered or consumed;

(d) Physical assault between two or more children that results in injury but did not require professional medical treatment;

(e) Physical assault of a foster parent, employee, volunteer or others by children that results in injury but did not require professional medical treatment;

(f) Drug and/or alcohol use by a child in your care;

(g) Any inappropriate sexual behavior by or toward a foster child; or

(h) Use of prohibited physical restraints for behavior management.

(3) Programs providing care to medically fragile children who have nursing care staff on duty may document the incidents described in WAC 388-147-1540 (2)(b) and (c) in the facility daily logs, rather than contacting the child's DSHS worker or case manager, if agreed to in the child's case plan.

NEW SECTION

WAC 388-147-1545 What are my reporting responsibilities when a child is missing from care? (1) As soon as you or your staff have reason to believe a child in your care is missing as defined in WAC 388-147-1305 or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:

(a) The child's assigned DSHS worker, as appropriate;

(b) Children's administration intake, if the DSHS worker is not available or it is after normal business hours.

(2) You are required to contact local law enforcement within six hours if the child is missing. However, if one or more of the following factors are present, you must contact law enforcement immediately:

(a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained or removed by another person;

(b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;

(c) The child is age thirteen or younger;

(d) The child has one or more physical or mental health conditions that if not treated daily, will place the child at severe risk;

(e) The child is pregnant or parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal thoughts) that if not treated, will place the child at severe risk;

(g) The child has an intellectual and developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

(3) After contacting local law enforcement, you must also contact the Washington state patrol's (WSP) missing children clearinghouse to report that the child is missing from care. The telephone number for the clearinghouse is 1-800-543-5678.

(4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's DSHS worker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsections (2)(a) through (i) of this section are present, you and the child's DSHS worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return on their own.

(5) You must provide the following information to law enforcement and to the child's DSHS worker when making a missing child report, if available:

(a) When the child left;

(b) The last known location of the child;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have caused the child's departure;

(e) Possible places where the child may go;

(f) Special physical or mental health conditions or medications that affect the child's safety;

(g) Known companions who may be aware or involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) Recent photo of the child.

(6) You must ask law enforcement for the missing person report number and provide it to the child's DSHS worker or staff.

(7) At any time after making an initial report you learn of a missing child's whereabouts, you must report that information to the child's DSHS worker.

(8) If a child is returned to your care, it is your responsibility to cancel the run report and notify all persons you have informed of the child's run.

(9) Youth participating in the extended foster care (EFC) program are exempt from these requirements. You must follow all other reporting requirements as defined in WAC 388-147-1540.

NEW SECTION

WAC 388-147-1550 What changes must I report to my licensor? (1) You must immediately report to your licensor changes in the original licensing application. You must report changes in:

(a) Your location or designated space, including address;

(b) Your phone number;

(c) Your program description and/or population served;

(d) Structure of your facility or premises from events causing damage, such as a fire, or from remodeling;

(e) Addition of any new staff person, employee, intern, contractor, or volunteer, who might have unsupervised contact with the children in care;

(f) Medical illness or incapacity that may affect the ability of any of your program staff to complete their duties;

(g) Staff arrests or convictions of which you are aware, that occur between the date of your license and the expiration date of your license;

(h) Any staff changes including the executive director, program manager/supervisor, or master's level consultants;

(i) Death, retirement, or incapacity of the person who holds the license;

(j) Name of licensed corporation, or the name by which your facility is commonly known; and

(k) Your articles of incorporation and bylaws.

Environment, Space and Equipment

NEW SECTION

WAC 388-147-1555 What does the department require for my buildings and property? (1) You must maintain your buildings, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair. You must have a working telephone at your agency at all times.

(2) All homes certified by your agency must meet the health and safety requirements outlined in chapter 388-148 WAC.

NEW SECTION

WAC 388-147-1560 What are the requirements for the prevention of the spread of infections and communicable disease? (1) You must notify your DLR licensor if you or any adults having access to children in your care, have been exposed to someone with tuberculosis, or if a health care provider recommends testing.

(2) Retesting for license renewals is not required unless the above conditions apply.

(3) Staff with a reportable communicable disease or notifiable disease condition in an infectious stage, as defined by the department of health in chapter 246-101 WAC, must not be on duty until they have a physician's approval for returning to work.

NEW SECTION

WAC 388-147-1565 Are alcoholic beverages, marijuana or illegal drugs allowed at my agency or in our certified homes? (1) You must not have or consume alcohol, marijuana or illegal drugs on the premises of your agency.

(2) You must not allow staff members who are under the influence of alcohol, marijuana or illegal drugs to have contact with children in care.

NEW SECTION

WAC 388-147-1570 Is smoking permitted around children? (1) You must not allow your staff to smoke in your agency, in the living spaces of the homes you certify, or while transporting children.

(2) You may permit adults to smoke outdoors away from children in accordance with RCW 70.160.075.

(3) You must not provide tobacco to children.

(4) These rules do not apply to traditional or spiritual Native American or religious ceremonies involving the use of tobacco.

NEW SECTION

WAC 388-147-1575 Are guns allowed on a licensed facility's property? You must not permit guns, ammunition and other weapons on the premises of your agency.

Fire Safety and Emergency Practices

NEW SECTION

WAC 388-147-1580 What fire safety requirements am I required to meet? (1) Child-placing agency staff providing supervision to your certified homes must be knowledgeable about each home's emergency and evacuation plan and be able to:

(a) Operate fire extinguishers;

(b) Test smoke detectors (single station types); and

(c) Conduct inspections to identify fire hazards and take action to correct any hazards noted during the inspection.

(2) If your agency does not have a sprinkler system, you must have at least one approved 2A10BC-rated 5lb or larger all-purpose (ABC) fire extinguisher readily available at your

agency. You must maintain and service fire extinguishers according to manufacturer's specifications.

NEW SECTION

WAC 388-147-1585 Do I need a written emergency plan? (1) You must have a written plan on how you will assist the homes you certify in case of fire or other emergencies such as natural disasters or unforeseen events. Emergency plans may change based on the developmental level and behaviors of children you serve. To ensure that medically fragile or non-ambulatory children can exit safely, you can develop a plan for simulated fire drills with your licenser as per chapter 212-12 WAC.

(2) You must be prepared for emergencies such as violent or threatening persons on the premises, fires, earthquake, or power failure by having a written plan prepared that identifies how you will:

(a) Contact and assist your homes when an emergency occurs; and

(b) How you will notify the department regarding the plan, if implemented.

(3) You must inform your staff of your emergency plan and review your emergency plans with your staff quarterly.

Service Planning

NEW SECTION

WAC 388-147-1590 How does my agency meet the religious needs of children in care? (1) You must assure an environment of tolerance and sensitivity to a child's spiritual and religious beliefs. This includes providing adequate opportunity for spiritual and religious training and participation appropriate to the child's beliefs, and not requiring any child to participate in spiritual or religious practices contrary to the child's beliefs.

(2) You must not impose consequences if a child chooses not to participate in any or specific spiritual or religious practices.

NEW SECTION

WAC 388-147-1595 What are the requirements about nondiscrimination? You must follow all state and federal laws regarding nondiscrimination while providing services to children in your care. You must treat foster children in your care with dignity and respect regardless of race, ethnicity, culture, sexual orientation and gender identity. You must connect a child with resources that meets a child's needs regarding race, religion, culture, sexual orientation and gender identity.

NEW SECTION

WAC 388-147-1600 Do I need a social summary for children under my care? (1) You must develop a written diagnostic social summary for each child accepted for care. The social summary must serve as the basis of the child's admission to your care.

(2) The social summary must be completed as soon as possible or no later than thirty days from the date of placement.

(3) The summary must contain the following information for the child:

(a) Available copies of psychological or psychiatric evaluations, if any, on the child under care;

(b) A narrative description of the child's background and family that identifies the immediate and extended family resources;

(c) Exploration of the child's relationships and the problems and behaviors that have required care away from his or her own home;

(d) The child's primary and alternate permanency plan;

(e) Previous placement history, if any; and

(f) An evaluation of the child's need for the particular services and type of care you provide.

NEW SECTION

WAC 388-147-1605 Do I need a treatment plan for children under my care? (1) If you care for children under the care and authority of the department, with contracts or agreements to provide treatment or therapeutic services, you must assist in developing and implementing a written treatment plan for each child by the thirtieth day in care.

(2) The treatment plan must:

(a) Identify the service needs of the child, parent or guardian;

(b) Describe the treatment goals and strategies for achieving those goals;

(c) Include an ongoing account of the treatment received by the child and others involved in the treatment plan, such as any group treatment or individual counseling; and

(d) Be updated at least quarterly to show the progress toward meeting goals and list barriers to the permanent plan.

(3) A master's level case management staff person or consultant must review and sign approving the child's treatment plan.

NEW SECTION

WAC 388-147-1610 How often should the case manager contact the foster child and family? The case manager must contact a foster child and the foster child's foster family, according to a case plan that reflects the child's needs. Case managers must make in-home health and safety visits as required by children's administration policy. Each foster child and one or both foster parents must be seen at each visit.

NEW SECTION

WAC 388-147-1615 Can children in my care receive services through the extended foster care program? Foster parents can serve youth enrolled in the extended foster care program. You must adhere to chapter 388-25 WAC.

Daily Care, Behavior ManagementNEW SECTION

WAC 388-147-1620 What are the requirements for supervising children? (1) Your agency is responsible to provide adequate supervision at all times. You should arrange and maintain supervision of children during times of crisis when one or more family members or staff members may be unavailable to provide the necessary supervision or coverage for other children in care.

(2) When special supervision is required and agreed upon between the department and the agency, the agency must ensure the necessary supervision is being provided. This supervision may require auditory or visual supervision at all times.

(3) Prior to placement, you must inquire if a child poses a risk to the other children or has special supervision needs by obtaining information from the parent, legal guardian, the child's DSHS worker, therapist, or previous placements. You must:

- (a) Develop a plan to address those needs;
 - (b) Obtain approval from the child's DSHS worker if the child is under the care and authority of the department; and
 - (c) Inform the foster parent who will be caring for the child.
- (4) All high risk activities, including the use of power driven machines or other hazardous equipment, must be properly supervised by an adult. When participating in high risk activities, children must:

- (a) Be instructed how to use and required to use appropriate safety equipment, such as helmets and life vests; and
- (b) Be in continuous visual or auditory range at all times, unless approved by the child's DSHS worker

NEW SECTION

WAC 388-147-1625 What requirements must I follow when I transport children? (1) Transportation you provide must be safe, reliable, and in compliance with law and contract requirements.

- (2) The driver of the vehicle must:
 - (a) Have a valid driver's license; and
 - (b) Be covered under an automobile liability insurance policy.
- (3) The vehicle must:
 - (a) Be kept in safe operating condition;
 - (b) Be equipped with seat belts, car seats and booster seats, and/or other appropriate safety devices for all passengers as required by law. All persons in the vehicle must use the restraint system when the vehicle is in motion; and
 - (c) Contain first aid supplies.
- (4) There must be at least one adult other than the driver in a vehicle when:
 - (a) There are more than five pre-school age children in the vehicle;
 - (b) Staffing requirements or your contract requires a second staff person; or
 - (c) The child's specific need requires a second adult.

(5) Buses approved by the state patrol are not required to have seat belts.

Medical SafetyNEW SECTION

WAC 388-147-1630 Where may I obtain a child's health history? You may obtain the health history from the child's DSHS worker or parent making the placement for all children placed in your facility.

NEW SECTION

WAC 388-147-1635 Am I required to assess a child's need for immediate medical attention? (1) After a child is admitted to your program you must ensure that a child receives an initial health screen as soon as possible but no later than five days after entering your program. You must also make reasonable attempts to obtain the following health history:

- (a) Allergies;
 - (b) All currently prescribed medications; and
 - (c) Any special physical or mental health issues.
- (2) If the child remains in placement beyond seventy-two hours, you must contact the child's DSHS worker, parent, or legal guardian to obtain the following information:
- (a) The date of the child's last physical/dental exam;
 - (b) A history of immunizations; and
 - (c) Clinical and medical diagnoses and treatment plans.
- (3) When a child leaves your care, the health history of the child must be retained by your agency or returned to the department.

NEW SECTION

WAC 388-147-1640 When must I get an EPSDT exam for a child? Children who enter out-of-home care must receive an early and periodic screening, diagnosis and treatment (EPSDT) exam within thirty days, unless they have had an EPSDT exam in the previous thirty days. Exception: Children placed by DDA through a voluntary placement agreement (for children placed by DDA, follow the direction of DDA regarding the need for an EPSDT exam after placement). Children also receive subsequent periodic EPSDT exams; information on these required exams may be obtained from the child's DSHS worker.

NEW SECTION

WAC 388-147-1645 What are the requirements for obtaining consent for emergent and routine medical care? (1) The department is the legal custodian for children it places in care. We have the authority to consent to emergent and routine medical services on behalf of a child under the age of eighteen. Youth in care over the age of eighteen must consent to their own medical care or have an identified person who has been granted the legal authority to consent on their behalf. We delegate some of the authority to providers. You must contact the child's DSHS worker or children's administration intake for specific information for each child.

(2) If you care for children in the custody of another agency, tribal court or other court, you must follow the direction of that agency or court regarding permission to provide consent for medical care.

(3) In case of medical emergency, contact the child's DSHS worker or children's administration intake as soon as possible.

(4) It is your responsibility to ensure that a child receives the necessary medical attention if injured or harmed. In the event of a life-threatening medical emergency, you must contact 911 prior to transporting the child to a medical facility.

NEW SECTION

WAC 388-147-1650 Can I accept medication from a child's parent or guardian? (1) The only medicine you may accept from the child's parent, guardian, or responsible relative is medicine in the original container labeled with:

- (a) The child's first and last name;
- (b) The date the prescription was filled;
- (c) The medication's expiration date; and
- (d) Legible instructions for administration (manufacturer's instructions or prescription label) of the medication.

(2) You must notify the child's DSHS worker if you have any concerns about medication being provided to you by the child's parent or guardian.

NEW SECTION

WAC 388-147-1655 What nursing services must I provide? (1) If you certify a foster home caring for chronically ill children or medically fragile children, you must arrange for regular nursing visits.

(2) These must include at least monthly visits unless a different agreement is specified in the individual child's treatment plan.

(3) The nurse must be registered and currently licensed in the state of Washington.

(4) The nurse's name, address and telephone number must be readily available to the foster parents and/or staff at the home where services are provided.

(5) The nurse must assist your agency in setting up a program that provides for regular medical check-ups and follow-up for special health care needs specified by the child's physician or your staff.

(6) The nurse must advise and assist nonmedical staff in maintaining child health records, meeting daily health needs and caring for children with minor illnesses and injuries.

Adoption Services

NEW SECTION

WAC 388-147-1660 What qualifications must adoption services staff meet? (1) Your agency must have staff serving in the roles of executive director, program manager, and case managers as identified in WAC 388-147-1440 through 388-148-1490.

(2) Staff may serve in multiple roles, but must meet the qualifications of each program role.

(3) Agencies providing inter-country adoptions must also have an individual on staff with experience in providing inter-country adoptions.

NEW SECTION

WAC 388-147-1665 What staff training must I provide? (1) You must have a pre-service training plan of at least sixteen hours for new staff that includes:

- (a) Relevant state law;
- (b) Agency goals, ethical and professional guidelines, organizational lines of accountability, policies and procedures;
- (c) The cultural diversity of the populations(s) you serve;
- (d) Potential short and long term effects of prenatal exposure to alcohol, drugs and poor nutrition;
- (e) The potential effects of separation and loss by the child in respect to their family of origin;
- (f) The process of developing emotional ties to an adoptive family;
- (g) Attachment and post-traumatic stress disorders;
- (h) Normal child and adolescent development;
- (i) The potential effects of abuse, neglect and institutionalization on child development;
- (j) The potential issues of race and culture;
- (k) The emotional adjustment of adopted children and their families;
- (l) Open adoption, benefits of continued relations with siblings;
- (m) Adoption support;
- (n) The most frequent medical and psychological problems experienced by children from the countries of origin you serve;
- (o) Acculturation and assimilation issues, including those that arise from race, ethnicity, religion, and culture; and
- (p) Child, adolescent and adult development as affected by adoption.

(2) If you provide inter-country adoption services, there is additional training required. Pre-service training must also include:

- (a) The requirements of the Hague Convention on the Protection of Children and Co-Operation in Respect of Inter-country Adoption, the federal Intercountry Adoption Act of 2000, Public Law 106-279, Immigration and Nationality Act and the applicable Code of Federal Regulations;
- (b) The adoption laws of any country where your agency provides adoption services;
- (c) Ethical considerations in inter-country adoption and prohibitions on child buying;
- (d) The effects of having been adopted internationally;
- (e) Factors in the countries of origin that lead to children needing adoptive families; and
- (f) Outcomes for children placed for adoption internationally.

(3) Employees may be exempt from elements of the inter-country adoption services training requirements when the employee has demonstrated experience with inter-country adoption and knowledge of the Hague Convention and the Intercountry Adoption Act of 2000.

(4) You must have a written in-service training program of at least fifteen hours annually that includes current and emerging adoption practice issues. If you provide specialized adoption services, such as interstate adoption services or adoption services for children with special needs, you must have a written in-service training program for staff for the specialized adoption services you provide.

NEW SECTION

WAC 388-147-1670 What are the requirements for providing adoptive services? (1) If you plan to provide adoption services you must meet the requirements for a child-placing agency outlined in this chapter.

(2) You must comply with federal and state adoption and adoption support laws and policies.

(3) You must provide adoptive applicants with the following:

(a) Information about the adoption process as outlined in this chapter, as well as your agency's policies, practices and legal procedures;

(b) The needs and characteristics of children available for adoption and the challenges and parenting practices that best meet those needs;

(c) Information on available adoption support programs and post-adoption services; and

(d) Information about the adoptive applicant's right to have legal counsel that is not associated with, and independent of, your agency.

(4) You must document that you provided this information to the adoptive applicant(s) in their file.

(5) You must prepare the potential adoptive family for placement of a specific child by locating and providing information about the child and the birth family to the prospective adoptive family provided under federal and state statute.

(6) You must accept or deny an adoption application and give the applicant(s) an explanation for your decision.

NEW SECTION

WAC 388-147-1675 Do I need to provide potential adoptive families with a program description? (1) You must provide a written program description to families that includes the following:

(a) Services you provide prior to and after placement and/or adoption;

(b) Your application and training requirements;

(c) How your agency will identify children needing adoptive placements, the diverse needs of those children (behavioral challenges, disabilities, medical needs, etc.), and how children will be matched to families.

(d) Post-adoption supports available, including financial support;

(e) The process of adoption from beginning to end;

(f) The expected waiting period prior to adoption;

(g) Your medical history disclosure procedures; and

(h) A copy of your contract.

(2) You must provide each applicant in writing with Federal Adoption Tax Credit information.

(3) You must provide written grievance procedures to the adoptive applicant(s). These must include grievance pro-

cedures in the event that the home study is denied or a particular child is not placed.

NEW SECTION

WAC 388-147-1680 What information regarding fees must I share with my applicants? You must advise each applicant in writing about your agency fees including:

(1) All fees and charges associated with the cost of adoption;

(2) A description of each fee including in-state, out-of-state and international expenses and fees;

(3) All other miscellaneous expenses associated with the adoption process such as:

(a) Home study fees;

(b) Childcare expenses prior to adoption;

(c) Post-placement and post-adoption reports;

(d) Third-party fees;

(e) Estimated travel and accommodation expenses; and

(f) Non-refundable fees.

NEW SECTION

WAC 388-147-1685 What are the requirements regarding contacts with each adoptive placement prior to adoption? You must have face-to-face post-placement contact with each child and adoptive parents at least once every thirty days until the adoption is finalized. Contact may include a home or office visit, and must be in person.

NEW SECTION

WAC 388-147-1690 What steps must I take prior to entering into a contract with an adoptive applicant? (1) The applicant(s) must submit an application to your agency.

(2) You must complete an adoption home study as outlined in WAC 388-147-1695.

(3) Once you have approved an application, but before you sign a contract for services, you must give the applicants a written statement about:

(a) The adoption agency's fixed fees and fixed charges to be paid by the applicant per WAC 388-147-1680;

(b) An estimate of fixed fees or additional itemized expenses to be paid by applicant; and

(c) Specific services covered by fees that you offer for child placement or adoption.

NEW SECTION

WAC 388-147-1695 What must I include in an adoption home study? (1) Your staff must complete an adoptive home study (pre-placement report) with the participation of the applicant(s). Contact with the applicant must include a minimum of three in-person contacts that include:

(a) An individual interview with each applicant parent and with each member of the applicant's household, including children;

(b) A joint interview with the couple, if the family is a two parent household; and

(c) An on-site evaluation of the applicant's home and property.

(2) For the study, your staff must gather information about and assess the following:

(a) The suitability and fitness of the applicant(s) to be adoptive parent(s), including completed background checks of the applicant(s); and

(b) Identification of child characteristics for which the applicant or applicants are best suited.

(3) As required in RCW 26.33.190(2), you must document that your agency discussed with the applicant(s) the following:

(a) The concept of adoption as a lifelong developmental process and commitment;

(b) Relevance of the child's relationship with siblings and the potential benefit to the child for providing for continuing relationship and contact between the child and known siblings;

(c) Disclosure of the fact of the adoption to the child;

(d) The child's possible questions about birth parents and relatives;

(e) Potential for the child to have feelings of identity confusion and loss regarding separation from the birth parents; and

(f) The relevance of a child's racial, ethnic and cultural heritage.

(4) The home study must identify the sources for the information gathered, and include the elements in subsection (1) through (3) in this section as well as the following:

(a) A background check as required in RCW 26.33.190 (3) that includes the examination of state and federal criminal history check(s) and child abuse and neglect check(s);

(b) Whether the applicant previously applied for an adoption home study from any entity, review of the completed home studies and the outcome of the application(s); and

(c) References gathered throughout the assessment process, including references from each of the applicant's adult children or documentation of your diligent efforts to contact the adult children. A minimum of four references, with no more than one relative, are required.

(5) A supervisor must sign for approval and denial of the adoption home study.

(6) Your staff must re-evaluate the applicant(s) suitability for adopting a child each time an adoptive placement is considered.

NEW SECTION

WAC 388-147-1700 What steps must I take to place a child for adoption? (1) Your staff must prepare the adoptive parent(s) for placement of a specific child by:

(a) Locating and providing information about the child and the birth family to the prospective adoptive family provided under the federal and state statute; and

(b) Developing a transition plan for the child into the family, including preparing for adjustment issues, given the child's background.

(2) You must file pre-placement (home study) reports with the court as required by RCW 26.33.180 through 26.33.-190.

NEW SECTION

WAC 388-147-1705 What requirements must I meet to provide specialized adoption services? (1) Specialized adoptive services are inter-country adoption, interstate adoption and adoptions for children with special needs such as intellectual and developmental disabilities or emotional disabilities.

(2) If your agency is providing specialized adoptive services, you must have supervisory staff with specialized training in the particular area of adoption that you want to provide.

(3) If you are facilitating the adoptive placement of children who have special needs, you must have adoptive families who are able to meet the children's special needs, such as behavioral disturbance, medical problems or intellectual and developmental disabilities.

NEW SECTION

WAC 388-147-1710 How will the department process a complaint against my agency? (1) If there is a complaint filed against you or your agency we will investigate to determine if you have violated the Washington Administrative Code and whether you have complied with your approved program description.

(2) Families adopting internationally may file complaints with the Hague Convention Complaint Registry with the federal government.

NEW SECTION

WAC 388-147-1715 Are there additional requirements for international adoptions? If you provide international adoption services to countries party to the Hague Convention, you must also be accredited by a federal Department of State accrediting entity and supply a copy of the accreditation certificate to your licensor.

NEW SECTION

WAC 388-147-1720 How do I maintain children's records? (1) Your child-placing agency must retain a record of each child you place in permanent custody. This record must contain all available identifying legal, medical, and social information and must be kept confidential, as required by chapter 26.33 RCW.

(2) If your agency closes you must make arrangements for a period of ninety-nine years for the retention of adopted children's records who were not in the custody of the department. You must inform your DLR regional licensor about the closure of your agency and where these children's records will be kept.

NEW SECTION

WAC 388-147-1725 What training must I provide prospective adoptive parents? (1) You must provide a minimum of ten hours of training before approval of a home study that includes at least the following:

(a) The rights and responsibilities of adoptive parents and the adoption agency;

(b) The potential risks and challenges inherent in adoption;

(c) The needs and characteristics of children available for adoption;

(d) Attachment, separation and loss issues for children and families, including attachment disorders and other emotional problems that institutionalized or traumatized children may experience;

(e) The importance of cultural and ethnic identity to the child and ways to foster these identities;

(f) The long term implications for a family that has become multi-cultural through adoption; and

(g) The effects of adoption on the child and family.

(2) Training to prepare the adoptive family for a particular child must also be provided. This training must include the child's:

(a) Cultural, racial, religious, ethnic and linguistic background;

(b) Medical, social, birth and developmental history, and

(c) Educational data.

NEW SECTION

WAC 388-147-1730 What must I include in a post placement report? (1) You must include at a minimum, the following information in the post placement report:

(a) All reasonably available information about the child's:

(i) Physical and mental condition;

(ii) Home environment;

(iii) Family life, health, and family constellation; and

(iv) Facilities where the child has resided.

(b) If relevant, information on the child's special cultural heritage, including membership in any Indian tribe or band;

(c) Collateral contacts with professionals involved with the family or child;

(d) Follow up contacts with personal references for the adoptive parents;

(e) A review of the family's discipline practices, done independently with the family and the child, if the child is age appropriate for an interview; and

(f) Documentation of your home visits, including one within the first thirty days following placement.

(2) If the placement appears likely to disrupt, you must document your efforts to provide necessary services to preserve the placement if appropriate. If disruption occurs, you must document your efforts to provide a new placement for the child.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-147-0010 What authority does the department of social and health services have to license residential programs for pregnant and parenting teens and their children?

WAC 388-147-0020 What is the purpose of this chapter?

WAC 388-147-0030 What definitions do I need to know to understand this chapter?

WAC 388-147-0040 Is a license required to provide care to pregnant and parenting teens and their children?

WAC 388-147-0050 How old do I have to be to apply for a license?

WAC 388-147-0060 What personal characteristics are needed to be licensed?

WAC 388-147-0070 What is required when completing an application for licensing?

WAC 388-147-0080 How long does an applicant have to complete the licensing application packet?

WAC 388-147-0090 Will the department license or continue to license a facility if the facility does not meet the licensing requirements?

WAC 388-147-0100 Does the department issue a probationary license?

WAC 388-147-0110 When is a license denied, suspended or revoked?

WAC 388-147-0120 Are there any other reasons that might cause me to lose my license?

WAC 388-147-0130 When is an employee or volunteer disqualified from having unsupervised access to a child or youth in a licensed facility?

WAC 388-147-0140 How is the applicant or licensee notified if the department decides to modify, deny, suspend, or revoke a license?

WAC 388-147-0150 What may an applicant or licensee do if he or she disagrees with the department's decision to modify, deny, suspend or revoke the license?

WAC 388-147-0160 Does the department need to approve the program offered for pregnant and parenting teens?

WAC 388-147-0170 Is a program description required as part of the license application?

WAC 388-147-0180 What must be included in a pregnant and parenting teen program?

WAC 388-147-0190 What independent living skills may be offered?

WAC 388-147-0200 Is a residential facility for pregnant and parenting teens required to provide childcare?

WAC 388-147-0210 What are the requirements about non-discrimination?

- WAC 388-147-0220 Is participation in the program conditional on a teen's decision about keeping or relinquishing her child?
- WAC 388-147-0230 What are your requirements for keeping client records?
- WAC 388-147-0240 What personnel policies must a program have?
- WAC 388-147-0250 Must the facility license be posted?
- WAC 388-147-0260 What are the qualifications for an executive director?
- WAC 388-147-0270 Is a supervisor or case consultant needed?
- WAC 388-147-0280 What are the qualifications of a case manager?
- WAC 388-147-0290 What are the responsibilities of the case manager?
- WAC 388-147-0300 What are the required ratios of case management staff to youth?
- WAC 388-147-0310 Is an on-site facilities manager required?
- WAC 388-147-0320 What are the qualifications for an on-site facilities manager?
- WAC 388-147-0330 What are the responsibilities of the on-site facilities manager?
- WAC 388-147-0340 What clerical, accounting and administrative services are needed?
- WAC 388-147-0350 What support and maintenance staff are needed?
- WAC 388-147-0360 What first aid and cardiopulmonary resuscitation (CPR) training is required?
- WAC 388-147-0370 What HIV/AIDS and bloodborne pathogens training is required?
- WAC 388-147-0380 What steps must be taken to prevent the spread of infections and communicable diseases?
- WAC 388-147-0390 Is in-service training required?
- WAC 388-147-0400 What types of disciplinary practices are forbidden at a facility?
- WAC 388-147-0410 What are the reporting requirements?
- WAC 388-147-0420 What changes to a facility must the licensee report to the licensor?
- WAC 388-147-0430 How is the capacity determined for a facility?
- WAC 388-147-0440 Are there general food service requirements?
- WAC 388-147-0450 What are the requirements for managing medications?
- WAC 388-147-0460 What are the requirements for transporting children and youth?
- WAC 388-147-0470 What are the requirements for beds?
- WAC 388-147-0480 May wheeled baby walkers be used?
- WAC 388-147-0490 What health and safety requirements are there?
- WAC 388-147-0500 Are local ordinances part of the licensing requirements?
- WAC 388-147-0510 What are the requirements regarding the location of a facility?
- WAC 388-147-0520 What physical structure safety requirements must a facility meet?
- WAC 388-147-0530 What measures are required for pest control?
- WAC 388-147-0540 What are the requirements regarding pets and animals in a facility?
- WAC 388-147-0550 Are alcoholic beverages or illegal drugs allowed at a facility?
- WAC 388-147-0560 Is smoking permitted around children or youth?
- WAC 388-147-0570 Are firearms allowed at a facility?
- WAC 388-147-0580 What are the requirements for storing dangerous chemicals or other substances?
- WAC 388-147-0590 What first-aid supplies are needed?
- WAC 388-147-0600 Is a telephone required at the facility?
- WAC 388-147-0610 What are the lighting requirements for the facility?
- WAC 388-147-0620 What are the requirements for laundry facilities?
- WAC 388-147-0630 What are the requirements for toilets, sinks, and bathing facilities?
- WAC 388-147-0640 What are the requirements about drinking water?
- WAC 388-147-0650 What are the requirements for sewage and liquid wastes?
- WAC 388-147-0660 Is a disaster plan required?
- WAC 388-147-0670 What fire safety procedures do case management and facility staff need to know?
- WAC 388-147-0680 What fire safety requirements must the licensee follow?
- WAC 388-147-0690 What other requirements must I follow for smoke detectors?
- WAC 388-147-0700 What fire safety instruction is required for children and youth residing in a facility?
- WAC 388-147-0710 What are the requirements for a fire or other emergency evacuation plan?

WAC 388-147-0720 Are there different construction and fire safety requirements for facilities that have multiple licenses in the same building?

Chapter 388-148 WAC

LICENSING REQUIREMENTS FOR CHILD FOSTER HOMES (~~(, STAFFED RESIDENTIAL HOMES, GROUP RESIDENTIAL FACILITIES, AND CHILD-PLACING AGENCIES))~~)

Purpose and Definitions

NEW SECTION

WAC 388-148-1300 What is the purpose of this chapter? (1) This chapter contains licensing requirements for all foster homes licensed directly by the department or certified through a child placing agency. Unless noted otherwise, these requirements apply to you if you are licensed to provide foster care.

(2) Licensing requirements are designed to ensure children who are in foster care are safe, healthy and protected from all forms of child abuse and neglect according to RCW 26.44.020(1) and chapter 388-15 WAC.

NEW SECTION

WAC 388-148-1305 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years of age and older, not in the care of the department.

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

"CA" means children's administration.

"Capacity" means the age range, gender and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and/or cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means either:

(1) Our review of whether you meet the licensing requirements, even though you do not need to be licensed; or

(2) A licensed child-placing agency (CPA) representing that a foster home being supervised by that CPA meets licensing requirements. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-148 WAC.

"Child", "children" or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years old;

(2) Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;

(3) Up to twenty-one years of age and participating in the extended foster care program;

(4) Up to twenty-one years of age with intellectual and developmental disabilities;

(5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child-placing agency or CPA" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that you and your home meet the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"Maternity services" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child under the care and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Non-ambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the home of a child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means your buildings and grounds adjacent to your residential property that are owned and/or managed by you.

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

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

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

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

Licensing Process

NEW SECTION

WAC 388-148-1310 Am I required to have a license to provide care to children? You must be licensed if you provide care on a twenty-four hour basis to a child who is not related to you. Exceptions to this rule are listed in RCW 74.15.020 or by order of the court under chapters 26.10 RCW or RCW 13.34.065.

NEW SECTION

WAC 388-148-1315 How is an application submitted? (1) You must complete your licensing application packet with all DLR required documents within ninety days of submitting the application and background authorization forms to the department. Application packets are available from the division of licensed resources and licensed child-placing agencies.

(2) If you do not meet this ninety-day deadline, your licenser may withdraw your application.

NEW SECTION

WAC 388-148-1320 When will the department grant me a foster family license? (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

(a) Complete first aid training and age-appropriate adult and/or infant CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and

(b) Complete HIV/AIDS and blood borne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members and anyone else having unsupervised contact with your foster child(ren) must pass the following background check requirements per chapter 388-06 WAC (This includes people living on any part of your property):

(a) Anyone over the age of sixteen must pass a criminal history check.

(b) Anyone over the age of eighteen must pass an FBI fingerprint check.

(c) Anyone over the age of eighteen must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test in the previous twelve months.

(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA and ARNP).

(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licensor will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

NEW SECTION

WAC 388-148-1325 How is a license issued and where is it kept? (1) We will issue a foster family license for the name and address shown on your application when requirements have been met. If you move, we must visit your new home to determine whether you continue to meet licensing requirements. Your license cannot be transferred to someone else.

(2) Your license is issued for a three-year period.

(3) You must keep your foster family license at your home available for viewing if requested.

NEW SECTION

WAC 388-148-1330 May I receive more than one in-home family license? (1) In rare situations and at our discretion, we may allow a family to be licensed for foster care and another type of in-home family care. The DLR Administrator may grant approval if it appears to be in the best interest of a child.

(2) If you have more than one in-home family license:

(a) It must be clear that the health and safety of children is not compromised; and

(b) The total number of children allowed in your home will not be higher than CA's maximum capacity. All licensing agencies must be in agreement.

NEW SECTION

WAC 388-148-1335 What happens when licensing requirements differ from contract requirements? You may also hold a contract with the state to provide services. When contract or other statutory requirements differ from licensing, you must meet the highest standard.

NEW SECTION

WAC 388-148-1340 What do I do to renew my license? (1) As a courtesy a renewal notice will be sent to you one hundred and twenty days prior to your license expiration date. If you do not receive this renewal notice it is your responsibility to contact your licensor.

(2) You must send the application and background authorization form to renew your license prior to the expiration date of your current license. Your license can be closed

if we do not receive your application prior to your license expiration date.

NEW SECTION

WAC 388-148-1345 Who must have access to my home? The department (and, if you are supervised by a CPA, CPA representatives) must have access to your premises, foster children, and documents related to foster children in your care.

NEW SECTION

WAC 388-148-1350 What are the roles of the department and the CPA? (1) We have the legal authority to license homes for the care of children in out-of-home placement. You may choose to be supervised by us, or by a child-placing agency (CPA).

(2) We license CPAs, including tribal CPAs, to supervise foster homes. The CPA is authorized to certify to the department that you meet the licensing requirements contained in this chapter.

(3) A CPA has the discretion whether or not to certify you. If you disagree with a child-placing agency's decision, you must abide by the child-placing agency's grievance process to challenge the decision.

(4) A CPA may, at their discretion, have additional requirements for you to become and remain a licensed foster home under their supervision.

(5) The department has the final approval for licensing you, if you are certified by a CPA.

NEW SECTION

WAC 388-148-1355 Can I be licensed as a foster home if I also work for a child-placing agency or children's administration? (1) If you or your relative(s) work for a CPA in the roles of administration, supervision, foster home certification, placement, payment authorization, or case management, you may not be certified by that CPA as a foster home.

(2) If you go to work for the agency that has already certified your home, and you serve in one of these roles, you must be recertified through another agency or become licensed directly by the department within six months of employment.

(3) You or your relative(s) may not have financial interest in an agency and be licensed or certified by that agency.

(4) If you or your relative works for DSHS, you must follow department policy regarding licensure.

NEW SECTION

WAC 388-148-1360 When may I be certified to provide care to children? (1) When you meet the licensing requirements, you may apply to us for certification of your home, rather than a license, if the following conditions apply:

(a) You are exempt from needing a license (per chapter 74.15 RCW), and you wish to serve department-funded children; or

(b) You are licensed by authority of an Indian tribe within the state under RCW 74.15.190.

Qualifications

NEW SECTION

WAC 388-148-1365 What are the character and personal requirements for foster parents? (1) You must be at least twenty-one years old to apply for a license.

(2) You must demonstrate you have:

(a) The understanding, ability, physical health, emotional stability and personality suited to meet the physical, mental, emotional, cultural, and social needs of children under your care;

(b) The ability to furnish children with a nurturing, respectful, and supportive environment; and

(c) Sufficient regular income to maintain your own family, without the foster care reimbursement made for the children in your care.

NEW SECTION

WAC 388-148-1370 What kinds of assessments are included in the licensing process? (1) The department or child-placing agency will assess you for a foster family license. This will include, but is not necessarily limited to:

(a) Your ability to comply with the licensing requirements;

(b) The physical condition of your home and property;

(c) The physical and mental health of all members of the household; and

(d) Your ability to provide sufficient income to meet the financial needs of your family without the foster care reimbursements for foster children in your care.

(2) At any time, we may require you or someone in your house to give additional information. We may also require an evaluation of your home or property, or of a person in your home, by an evaluator/provider approved by the department.

(3) Any evaluation requested by the department will be at your expense.

(4) You must give the evaluator written permission to share information with us throughout the evaluation process.

NEW SECTION

WAC 388-148-1375 What training am I required to have before I become licensed? (1) Before you are licensed for the first time, orientation and pre-service training will be required for the primary caregiver (at a minimum) in your home.

(2) All members of the household over the age of eighteen who provide care must have and maintain the following training:

(a) First aid;

(b) Age appropriate cardiopulmonary resuscitation (CPR); and

(c) HIV/AIDS to include blood-borne pathogens and infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) The department-approved first aid and CPR training must be accredited with nationally recognized standards. It also must include an in-person exercise demonstrating that you are capable of performing CPR.

(4) You must keep records in your home showing completed current first-aid and age appropriate CPR training for all care providers.

(5) Training for CPR is not required if you have a statement from a physician that the training is not advised for medical reasons. In that case, another person with current CPR training must be on the premises when children are present.

(6) Applicants with current and active medical licenses or certificates (nurses, physicians and EMS personnel) may submit their licenses or certificates to satisfy the first aid and CPR requirement.

NEW SECTION

WAC 388-148-1380 What training must I complete after I am licensed? (1) You and your licensor must develop an individual in-service training plan pursuant to the department's foster home training policy. The training plan will be based on the type of children in your care and your previous training and experience.

(2) If you fail to complete your training plan requirements, we may take corrective action by:

(a) Delaying your foster care renewal license until the requirements are met;

(b) No longer placing children in your home; or

(c) Revoking your license.

(3) We may modify training plans at any time and we may require specific training given the needs of the foster children placed in your home.

NEW SECTION

WAC 388-148-1385 How do you decide how many children may be placed in my home? (1) We will identify the maximum number, age range, and gender of children that may be placed with you. We will base this on your skills, the number of care providers, the physical accommodations in your home, and the needs of the children placed in your home.

(2) The maximum number of children in a licensed foster home is:

(a) Six children in a home licensed with two caregivers. This includes your own children under the age of eighteen, and children in foster or respite care;

(b) Four children, in a home licensed with one caregiver. This includes your own children under the age of eighteen, and children in foster or respite care;

(c) If you already have the maximum number of your own children as specified in (a) or (b) in this subsection, you may be licensed for one foster child at our discretion if you meet the other licensing requirements.

(3) If you reach maximum capacity during licensure because you give birth or adopt, your licensor will determine your home's suitability for one additional child.

(4) At any one time you may care for not more than:

(a) Two children less than two years of age or who are non-ambulatory, including your own children; or

(b) Four children with intellectual and developmental disabilities as defined in RCW 71A.10.020 ; or

(c) Three medically fragile foster children who need semi-skilled maintenance or supportive services. You must have the qualified training and experience to provide proper care.

(5) You may have placement of a teen parent and their child. Both the teen parent and their child do not have to be in the custody of the department or a CPA, however, they will count towards your maximum capacity.

NEW SECTION

WAC 388-148-1390 Can I accept children outside the limitations of my license? (1) We have the discretion to allow you to temporarily exceed your capacity. We may do this when you provide care for a sibling group, respite care, placement of a relative child, or because you have demonstrated exceptional abilities to meet the needs of children. The placement must be in the best interest of the child and may not affect the health and safety of other children in the home.

(2) The approval must be in writing and we may require a written plan for additional supervision or other requirements before granting approval.

NEW SECTION

WAC 388-148-1395 Do I have to admit or retain all children? (1) You have the right to decline to admit or keep a child in your home. However, individual CPA programs may have contracts that specify a child cannot be denied admission.

(2) You do not have the authority to move a child to another home (either temporarily or permanently) without the consent of the child's DSHS worker or the child-placing agency case manager. This does not include temporary visits under seventy-two hours. You must also comply with travel requirements in WAC 388-148-1435.

NEW SECTION

WAC 388-148-1400 What services must I provide for medically fragile children and children with intellectual and developmental disabilities? (1) If you care for medically fragile children and children with intellectual and developmental disabilities, you must ensure the following services are provided, if prescribed by a physician:

(a) An individualized treatment plan suited to the unique needs of each child in care; and

(b) Care by physicians, including surgeons, general and family practitioners, and specialists related to the child's particular diagnosis.

Managing Records and Reporting

NEW SECTION

WAC 388-148-1405 What are the requirements for keeping children's records? (1) When a child is placed in your foster home, you must keep the child's records in your home. You should have the following information, if available:

(a) The child's name, birth date, and legal status;

(b) Name and telephone number of the DSHS worker or case manager for each child in care;

(c) Names, address and telephone numbers of parents or persons to be contacted in case of emergency;

(d) Information on specific cultural needs of the child including a cultural plan for native children with input from the child's tribe, if appropriate;

(e) The child's medical history including any medical problems, name of doctor(s), type of medical coverage and provider;

(f) The child's mental health history and any current mental health, chemical dependency, and behavioral issues, including medical and psychological reports;

(g) A written list of all prescription medications for the children in your care;

(h) Dental care provider;

(i) Immunizations records;

(j) Child's school records, report cards, school pictures, and individual education plans (IEP);

(k) Special instructions including supervision requirements and suggestions for managing problem behavior;

(l) Inventory of the child's personal belongings;

(m) The child's visitation plan;

(n) Written consent from the child-placing agency, if any, for providing medical care and emergency surgery (unless that care is authorized by a court order); and

(o) Names, addresses, and telephone numbers of persons authorized to take the child in care out of your home.

(2) Foster parents are encouraged to obtain a copy of the child's court order or voluntary placement agreement that gives approval to place the child, and the child's case plan from the child's DSHS worker.

(3) At the end of the child's placement, you must return reports and information about the child or the child's family to the child's DSHS worker or case manager, or the child's next placement at the discretion of the child's DSHS worker or case manager.

NEW SECTION

WAC 388-148-1410 What information is confidential and what information can I share about a child or a child's family? (1) Information about a child or the child's family is confidential and must only be shared with people directly involved in caring for a child on a need to know basis, or involved in the case plan for a child. You may discuss information about the child, the child's family and the case plan only with:

(a) Our representatives, including staff from DCFS, DLR and DDA;

- (b) Department of health, office of the state fire marshal and the office of the family and children's ombuds;
 - (c) A child placing agency team assigned to the child;
 - (d) A child's tribal social services worker;
 - (e) Treatment and service providers identified in the child's case plan or with permission of the child's DSHS worker; and
 - (f) The child's guardian ad litem, court-appointed special advocate and/or attorney.
- (2) You may check with your child's DSHS worker for guidance about sharing information with the child's teacher, counselor, doctor and others involved in the child's case plan.
- (3) Child-placing agencies and the department must share information about the child and child's family related to the case plan with you so that you can meet the child's needs.

NEW SECTION

WAC 388-148-1415 Where can I get a child's health history? (1) You may get the health history and immunization record from the DSHS worker or child-placing agency making the placement for all children placed in your home. The health history should include:

- (a) The date of the child's last physical and dental examination;
 - (b) Allergies;
 - (c) Any special health problems;
 - (d) A history of immunizations;
 - (e) Clinical and medical diagnoses and treatment plans;
- and
- (f) All currently prescribed medications.
- (2) When leaving the foster home, the health history of the child must go with the child to the next placement or be returned to the child's DSHS worker or CPA case manager.

NEW SECTION

WAC 388-148-1420 What incidents involving children must I report? (1) You must report the following immediately and in no instance later than forty-eight hours to your local children's administration intake staff and the child's DSHS worker or CPA case manager and/or child's tribal ICW case manager:

- (a) Death, serious illness or injury, or psychiatric care that requires medical treatment or hospitalization of a child in care;
- (b) Any time you suspect or a child discloses physical or sexual abuse, neglect, or exploitation of a child as required under RCW 26.44;
- (c) Sexual contact between two or more children that is not considered typical play between preschool age children;
- (d) Any child's suicide attempt that results in injury requiring medical treatment or hospitalization;
- (e) Any use of physical restraint that is alleged to have been improperly applied or excessive;
- (f) Physical assault between two or more children that results in injury requiring off-site medical attention or hospitalization;
- (g) Physical assault of a foster parent, employee, volunteer or others by children in care that results in injury requiring off-site medical attention or hospitalization;

- (h) Any medication that is given or consumed incorrectly and requires off-site medical attention; or
- (i) Serious property damage that is a safety hazard and is not immediately corrected or may affect the health and safety of children.

(2) You must report the following incidents related to a child in care as soon as possible or in no instance later than forty-eight hours, to the child's DSHS worker:

- (a) Suicidal/homicidal thoughts, gestures, or attempts that do not require professional medical treatment;
- (b) Unexpected health problems outside the usual range of reactions caused by medications, that do not require professional medical attention;
- (c) Any incident of medication incorrectly administered or consumed;
- (d) Physical assault between two or more children that results in injury but did not require professional medical treatment;
- (e) Physical assault of a foster parent, employee, volunteer or others by children that results in injury but did not require professional medical treatment;
- (f) Drug and/or alcohol use by a foster child;
- (g) Any inappropriate sexual behavior by or toward a foster child; or
- (h) Use of prohibited physical restraints for behavior management.

NEW SECTION

WAC 388-148-1425 What are my reporting responsibilities when a child is missing from care? (1) As soon as you have reason to believe a child in your care is missing as defined in WAC 388-148-1305 or has refused to return to or remain in your care, or whose whereabouts are otherwise unknown, you are required to notify the following:

- (a) The child's assigned DSHS worker, as appropriate;
 - (b) CA Intake, if the DSHS worker is not available or it is after normal business hours;
 - (c) The case manager, if the child is placed by a child placing agency program.
- (2) You are required to contact local law enforcement within six hours if the child is missing from care. You must contact law enforcement immediately in any of the following circumstances:
- (a) The child is believed to have been taken from placement. This means the child's whereabouts are unknown, and it is believed that the child has been concealed, detained or removed by another person;
 - (b) The child is believed to have been lured from placement or has left placement under circumstances that indicate the child may be at risk of physical or sexual assault or exploitation;
 - (c) The child is age thirteen or younger;
 - (d) The child has one or more physical or mental health conditions that if not treated daily, will place the child at severe risk;
 - (e) The child is pregnant, or is parenting and the infant/child is believed to be with him or her;

(f) The child has severe emotional problems (e.g., suicidal thoughts) that if not treated, will place the child at severe risk;

(g) The child has an intellectual and developmental disability that impairs the child's ability to care for him/herself;

(h) The child has a serious alcohol and/or substance abuse problem; or

(i) The child is at risk due to circumstances unique to that child.

(3) After contacting local law enforcement, you must also contact the Washington state patrol's (WSP) missing children clearinghouse to report that the child is missing from care. The telephone number for the clearinghouse is 1 (800) 543-5678.

(4) If the child leaves school or has an unauthorized absence from school, you should consult with the child's worker to assess the situation and determine when you should call law enforcement. If any of the factors listed in subsections (2)(a) through (i) of this section are present, you and the child's worker may decide it is appropriate to delay notification to law enforcement for up to four hours after the end of the school day to give the child the opportunity to return.

(5) You must provide the following information to law enforcement and to the child's DSHS worker when making a missing child report, if available:

(a) When the child left;

(b) Location the child left;

(c) What the child was wearing;

(d) Any known behaviors or interactions that may have caused the child's departure;

(e) Possible places where the child may go;

(f) Special physical or mental health conditions or medications that affect the child's safety;

(g) Known companions who may be aware or involved in the child's absence;

(h) Other professionals, relatives, significant adults or peers who may know where the child would go; and

(i) Recent photo of the child.

(6) You must ask law enforcement for the missing person report number and provide it to the child's DSHS worker or staff.

(7) At any time after making an initial report you learn of a missing child's whereabouts or the child returns to your home, you must report that information to the child's DSHS worker.

NEW SECTION

WAC 388-148-1430 What are other reporting requirements? (1) You must report to your licensor immediately if:

(a) Your address or telephone number changes;

(b) The structure of your home is damaged or you plan to make changes to the structure; or

(c) You have any changes to your original licensing application or you relocate your home.

(2) You must report to your licensor any significant changes regarding people in your home and your property including:

(a) A change in your marital status;

(b) A separation from your spouse or partner;

(c) An arrest of anyone on the premises or who has access to children;

(d) The death of immediate family members living in your home;

(e) Anyone moving in or out of your home or on the property;

(f) Any serious physical or mental incapacity that may interfere with the care of children;

(g) Any changes in a medical condition, including changes in prescription drugs that impact your ability to care for children;

(h) A change in employment or significant decrease in income; and

(i) If you adopt a child.

(3) The above changes may require the department or child-placing agency to complete a new assessment of your home. This assessment may or may not result in the issuance of a license.

NEW SECTION

WAC 388-148-1435 What are the travel requirements for children in care? You must get written approval from the child's DCFS worker for children or youth in the care and custody of the department, prior to any travel over seventy-two hours, and any out-of-country travel.

Health and Safety

NEW SECTION

WAC 388-148-1440 What are the requirements for my home and property? (1) Your home must have adequate indoor and outdoor space, ventilation, toilet and bathing facilities, light and heat to ensure the health and comfort of all members of the household.

(2) You must keep your home, property, living areas and furnishings:

(a) Clean, comfortable and in good repair;

(b) Reasonably free from pests, such as rodents, flies, cockroaches, fleas, and other insects using the least toxic methods available; and

(c) Reasonably free from anything that may be a hazard to children.

(3) You must keep all toxic materials out of the reach of children and separated from food items.

(4) You must provide adequate laundry and drying equipment, or make other arrangements for laundry on a regular basis.

(5) People must be able to easily open doors from the inside and outside in all areas of the home that are occupied. This includes closets, bathrooms, and bedrooms. You must also have easy access to the outside in case of an emergency.

(6) The cleanliness and care of your home must meet generally accepted health standards for the storage and preparation of food.

(7) You must develop a plan with your licensor to address hazardous conditions that are present in your home or on your property.

(8) You are responsible for following all local and state regulations such as zoning regulations, local building codes and fire codes. The department may require you to provide proof that you are complying with local regulations.

NEW SECTION

WAC 388-148-1445 What are the requirements for water, garbage and sewer in my home? (1) You must maintain adequate sewage and garbage facilities. You must discharge sewage into a public system or into a functioning septic system or a department of health approved and/or tribal authority alternative system.

(2) You must have access to a public water supply unless you have a private water supply tested by the local health authority or a private water-testing laboratory approved by the department of public health and/or tribal authority. Testing is required at the time of licensing, re-licensing and at any time the department or child-placing agency deems necessary.

(3) The temperature of running water must not exceed one hundred twenty degrees.

NEW SECTION

WAC 388-148-1450 What are requirements for my household equipment and hardware? (1) You must disinfect diaper-changing areas and toilet-training equipment between each use or use a nonabsorbent, disposable covering that you discard after each use. All caregivers must wash hands before and after diapering each child.

(2) You must install electrical outlet covers in areas that are accessible to children who might be endangered by exposed outlets. This includes children under the age of six or children with intellectual and developmental delays.

(3) Caregivers must have access to a working telephone at all times while children are present in the home. You must post emergency numbers and the address of your home in an easily visible location. This must include the Washington state poison control number (1-800-222-1222).

(4) Infants/toddlers are not allowed to use wheeled baby walkers.

NEW SECTION

WAC 388-148-1455 How must I keep children safe around bodies of water? (1) You must ensure children in your care are safe around bodies of water. You must:

(a) Keep all swimming pools and other bodies of water fenced with a locking gate or other DLR-approved safety device;

(b) Lock hot tubs when not in use;

(c) Make all potential water hazards, including wading pools, inaccessible to children when not in use.

(2) All swimming pools and other bodies of water must comply with state and local regulations. You must work with your licensor to establish a plan for the bodies of water based on the development level and behaviors of the children in your home.

(3) You must observe the following when foster children are swimming in pools and outdoor bodies of water:

(a) Swim only in designated swimming areas; or

(b) Require all children age thirteen and under to wear U.S. Coast Guard-approved personal floatation devices when swimming outside the supervision of a lifeguard.

(4) If you have any water-based recreation devices, you must use and maintain them according to manufacturer's recommendations. All children and youth who ride in a water-based recreation device must wear a U.S. Coast Guard-approved personal floatation device at all times.

(5) An adult with current age-appropriate first aid and CPR or a lifeguard must supervise children swimming under age twelve, and must be able to see and hear the children at all times. Children under the age of five must be within touching distance of a supervising adult or the birth parent at all times.

NEW SECTION

WAC 388-148-1460 How do I prepare for a natural disaster or emergency? (1) You must develop an evacuation plan in case of a fire, natural disaster or other emergency. The plan must include:

(a) An evacuation floor plan, identifying exit doors and windows;

(b) Action to take for evacuating your home that ensures responsibility for the children; and

(c) A plan for notification regarding the whereabouts and well-being of the children following the evacuation.

(2) You must share this plan with your licensor and update the plan when circumstances in your home change. The emergency plan will be based on the type of children in your care, and the conditions of your home and property. Evacuation plans may change based on the developmental level and behaviors of children living in your home.

(3) Your required plan for natural disasters should include supplies of food, water, medications and other necessary supplies.

(4) Emergency evacuation drills shall be practiced at least quarterly with children in your home. You must review evacuation procedures with every child when he or she is placed in your home.

NEW SECTION

WAC 388-148-1465 What other emergency fire and safety requirements must I follow to become licensed? (1) You must observe all state and local fire codes (WAC 212-12-005). We will determine that reasonable fire safety standards exist in your home based on the children placed in your home.

(2) Children must be able to escape from every floor in your home. In most cases, this includes a functional fire ladder available from upper stories.

(3) Windows must open to the outside and be large enough for a rescue person to enter and exit wearing rescue gear.

(4) You must have easy access to all rooms in your home in case of emergency.

(5) We may require you to have an inspection by WSP/FPB or the local fire authority if we have questions about fire safety, or if local ordinances or WSP/FPB require these inspections.

(6) Your home must have smoke detectors in operating condition to protect sleep areas, play areas and the basement. You must install and maintain smoke detectors according to manufacturer's specifications.

(7) You must have at least one approved 2A10BC-rated 5lb or larger all-purpose fire extinguisher readily available at all times. You must maintain and service fire extinguishers according to manufacturer's specifications.

(8) Barriers are required for fireplaces, wood stoves and other heating systems if you are licensed for children less than six years of age. You must not leave open-flame devices unattended or use them incorrectly.

(9) Emergency vehicles must be able to access your home. Your address must be clearly visible on your home or mailbox so that emergency personnel can easily find your home.

NEW SECTION

WAC 388-148-1470 What are the general requirements for bedrooms? (1) Each child shall have a bedroom, approved by the licensor, with privacy and space that is appropriate and adequate to meet the child's developmental needs. Children may share bedrooms, in compliance with WAC 388-148-1475.

(2) Each bedroom must have unrestricted direct access to outdoors as well as one direct access to common use areas such as hallways, corridors, living rooms, day rooms, or other such common use areas.

(3) You must not use hallways, kitchens, living rooms, dining rooms, and unfinished basements as bedrooms.

(4) Children must not be required to pass through private bedroom space in order to access common areas of the home.

(5) An adult must be on the same floor or within easy hearing distance and access to where children under six years of age are sleeping.

(6) You must provide an appropriately sized separate bed for each child with clean bedding, and a mattress in good condition.

(7) Some children may soil the bed, and you may need to plan accordingly. You must provide waterproof mattress covers or moisture-resistant mattresses if needed. Each child's pillow must be covered with waterproof material or be washable.

(8) You must provide an infant with a crib that ensures the safety of the infant, and complies with chapter 70.111 RCW, Consumer Product Safety Improvement Act of 2008. These requirements include:

(a) A maximum of 2 3/8" between vertical slats of the crib;

(b) Cribs, infant beds, bassinets, and playpens must have clean, firm, snug-fitting mattresses covered with waterproof material that can be easily disinfected and be made of wood, metal, or approved plastic with secure latching devices; and

(c) You must not use crib bumpers, stuffed toys and pillows with sleeping infants unless advised differently by the child's physician.

(9) You must place infants on their backs for sleeping, unless advised differently by the child's physician.

(10) You must not allow children to use the loft style beds or upper bunks if the child is vulnerable due to age, development or condition. Examples: Preschool children, expectant mothers, and children with a disability.

(11) You must assure that children have access to clean clothing that is appropriate to their age. You must provide safe storage of children's clothing and personal possessions.

NEW SECTION

WAC 388-148-1475 What are the requirements for sharing bedrooms? (1) Shared bedrooms must provide enough floor space for the safety and comfort of children.

(2) Foster teen parents may sleep in the same room with their children. When a teen parent and his/her infant sleep in the same room, the room must contain at least eighty square feet of usable floor space. You must allow only one parent and infant(s) to occupy a bedroom.

(3) No more than four children shall sleep in the same room. This includes foster children and any other children.

(4) Children over age one may share a bedroom with an adult who is not the child's parent only if the child's physician authorizes it in writing.

(5) Foster children may not share the same bedroom with a child of another gender unless all children are under age six.

(6) A youth placed in the extended foster care program may not share a bedroom with a youth younger than ten years of age.

(7) An exception may be granted to 388-148-1475 (3) through (6) with an administrative approval if it is supported by the licensor and the child(ren)'s DSHS worker, and is in the best interest of the child.

NEW SECTION

WAC 388-148-1480 What are the requirements for animals? (1) All animals on your property must be safe and properly cared for in a sanitary manner.

(2) You must comply with city, county, state and federal statutes and regulations regarding:

(a) Animal safety;

(b) Vaccinations; and

(c) Standard veterinary care.

(3) You may not have an animal in your home or on your premises that is dangerous to children in care.

(4) We have the discretion to limit the type and number of household pets and animals if we determine that there are risks to the children in your care.

(5) All pet medications must be kept in a separate locked container.

NEW SECTION

WAC 388-148-1485 Under what conditions may I have alcoholic beverages or marijuana on my property? You may have alcoholic beverages or marijuana on your property as long as they are not accessible to people under the age of twenty-one.

NEW SECTION

WAC 388-148-1490 May I have illegal drugs on my property? You must not have illegal drugs on your property and/or in your possession.

NEW SECTION

WAC 388-148-1495 What are the requirements for smoking around children? (1) You must not allow smoking in your home. You may not smoke in motor vehicles when children are present.

(2) You may permit adults to smoke outdoors away from children in accordance with RCW 70.160.075.

(3) These requirements do not apply to traditional or spiritual Native Alaskan/Native American or religious ceremonies involving the use of tobacco.

NEW SECTION

WAC 388-148-1500 Under what conditions may I have guns and weapons on my property? (1) You must notify your licensor if you or someone else in your home has a gun or weapon on the property. This includes but is not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

(2) Guns and ammunition must not be accessible to children, and must be kept in locked containers with guns and ammunition locked separately.

(3) You must unstring or unload other types of dangerous weapons, and store them in locked containers out of reach of children.

(4) If you store guns in a container that may be easily breakable, you must secure them with a locked cable or chain placed through the trigger guards.

(5) Whenever possible, we encourage you to equip guns with a trigger guard lock.

(6) You must keep keys to the locked storage area of weapons secure from children.

(7) Children may use a gun only if the child's worker approves and the youth and supervising adult has completed an approved gun or hunter safety course.

NEW SECTION

WAC 388-148-1505 What must I do to prevent the spread of infections and communicable diseases? (1) You must notify your licensor if you or any adults living in your home have been exposed to someone with tuberculosis or if a health care provider recommends testing.

(2) Retesting for license renewals is not required unless the above conditions apply.

(3) You must promote personal hygiene to help prevent the spread of germs in your home such as washing hands after smoking, changing diapers, using the toilet, touching animals, playing outside or before preparing food or eating.

(4) If you care for medically fragile children, you may use in-home nursing services to consult on additional infection control procedures.

NEW SECTION

WAC 388-148-1510 What requirements do I need to follow when I transport children? (1) When you transport children in your care you must follow these requirements:

(a) The vehicle must be kept in a safe operating condition;

(b) The driver must have a valid driver's license;

(c) The driver or owner of the vehicle must be covered under an automobile liability insurance policy;

(d) The vehicle must be equipped with seat belts, car seats and booster seats, and/or other appropriate safety devices for all passengers as required by law;

(e) The number of passengers must not exceed the vehicle's seat belts; and

(f) Each person in the vehicle must use an individual seat belt or approved child passenger restraint system whenever the vehicle is in motion, and follow the law regarding placement of children in vehicles.

NEW SECTION

WAC 388-148-1515 What are the requirements regarding food? (1) Food served to children in your care must meet their nutritional and developmental needs, with a variety of options for adequate nutrition and meal enjoyment.

(2) Children's cultural needs should also be considered when planning meals.

(3) All home-canned foods must be preserved following published procedures and you must be able to provide the printed published procedures that you followed.

(4) Before you modify a child's diet, you must obtain written authorization from a physician for children under the age of ten years.

(5) The milk or milk products you serve must be pasteurized. Children between the ages of twelve and twenty-four months must receive whole milk unless you have written authorization from a physician not to serve whole milk.

(6) Children under the age of twelve months must receive formula or breast milk unless the child's physician authorizes a different diet.

(7) Before serving a child breast milk you must have approval of the child's DSHS worker, physician, parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(8) When you are using bottles to feed infants, you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within twenty-four hours.

(9) To prevent burns, formula must not be warmed in a microwave oven in the bottle that will be used for feeding the infant.

Services To ChildrenNEW SECTION

WAC 388-148-1520 What services am I expected to provide for children in my care? (1) You must make all

reasonable efforts to ensure that children are not abused or neglected per RCW 26.44.020(1) and chapter 388-15 WAC.

(2) You must provide and arrange for care that is appropriate for the child's age and development including:

- (a) Emotional support;
- (b) Nurturing and affection;
- (c) Structured daily routines and living experiences; and
- (d) Activities that promote the development of each child. This includes cultural and educational activities in your home and the community.

(3) In caring for infants and young children you must:

- (a) Hold infants, under the age of six months, for all bottle feedings;
- (b) Hold infants at other times for the purposes of comfort and attention; and
- (c) Allow children plenty of free time outside of a swing, crib or playpen.

(4) In caring for youth enrolled and participating in the extended foster care program you must:

(a) Provide a youth opportunity and support for achieving independence; and

(b) Allow a youth responsibility for their actions.

(5) Before making significant changes in a child's appearance, you must consult with the child's DSHS worker. These significant changes include, but are not limited to, body piercing, tattoos and major changes in hairstyle or color.

(6) You must follow all state and federal laws regarding nondiscrimination while providing services to children in your care. You must treat foster children in your care with dignity and respect regardless of race, ethnicity, culture, sexual orientation and gender identity.

(7) You must connect a child with resources that meets a child's needs regarding race, religion, culture, sexual orientation and gender identity. These include cultural, educational and spiritual activities in your home and community including tribal activities within the child's tribal community or extended tribal family. Your licenser, the child's DSHS worker or CPA case manager and/or child's tribal ICW case manager can assist you with identifying these resources.

(8) You must be sensitive to a child's religion or spiritual practices. You must provide adequate opportunity for religious or spiritual training and participation appropriate to the child's spiritual beliefs. You may not require any child to participate in practices against their beliefs.

(9) You must provide for the child's physical needs. This includes adequate hygiene, nutritional meals and snacks, and readily available drinking water. This also includes a balanced schedule of rest, active play, and indoor and outdoor activity appropriate to the age of the child in care.

(10) You must guide the child to develop daily living skills according to the child's abilities and development. This may include assigning daily chores to children.

NEW SECTION

WAC 388-148-1525 What are the educational and vocational instruction requirements for children in care?

(1) You must meet the following requirements for providing

education and vocational instruction to the children under your care. For each child you must:

(a) Follow the educational plan approved by the child's DSHS worker;

(b) Support the child in regular school attendance. If a child is absent from school you must follow the school's reporting requirements. Notify the child's DSHS worker if the child is absent from school more than three consecutive school days;

(c) Receive approval from the child's DCFS worker prior to making any changes to a child's educational plan;

(d) Support the child's educational plan by providing each child with necessary school supplies and a suitable place to study;

(e) Develop a transportation plan with the child's DSHS worker to ensure school attendance; and

(f) Encourage older youth to pursue a post-secondary education when appropriate.

NEW SECTION

WAC 388-148-1530 Can children participate in everyday activities under my care? (1) You may decide what family or community activities are appropriate for foster children. These activities must be appropriately supervised and may not interfere with visitation with the child's parents.

(2) Children may participate in family, community or friend social activities, organized sports activities, or field trips. Overnight stays over seventy-two hours requires DSHS worker approval. Any activities requiring travel must comply with WAC 388-148-1435.

(3) All high risk activities, including the use of power driven machines or other hazardous equipment, must be properly supervised by an adult. When participating in high risk activities, children must:

(a) Be instructed on, and required to use appropriate safety equipment, such as helmets and life vests; and

(b) Be in continuous visual or auditory range at all times, unless approved by the child's DSHS worker.

(4) It may be appropriate for some children to obtain employment when:

(a) Laws regarding minors working are followed; and

(b) The child's work does not interfere with school.

(5) Youth may obtain a driver's license if you agree to act as the "parent/guardian" for the purposes of the Intermediate Driver's License Law. If you act in this capacity for the youth, you will also be responsible for the child's insurance until the child reaches eighteen years of age or another responsible adult assumes financial liability risks for the child.

NEW SECTION

WAC 388-148-1535 Can I provide care to youth enrolled in the extended foster care program? (1) You can serve youth enrolled in the extended foster care program if you meet the requirements in WAC 388-25-0500 to 388-25-0548. The youth enrolled and participating in the extended foster care program are considered children only for the purposes of the dependency. Otherwise the youth has the legal

status and legal rights of an adult. The youth is responsible for his or her actions, including:

- (a) Purchases;
- (b) Driving;
- (c) Traveling; or
- (d) Financial obligations.

NEW SECTION

WAC 388-148-1540 What privacy must I provide for children in my care? (1) You must assure the right to privacy of personal mail, electronic mail, and phone calls unless:

- (a) We ask you to provide monitoring; or
- (b) The court approves implementation of the monitoring as part of the child's case plan.

(2) CA prohibits the use of video and audio monitoring of children in foster homes unless all of the following are met:

- (a) The DLR administrator grants approval for the use of an electronic monitoring device in your facility following a request by the child's DSHS worker;
- (b) The court approves implementation of the monitoring as part of the child's case plan; and
- (c) You maintain a copy of the approval.

(3) The prohibition of audio or visual monitoring does not include monitoring of the following:

- (a) Infants and toddlers;
- (b) Medically fragile or sick children;
- (c) Video recording equipment to document actions of a child as directed in writing by the child's physician;
- (d) Video recording for special events such as birthday parties or vacations; or
- (e) The use of door or window alarms or motion detectors.

NEW SECTION

WAC 388-148-1545 What belongings will foster children take when they leave my home? (1) You must permit a child who leaves your home to take their personal belongings with them. This includes belongings the child brought with them and acquired in your care, such as clothing, mementos, bicycles, gifts, and any saved money.

(2) If it is not possible for the child to take their belongings at the time they leave, you are required to secure them for up to thirty days and cooperate with the child's DSHS worker to transfer them to the child, as soon as possible.

NEW SECTION

WAC 388-148-1550 What medical and dental care must I provide to children? (1) You must ensure that children receive appropriate medical and dental care.

(2) You must make sure children have routine medical, dental, and vision care, and receive transportation to and from these scheduled appointments.

(3) You must arrange for an early and periodic screening, diagnosis and treatment (EPSDT) exam for children who are in your care for more than thirty days, if that child has not had

an EPSDT exam in the thirty days prior to entering out-of-home care. EXCEPTION: Children placed by DDA through a voluntary placement agreement. (For children placed by DDA, follow the direction of DDA regarding the need for an EPSDT exam after placement.) In addition, you must ensure that each child in your care has an EPSDT exam annually.

(4) You must obtain and follow instructions from the child's medical provider if you give medication or treatment, and use medications as prescribed per the medication label. Prescription or over-the-counter medications shall be clearly labeled.

(5) You must make plans to respond to illness and emergencies, including serious injuries and contact with toxic or poisonous substances.

(6) You must immediately call 911 in a life-threatening emergency and notify:

- (a) The child's DSHS worker or CPA case manager and/or child's tribal ICW case manager; and
- (b) Your licensor.

(7) You must have first aid supplies available in your home including:

- (a) Protective non-latex gloves;
- (b) Bandages;
- (c) Scissors and tweezers;
- (d) Ace bandage;
- (e) Gauze; and
- (f) Non-breakable and mercury-free thermometer.

(8) One-way resuscitation masks are recommended but not required.

NEW SECTION

WAC 388-148-1555 What are the immunization requirements? (1) Children placed in your home by the department are required to be immunized according to the Advisory Committee on Immunization Practices of the Centers for Disease Control (ACIP/CDC) as established in the Recommended Immunization Schedule for Persons Aged 0-18 Years, United States, 2012 and as amended each subsequent year, except for rotavirus and human papillomavirus.

(2) If a child who has not received all recommended immunizations is placed in your care, you must take the child to a health care provider as soon as medically possible for catch-up immunizations according to the ACIP/CDC catch-up schedule.

(3) You must contact each child's DSHS worker and your licensor if a serious infection or a communicable disease is a threat to the children in your care. The department may remove a foster child from your home when the threat of a serious infection or communicable disease creates a risk to the health of any child placed in your home.

NEW SECTION

WAC 388-148-1560 What are the requirements for obtaining consent for emergent and routine medical care?

(1) The department is the legal custodian for children it places in care. We have the authority to consent to emergent and routine medical services on behalf of a child under the age of eighteen. Youth in care over the age of eighteen must consent to their own medical care or have an identified per-

son who has been granted the legal authority to consent on their behalf. We delegate some of the authority to providers. You must contact the child's DSHS worker or children's administration intake for specific information for each child.

(2) If you care for children in the custody of another agency, tribal court or other court, you must follow the direction of that agency or court regarding permission to provide consent for medical care.

(3) In case of medical emergency, contact the child's DSHS worker or children's administration intake as soon as possible.

(4) It is your responsibility to ensure that a child receives the necessary medical attention if injured or harmed. In the event of a life-threatening medical emergency, you must contact 911 prior to transporting the child to a medical facility.

NEW SECTION

WAC 388-148-1565 How must medications be stored? (1) Prescription and over the counter medications must be kept in a locked container.

(2) Internal and external medication must be stored separately.

(3) Human medication and animal medication must be kept separate and in locked containers.

NEW SECTION

WAC 388-148-1570 Who may access stored medications? Only you or another authorized care provider (such as a respite provider) is allowed to have access to medications for a child in your care except as noted in WAC 388-148-1580.

NEW SECTION

WAC 388-148-1575 What are other requirements for medications? (1) You must keep a written record of all prescription medications and the dates given for the children in care. This list must go with the child when a child leaves your home.

(2) You must notify the child's DSHS worker of changes in prescribed medications.

(3) You must give prescription and over the counter medications as specified on the medication label or as prescribed by persons legally authorized to prescribe medication. This includes herbal supplements and remedies, vitamins, or minerals.

(4) You must give children non-prescription medication according to product instructions and seek medical advice regarding possible interactions with a child's other prescription and non-prescription medications.

NEW SECTION

WAC 388-148-1580 Can children take their own medications? (1) You may permit children under your care to take their own medicine as long as:

(a) They are physically and mentally capable of properly taking the medication; and

(b) You obtain and keep written approval by the child's DSHS worker in your records.

(2) When a child is taking their own medication, the medication and medical supplies must be kept locked or inaccessible to unauthorized persons.

NEW SECTION

WAC 388-148-1585 Can I use medication for behavior control? You must not use medication for behavior control, unless prescribed for that purpose by a physician or another person legally authorized to prescribe medication.

NEW SECTION

WAC 388-148-1590 Can I choose to give prescribed medications, including psychotropic medication? (1) You must not start or stop giving a child's prescribed medication without approval from the child's physician.

(2) In addition to the physician, you must coordinate starting or stopping a child's psychotropic medication with the child's social worker to determine what consent is needed. The social worker may need to obtain consent from the child age thirteen and older, the parent, or the court.

(3) You must not give medications to a child that has been prescribed for someone else.

NEW SECTION

WAC 388-148-1595 Can I accept prescription medication from a child's parent or guardian? (1) The only medication you may accept from the child's parent, guardian, or responsible relative is medicine in the original container labeled with:

(a) The child's first and last name;

(b) The date the prescription was filled;

(c) The medication's expiration date; and

(d) Readable instructions for administration (manufacturer's instructions or prescription label) of the medication.

(2) You must notify the child's DSHS worker when you receive a new prescription from a child's parent or guardian before giving it to the child.

NEW SECTION

WAC 388-148-1600 What is respite care? (1) Respite care is provided by someone who is approved by the department and is paid to care for the foster children or provide relief for the foster parents. If the person provides care in their own home, they must be licensed. A non-licensed respite care provider caring for a child(ren) in your home must follow the requirements to become a DLR certified respite provider.

(2) You may arrange respite care to provide substitute care in your absence, or to support you as part of a child's case plan. If you use a respite care provider, you should seek prior approval from the child's DSHS worker or CPA case manager and/or child's tribal ICW case manager.

NEW SECTION

WAC 388-148-1605 Who can watch my foster child when I am away from home? (1) You may use a respite provider as defined in WAC 388-148-1600.

(2) You may also use a friend or relative as a substitute care provider for foster children without arranging for a background check. Care provided on an occasional basis, for less than seventy-two hours, will be at your own expense. This may occur when you have no reason to suspect the substitute care provider would be a risk to children, or has no founded child abuse or neglect history or criminal history that would disqualify them from caring for children. You must also:

(a) Be familiar and comfortable with the person who will be caring for the child;

(b) Meet with the substitute care provider and review the expectations regarding supervision and discipline of the foster children;

(c) Be responsible for providing the care provider any special care instructions; and

(d) Tell the substitute care provider how to contact you in case of an emergency.

(3) If the care by the substitute care provider is a regular arrangement, you must have written approval from the child's worker. The person must provide evidence of a cleared background check and meet additional requirements for members of the household as defined in WAC 388-148-1320.

(4) Based on the special needs of a child, the DSHS worker may require the substitute care provider to have additional skills or training.

(5) Teenagers, age sixteen and seventeen, who meet all requirements stated in this section, may supervise no more than three foster children.

(6) Foster children may provide short-term babysitting for children not in foster care. Sexually aggressive and physically assaultive youth may not babysit other children.

Behavior ManagementNEW SECTION

WAC 388-148-1610 What are the requirements for supervising children in my care? (1) You must provide and arrange for adult supervision that is appropriate for the child's age and development.

(2) For each child in your care you must:

(a) Provide personal attention to the child(ren), and additional supervision as needed and required by us; and

(b) Advise the child's DSHS worker about your plan for supervision of children in your care if you work outside the home. You will also provide a general plan to your licensor during the licensing process.

(3) When supervising children you must not:

(a) Leave children under five years of age and children with intellectual and developmental disabilities unattended in a bathtub or shower; or

(b) Use cribs, bassinets, cradles, playpens and swings as a substitute for supervising or one-on-one play with infants and young children.

(4) You are encouraged to obtain and follow a written supervision plan for every child in your care from the child's

DSHS worker or CPA case manager and/or tribal ICW case manager.

NEW SECTION

WAC 388-148-1615 What are the requirements for disciplining children? (1) You must use discipline that is appropriate to the child's age and level of development.

(2) You must establish limits and use positive methods of guidance that promote self-control, self-responsibility, self-direction, self-esteem and cooperation.

(3) Positive methods include:

(a) Directing children to another activity;

(b) Giving choices when appropriate;

(c) Time out as a method of guidance, allowing the child time to change his/her behavior;

(d) Planning in order to prevent problems; and

(e) Using positive reinforcement and encouraging children to express their feelings and ideas.

(4) You must not use physical punishment or verbally abusive, neglectful, humiliating or frightening punishment which includes but is not limited to:

(a) Spanking;

(b) Cursing;

(c) Threats, humiliation or intimidation; and

(d) Locked time-out rooms or methods that interfere with a child's basic needs, including withholding of food.

(5) You and authorized care providers are responsible for discipline; you may not give that responsibility to a child.

(6) You must allow a child needed services, including contact with the child's DSHS worker, legal representatives, legal parents or other family members.

(7) You will develop a written plan for disciplining children with your licensor and you must follow that plan.

NEW SECTION

WAC 388-148-1620 When may a child be restrained? (1) You may use physical restraint when a child's behavior poses an immediate risk to physical safety. The restraint must be reasonable and necessary to:

(a) Prevent a child from harming self or others; or

(b) Protect property from serious damage.

(2) You must not use physical restraint as a form of punishment or discipline. You must not use mechanical restraints such as handcuffs and belt restraints unless ordered by the child's physician. You must not use physical restraint that restricts breathing, inflicts pain to manage behavior, or is likely to cause injury that is more than temporary. This includes, but is not limited to:

(a) Restriction of movement by placing pressure on joints, chest, heart, or vital organs;

(b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;

(c) Arm twisting;

(d) Hair holds;

(e) Choking or putting arms around the throat; or

(f) Chemical restraints, such as pepper spray.

(3) You must document your use of physical restraint and send a copy to the child's DSHS worker within forty-eight hours. If you are supervised by a child-placing agency

you must contact the case manager and keep a copy of the documentation on the premises.

(4) When you have to use physical restraints on a regular basis, you must get prior written approval from the child's DSHS worker as well as verbal or written approval by DLR.

Rule Violations and Corrective Actions

NEW SECTION

WAC 388-148-1625 Will you license or continue to license me if I violate licensing requirements? (1) We may modify, deny, suspend or revoke your license when:

(a) You do not meet the licensing requirements in this chapter;

(b) You or others in your home may not have unsupervised access to children;

(c) We have determined that you have abused or neglected a child;

(d) You are unable to manage your property and financial responsibilities; or

(e) You cannot provide for the safety, health and well-being of the children in your care.

(2) We will send you a certified letter telling you of the decision to modify, deny, suspend or revoke your license. In the letter, we will also tell you what you need to do if you disagree with the decision.

(3) The department has jurisdiction over all foster home licenses and over all holders of and applicants for licenses as provided in RCW 74.15.030(5). This jurisdiction is retained even if you request to withdraw the application, or you surrender or fail to renew your license.

NEW SECTION

WAC 388-148-1630 Are there exceptions made if I do not meet the licensing requirements? (1) We may make exceptions and license or continue to license you if you do not meet the minimum licensing requirements if we find that you can provide for the safety, health and well-being of children in your care.

(2) In addition, we may limit or restrict your license and/or require you to enter into a compliance agreement to ensure the safety and well-being of the children in your care.

(3) You must keep a copy of the approved exception to the licensing requirements for your files.

(4) You do not have appeal rights if the department denies your request for an exception to the licensing requirements.

NEW SECTION

WAC 388-148-1635 Can people living in my home be disqualified from having access to the children in my care? (1) The department must disqualify people living in your home if they do not meet the requirements of chapter 388-148 WAC, or cannot have unsupervised access to children because of their background check (chapter 388-06 WAC).

(2) We will notify you if a person in your home is disqualified from having unsupervised access to children. This

could also lead to denial, suspension or revocation of your license.

NEW SECTION

WAC 388-148-1640 Are there any other reasons that might cause me to lose my license? (1) We may suspend or revoke your license if you:

(a) Have foster children in your home for whom you are not licensed, without approval by your licensor. This includes having more children, or children of different ages or gender than your license allows;

(b) Do not provide a safe, healthy and nurturing environment for children in your care; or

(c) Do not meet any of the other licensing requirements.

(2) Do not meet the health and safety requirements of the department of health and/or the Washington state patrol fire protection bureau, if required.

NEW SECTION

WAC 388-148-1645 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check? (1) You have the right to request an administrative hearing if you disagree with any of these actions. You must request this hearing within twenty-eight calendar days of receiving a certified letter with our decision (see chapter 34.05 RCW and chapter 388-02 WAC). To request a hearing you must send a letter to the office of administrative hearings, P.O. Box 42489, Olympia Washington 98504-2456, 1-800-583-8271. The letter must have the following:

(a) A specific statement why you disagree with our decision and any laws you believe are related to your claim; and

(b) A copy of the certified letter we sent to modify, revoke, suspend, or deny your license or to disqualify your background check.

NEW SECTION

WAC 388-148-1650 How do I appeal the decision of the office of administrative hearings' administrative law judge? (1) The decision of the administrative law judge is the final decision of the department unless you or the department files a petition for review with DSHS board of appeals within twenty-one calendar days after the administrative law judge's decision is mailed to the parties.

(2) The procedure for requesting or responding to a petition for review with the board of appeals is described in WAC 388-02-0560 through WAC 388-02-0635.

(3) We will not appeal decisions made by the board of appeals.

(4) If you disagree with the board of appeals, you may file a petition in Superior Court and ask for further review. (RCW 34.05.510 to 34.05.598)

NEW SECTION

WAC 388-148-1655 Can I be issued a probationary license? (1) We may issue a probationary license as part of a corrective action plan with you.

(2) We will consider the following when deciding whether a probationary license will be issued:

- (a) An intentional or negligent violation of licensing requirements;
- (b) A history of violation of licensing requirements;
- (c) A current violation of licensing requirements;
- (d) Whether you are making a good faith effort to comply; and
- (e) Any other factors relevant to the specific situation.

(3) A probationary license may be issued for up to six months. At our discretion, we may extend the probationary license for an additional six months. You may not appeal our decision not to issue a probationary license.

REPEALER

The following sections of the Washington Administrative Code are repealed:

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| <p>WAC 388-148-0005 What is the purpose of this chapter?</p> <p>WAC 388-148-0010 What definitions do I need to know to understand this chapter?</p> <p>WAC 388-148-0015 Am I required to have a license to provide care to children?</p> <p>WAC 388-148-0020 When is a license not required if I provide care to children?</p> <p>WAC 388-148-0025 How do you decide how many children I may serve in my home or facility?</p> <p>WAC 388-148-0030 How old do I have to be to apply for a license to provide care to children?</p> <p>WAC 388-148-0035 What personal characteristics do I need to provide care to children?</p> <p>WAC 388-148-0040 What first-aid and cardiopulmonary resuscitation (CPR) training is required?</p> <p>WAC 388-148-0045 What HIV/AIDS and bloodborne pathogens training is required?</p> <p>WAC 388-148-0050 How do I apply for a license?</p> <p>WAC 388-148-0055 How long do I have to complete the licensing application packet?</p> <p>WAC 388-148-0058 May I receive more than one in-home family license?</p> <p>WAC 388-148-0060 May my relative or I be certified by a child-placing agency to be a foster parent and be an employee of that same agency?</p> <p>WAC 388-148-0065 When may I be certified to provide care to children?</p> <p>WAC 388-148-0070 Is there a difference between licensing and certification?</p> | <p>WAC 388-148-0075 May I be licensed with the department and certified by a child-placing agency at the same time?</p> <p>WAC 388-148-0080 What may I do if I disagree with the decision of a child-placing agency that I do not meet the licensing requirements?</p> <p>WAC 388-148-0085 Will the department license or continue to license a home or facility if the home or facility does not meet the licensing requirements?</p> <p>WAC 388-148-0090 Does the department issue probationary license?</p> <p>WAC 388-148-0095 When are licenses denied, suspended or revoked?</p> <p>WAC 388-148-0098 When is an employee or volunteer disqualified from having unsupervised access to a child in a licensed home, facility, or agency?</p> <p>WAC 388-148-0100 Are there any other reasons that might cause me to lose my license?</p> <p>WAC 388-148-0105 How do you notify me if you have modified, denied, suspended, or revoked my license?</p> <p>WAC 388-148-0110 What may I do if I disagree with your decision to modify, deny, suspend or revoke my license?</p> <p>WAC 388-148-0115 May I appeal the decision of the office of administrative hearings' administrative law judge?</p> <p>WAC 388-148-0120 What incidents involving children must I report?</p> <p>WAC 388-148-0123 What are my reporting responsibilities when a child is missing from care?</p> <p>WAC 388-148-0125 What are your requirements for keeping client records?</p> <p>WAC 388-148-0127 What are the requirements for information kept in facility logs for staffed residential homes and group care programs?</p> <p>WAC 388-148-0130 What information may I share about a child or a child's family?</p> <p>WAC 388-148-0135 What changes to my home or facility must I report to my licensor?</p> <p>WAC 388-148-0140 What personnel policies must I have?</p> <p>WAC 388-148-0145 Where do I post my license?</p> <p>WAC 388-148-0150 Are local ordinances part of the licensing requirements?</p> |
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- WAC 388-148-0155 What physical structure safety requirements must my home or facility meet?
- WAC 388-148-0160 What measures must I take for pest control?
- WAC 388-148-0165 What are the requirements regarding the location of my home or facility?
- WAC 388-148-0170 What steps must I take to ensure children's safety around outdoor bodies of water?
- WAC 388-148-0175 What are your requirements regarding pets and animals in my home or facility?
- WAC 388-148-0180 Are alcoholic beverages or illegal drugs allowed at my home or facility?
- WAC 388-148-0185 Is smoking permitted around children?
- WAC 388-148-0190 May I have firearms in my home or facility?
- WAC 388-148-0195 What are your requirements for storing dangerous chemicals or other substances?
- WAC 388-148-0200 Do I need first-aid supplies?
- WAC 388-148-0205 What requirements are there for the storage of medications?
- WAC 388-148-0210 What requirements do I need to follow when I transport children?
- WAC 388-148-0215 May I use wheeled baby walkers?
- WAC 388-148-0220 What fire safety requirements must I follow to qualify for a license?
- WAC 388-148-0225 What fire safety requirements are there for exits?
- WAC 388-148-0230 Are there other fire safety requirements for inside a foster home or staffed residential home licensed for five or fewer children?
- WAC 388-148-0235 What are the requirements for smoke detectors for foster homes and staffed residential homes licensed for five or fewer children?
- WAC 388-148-0240 What are the requirements for fire extinguishers in homes and facilities?
- WAC 388-148-0245 What fire escape measures must be taken for multilevel homes and facilities?
- WAC 388-148-0250 What fire safety instructions must I give to children residing in a home or staffed residential home licensed for five or fewer children?
- WAC 388-148-0255 What are the requirements for a fire evacuation plan?
- WAC 388-148-0260 What are the general requirements for bedrooms?
- WAC 388-148-0265 What are additional requirements for bedrooms for more than one person?
- WAC 388-148-0270 What are the requirements for beds?
- WAC 388-148-0275 Do I need a telephone at my home or facility?
- WAC 388-148-0280 What are the lighting requirements for my home or facility?
- WAC 388-148-0290 What does the room temperature for my home or facility need to be?
- WAC 388-148-0300 How must I ventilate my home or facility?
- WAC 388-148-0305 What are the requirements for laundry facilities?
- WAC 388-148-0310 What are the requirements for washing clothes?
- WAC 388-148-0315 What are the requirements for toilets, sinks, and bathing facilities?
- WAC 388-148-0320 What are the requirements about drinking water?
- WAC 388-148-0325 What are the requirements for sewage and liquid wastes?
- WAC 388-148-0330 Am I required to obtain a child's health history?
- WAC 388-148-0335 When must I get an EPSDT exam for a child under my care?
- WAC 388-148-0340 What are the requirements for immunizations for children?
- WAC 388-148-0345 What must I do to prevent the spread of infections and communicable diseases?
- WAC 388-148-0350 What are the requirements for obtaining consent for medical care for children under my care?
- WAC 388-148-0352 What are the requirements for the management of medication for children in my care?
- WAC 388-148-0355 May I accept medicine from a child's parent or guardian?
- WAC 388-148-0365 When may children take their own medicine?
- WAC 388-148-0370 What food and meal guidelines must I follow?
- WAC 388-148-0375 How often must I feed children?
- WAC 388-148-0380 How do I handle a child's special diet?
- WAC 388-148-0385 Are there special requirements for serving milk?
- WAC 388-148-0390 What home-canned foods may I use?

- WAC 388-148-0395 What requirements must I meet for feeding babies?
- WAC 388-148-0400 What are the requirements for diapers and diaper-changing areas?
- WAC 388-148-0405 Do I have responsibility for a child's clothing?
- WAC 388-148-0410 May a child take personal belongings after being discharged from a home or facility?
- WAC 388-148-0415 Do I have responsibility for a child's personal hygiene?
- WAC 388-148-0420 What are the requirements for protecting a child under my care from abuse and neglect?
- WAC 388-148-0422 What are the requirements for privacy for children in out-of-home placements?
- WAC 388-148-0425 What are the requirements about non-discrimination?
- WAC 388-148-0430 May I take a foster child to church services, temple, mosque or synagogue?
- WAC 388-148-0435 Do I have to admit or retain all children?
- WAC 388-148-0440 What must I consider in assigning work to children in my home or facility?
- WAC 388-148-0445 What toys and activities must I provide to children?
- WAC 388-148-0460 What requirements do you have for supervising children?
- WAC 388-148-0470 What types of disciplinary practices are forbidden?
- WAC 388-148-0475 Do you require a written statement describing my discipline methods?
- WAC 388-148-0480 When may a child be restrained?
- WAC 388-148-0485 What types of physical restraint are not acceptable for children?
- WAC 388-148-0487 Are there requirements for time-out or quiet rooms?
- WAC 388-148-0488 Are time-delay mechanisms allowed on windows and doors of a facility or staffed residential home licensed for six?
- WAC 388-148-0490 What must I do following an incident that involved using physical restraint?
- WAC 388-148-0505 What services must a foster parent be able to provide?
- WAC 388-148-0510 What educational support must I provide to children under my care?
- WAC 388-148-0515 What is the minimum age to be a foster parent?
- WAC 388-148-0520 What are the training requirements for foster parents and prospective foster parents?
- WAC 388-148-0525 How many children may my foster home serve?
- WAC 388-148-0530 May I be employed if I am a foster parent?
- WAC 388-148-0535 Do I need to have income separate from foster care payments?
- WAC 388-148-0540 When may I use respite care?
- WAC 388-148-0541 Excluding respite care, who may provide care to a foster child in the foster home when the foster parent is away from the home?
- WAC 388-148-0542 May a foster child be supervised by someone under eighteen in the foster home?
- WAC 388-148-0545 May I place my foster child with another family temporarily?
- WAC 388-148-0550 May my foster children participate in routine activities without a licensed provider supervising the activity?
- WAC 388-148-0555 Do I need a social summary for children under my care?
- WAC 388-148-0560 Do I need a treatment plan for children under my care?
- WAC 388-148-0565 Do you need to approve the program that I offer for children under my care?
- WAC 388-148-0570 What education and vocational instruction must I provide to the children under my care?
- WAC 388-148-0575 What medical policies and procedures must I have?
- WAC 388-148-0580 What nursing services must I provide?
- WAC 388-148-0585 What social service staff do I need?
- WAC 388-148-0590 What clerical, accounting and administrative services do I need for my home or facility?
- WAC 388-148-0595 What support and maintenance staff do I need for my home or facility?
- WAC 388-148-0600 Do I need professional consultants for my program?
- WAC 388-148-0605 Is in-service training required?
- WAC 388-148-0610 What are the required ratios of social service staff to children under care?
- WAC 388-148-0620 What safety features do I need for hazardous areas?

- WAC 388-148-0625 What other requirements must I follow for smoke detectors?
- WAC 388-148-0640 What fire safety procedures do staff of a group care facility and a staffed residential home licensed for six children need to know?
- WAC 388-148-0645 What are the requirements for fire drills and testing smoke detectors?
- WAC 388-148-0655 Are there different construction and fire safety requirements for facilities that have multiple licenses in the same building?
- WAC 388-148-0660 Do mealtimes need to be established?
- WAC 388-148-0665 Do you have general menu requirements?
- WAC 388-148-0670 What types of group care programs are licensed to provide care to children?
- WAC 388-148-0680 What basic elements must a group care program include?
- WAC 388-148-0685 Who may a group care program provider serve?
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- WAC 388-160-0365 Where may my shelter be located?
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- WAC 388-160-0625 What requirements must I follow when disciplining youth?
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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 15-01-174

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 23, 2014, 2:48 p.m., effective January 23, 2015]

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

Purpose: The department is amending chapter 388-71 WAC, specifically adult day services, in order to differentiate adult day care from adult day health by separating the rules, and to update the rule to meet the provider practice changes.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-0726, 388-71-0742 and 388-71-0768; and amending WAC 388-71-0702, 388-71-0704, 388-

71-0706, 388-71-0708, 388-71-0710, 388-71-0712, 388-71-0714, 388-71-0716, 388-71-0718, 388-71-0720, 388-71-0722, 388-71-0724, 388-71-0728, 388-71-0730, 388-71-0732, 388-71-0734, 388-71-0736, 388-71-0738, 388-71-0740, 388-71-0744, 388-71-0746, 388-71-0748, 388-71-0750, 388-71-0752, 388-71-0754, 388-71-0756, 388-71-0758, 388-71-0760, 388-71-0762, 388-71-0764, 388-71-0766, 388-71-0770, 388-71-0772, 388-71-0774, and 388-71-0776.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 14-21-016 on October 2, 2014.

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 35, Repealed 3.

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 35, Repealed 3.

Date Adopted: December 18, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0702 (~~(Purposes and definitions.)~~)
What is the purpose of adult day services? (1) WAC 388-71-0702 through 388-71-0776 (~~(contain)~~) contains the eligibility requirements for (~~(medicaid funded)~~) COPEs waiver and roads to community living (RCL) demonstration funded adult day care and adult day health services. These rules also contain the requirements that apply to adult day care or adult day health centers that contract with the department, an area agency on aging, or other department designee to provide (~~(medicaid)~~) COPEs waiver and RCL services to department clients. Nothing in these rules may be construed as requiring the department, area agency on aging, or other designee to contract with an adult day care or day health center.

(2) An adult day services program is a community-based program designed to meet the needs of adults with impairments through individual plans of care. This type of structured, comprehensive, nonresidential program provides a variety of health, social, and related support services in a protective setting. By supporting families and caregivers, (~~(an adult day services program enables the person)~~) the goals are:

(i) To provide the opportunity for the participant to live in ((the) their community((-));

(ii) To provide the participant with services, clinical and non-clinical to meet their unmet skilled needs;

(iii) To assist the participant to maintain maximal independence in their activities of daily living (ADL); and

(iv) To measure their progress through the interventions.

An adult day services program (~~((assesses))~~ evaluates the needs of the (~~((persons))~~ participant served and offers services to meet those needs and enhance their quality of life. The (~~((persons))~~ participants served attend on a planned basis. The centers evaluate the potential participants to determine if they are able to communicate with each participant in order to meet their identified need/s. Nothing in this generic description (~~((of adult day services))~~) may be construed to modify the specific services or eligibility requirements referenced in the definition of adult day care and adult day health.

(3) The following definitions apply under WAC 388-71-0702 through 388-71-0774:

(a) **"Adult day care" (ADC)** means the services under WAC 388-71-0704 that are provided to clients who meet the eligibility requirement under WAC 388-71-0708.

(b) **"Adult day center"** means an adult day care or adult day health center. A day care or day health center for purposes of these rules is a center operating in a specific location, whether or not the center's owner also operates adult day centers in other locations.

(c) **"Adult day health" (ADH)** means the ADC services and the skilled care services listed under WAC 388-71-0706 that are provided to clients who meet the eligibility requirements under WAC 388-71-0710.

(d) **"Adult day services"** is a generic term referring to adult day care and adult day health services.

(e) **"Authorizing Practitioner"** means a physician, osteopath, nurse practitioner and physician assistant who has the licensed ability to write medical orders for skilled care interventions requiring a practitioner order.

(f) **"Chronic-care management"** means regular monitoring of the client's chronic health condition, training the client and caregiver, providing treatments or interventions when warranted and regular communication with primary care practitioner and caregivers to help implement and keep current the clinical care plan while ensuring the treatments are having the intended effect of improving health, maintaining health or slowing declining health when the diagnosis is a non-reversible condition.

(g) **"Client"** means an applicant for or recipient of (~~((medicaid-))~~ COPES waiver or RCL reimbursed adult day services.

(~~((#))~~) (h) **"Direct Care Staff"** are the staff in an adult day center that is interacting with participants by providing care, services, and guidance.

(i) **"The Discharge Plan" (DC)** outlines specific measurable goals expected to occur due to the skilled individualized treatments provided to the participants indicating discharge is appropriate. This plan is developed and addressed on the client's ADC and/or ADH negotiated care plan and updated with each significant change of condition or when the client partially or completely meets the expected measurable goal/s. Discharge planning outcomes reflect the end of the treatment due to the client meeting the measurable outcomes or stipulating that a client has declined to the point of inability to participate in skilled treatment or is no longer able to benefit from skilled treatment.

(j) **"Maintenance"** is continuing clinically appropriate skilled service/s which is justified as reasonable, necessary, and/or appropriate to sustain minimal loss of function. Maintenance interventions have discharge measurable goals that outline when maintenance skilled services are no longer beneficial.

(k) **"Medically Necessary"** means the service is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent worsening of conditions in the client that endangers life, or causes suffering or pain, or results in an illness or infirmity, or threatens to cause or aggravate a disability, or causes physical deformity or malfunction.

(l) **"Negotiated Care Plan"** The adult day center must use the participant state assessment, center's evaluation and preliminary service plan to develop a written negotiated care plan. The center must ensure each participant's negotiated care plan includes:

(1) A list of the care and services to be provided;

(2) Identification of who will provide the care and services;

(3) When and how the care and services will be provided;

(4) How medications will be managed, including how the participant will receive their medications when attending the adult day center;

(5) The participant's activities preferences and how the preferences will be met;

(6) Other preferences and choices about issues important to the resident, including, but not limited to:

(a) Food;

(b) Daily routine;

(c) Grooming; and

(d) How the center will accommodate the preferences and choices.

(7) If needed, a plan to:

(a) Follow in case of a foreseeable crisis due to a participant's assessed needs;

(b) Reduce tension, agitation and problem behaviors;

(c) Respond to participant's special needs, including, but not limited to medical devices and related safety plans;

(d) Respond to a participant's refusal of care or treatment, including when the participant's physician or practitioner should be notified of the refusal; and

(8) Identification of any communication barriers the participant may have and how the center will use behaviors and nonverbal gestures to communicate with the resident.

(m) **"Participant"** means clients and other persons receiving adult day services at an adult day center.

(n) The adult day center must ensure that each participant has a preliminary service plan that includes:

(1) The participant's specific problems and needs identified in the assessment;

(2) The needs for which the participant chooses not to accept or refuses care or services;

(3) What the center will do to ensure the participant's health and safety related to the refusal of any care or service;

(4) Participant defined goals and preferences; and

(5) How the center will meet the participant's needs.

(o) **"Rehabilitative Service"** is provided using applicable physical therapy or occupational therapy or speech ther-

apy standards of practice and is considered medically necessary if the type, amount, and duration of services outlined in the plan of care increase the likelihood of meeting one or more of these stated goals: to improve function, minimize loss of function, improve cognition or minimize loss of cognition, or decrease risk of injury and disease.

(p) "Significant Change" means:

(i) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(ii) The change is significant enough so the current assessment and/or negotiated care plan does not reflect the resident's current status; and

(iii) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

(q) "Skilled Nursing Services" must be reasonable and necessary for the treatment of the illness or injury, that is the services must be consistent with the unique nature and severity of the participant's illness or injury, his or her particular medical needs, and accepted standards of medical and nursing practice, without regard to whether the illness or injury is acute, chronic, terminal, or expected to last a long time. The standards of nursing conduct or practice must follow WAC 246-840-700.

(r) "Specific Goals" mean those expected outcomes, individualized to the client's skilled need, that stipulate the measurable, detailed and expected progress the client may make while receiving the skilled service. They address the how, who, what and when of the expected final outcome. If a client's goal is to prevent a decline in their condition/s the goal/s must have measurable outcomes which identify the intervention to prevent the decline and how to measure this prevention. If you cannot measure the expected outcome of the clinical intervention then you are not preventing a decline.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0704 ((~~Adult day care Services~~))

What services are provided in adult day care? Adult day care is a supervised (~~(daytime)~~) non-residential program providing (~~(core)~~) services as defined in WAC 388-106-0800. (~~(Core services)~~) Services are appropriate for adults with medical or disabling conditions that do not require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's (~~(physician)~~) authorizing practitioner. The adult day care center must offer and provide on-site the following (~~(core)~~) services. These (~~(core)~~) services must meet the level of care needed by the client as assessed by the department case manager for waiver funded clients and do not exceed the scope of services that the adult day care center is able to provide.

- (1) Assistance with activities of daily living:
 - (a) Locomotion outside of room, locomotion in room, (~~(walk)~~) walks in room;
 - (b) Body care;
 - (c) Eating;
 - (d) Repositioning;
 - (e) Medication management that does not require a licensed nurse;
 - (f) Transfer;
 - (g) Toileting;
 - (h) Personal hygiene at a level that ensures client safety while in attendance at the program; and
 - (i) Bathing at a level that ensures client safety and comfort while in attendance at the program.
- (2) Social services on a consultation basis, which may include:
 - (a) Referrals to other providers for services not within the scope of (~~(medicaid)~~) COPEs waiver or RCL reimbursed adult day care services;
 - (b) Caregiver support and education; or
 - (c) Assistance with coping skills.
- (3) Routine health monitoring with consultation from a registered nurse that a consulting nurse acting within the scope of practice can provide with or without (~~(a physician's)~~) an authorizing practitioner's order. Examples include:
 - (a) Obtaining baseline and routine monitoring information on client health status, such as vital signs, weight, and dietary needs;
 - (b) General health education such as providing information about nutrition, illnesses, and preventative care;
 - (c) Communicating changes in client health status to the client's caregiver;
 - (d) Annual and as needed updating of the client's medical record; or
 - (e) Assistance as needed with coordination of health services provided outside of the adult day care program.
- (4) General therapeutic activities that an unlicensed person can provide or that a licensed person can provide with or without (~~(a physician's)~~) an authorizing practitioner's order. These services are planned for and provided based on the client's abilities, interests, and goals. Examples include:
 - (a) Recreational activities;
 - (b) Diversionary activities;
 - (c) Relaxation therapy;
 - (d) Cognitive stimulation; or
 - (e) Group range of motion or conditioning exercises.
- (5) General health education that an unlicensed person can provide or that a licensed person can provide with or without (~~(a physician's)~~) an authorizing practitioner's order, including but not limited to topics such as:
 - (a) Nutrition;
 - (b) Stress management;
 - (c) Disease management skills; or
 - (d) Preventative care.
- (6) A nutritional meal and snacks every four hours, including a modified diet if needed and within the scope of the program, as provided under WAC (~~(388-71-0768)~~) 388-71-0770;
- (7) Supervision and/or protection if needed for client safety;

(8) Assistance with arranging transportation to and from the program; and

(9) First aid and provisions for obtaining or providing care in an emergency. NOTE: If the client requires the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of ~~((a physician))~~ an authorizing practitioner, consider adult day health services.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0706 (~~(Adult day health—Services.)~~)
What services are provided in adult day health? Adult day health is a supervised ~~((daytime))~~ non-residential program providing skilled nursing and/or rehabilitative therapy services in addition to ~~((ore))~~ all services provided in an adult day care center. Adult day health services are only appropriate for adults with medical or disabling conditions that require the skilled intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's ~~((physician))~~ authorizing practitioner.

The adult day health center must offer and provide on-site the following services:

- (1) All ~~((ore))~~ services under WAC 388-71-0704; and
- (2) Skilled nursing services other than routine health monitoring with nurse consultation; or
- (3) At least one of the following skilled therapy services: physical therapy, occupational therapy, or speech-language pathology or audiology, as defined under chapters 18.74, 18.59 and 18.35 RCW; and
- (4) Psychological or counseling services, including assessing for psycho-social therapy need, dementia, abuse or neglect, and alcohol or drug abuse; making appropriate referrals; and providing brief, intermittent supportive counseling. These services are provided by social services professionals.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0708 (~~(Adult day care—Eligibility.)~~)
What are the eligibility criteria for enrollment in adult day care? Clients are eligible for adult day care services if they meet criteria outlined in WAC 388-106-0805.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0710 (~~(Adult day health—Eligibility.)~~)
What are the eligibility criteria for enrollment in adult day health? Clients are eligible for adult day health services if they meet the criteria outlined in WAC 388-106-0815 which references WAC 388-106-0300 and 0305.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0712 (~~(Adult day health—Skilled nursing.)~~) **What is considered skilled nursing in adult day health?** (1) Skilled nursing services are medically necessary

services provided directly or indirectly by a registered nurse under ~~((physician))~~ an authorizing practitioner's supervision, or by a licensed practical nurse under physician or registered nurse supervision, that a licensed nurse acting within the scope of practice can provide or supervise. ~~((Physician))~~ Authorizing practitioner orders must be obtained when required by applicable state practice laws for licensed nurses. Authorizing practitioner orders must be obtained upon initial service, updated when a significant change occurs changing the nursing intervention or at least annually.

(2) Skilled nursing services must exceed the level of routine health monitoring, general health education, and general therapeutic activities as defined in WAC 388-71-0704, and must be provided with the reasonable expectation that the services will improve, restore, ~~((or))~~ maintain function ~~((as defined in WAC 388-71-0710-1(e))~~ or slow the client's decline of the disease or functional ability. Skilled nursing services are:

- (a) Specific to a ~~((client))~~ client's diagnosis;
- (b) Individualized to the client with planned measurable ~~((outcomes))~~ outcome goals; and
- (c) ~~((Evaluated))~~ Re-evaluated every ninety days or sooner when there is a significant health change for effect on improvement or maintenance of health status, or ~~((prevention of decline))~~ slowing the decline of the disease or functional ability.

(3) Skilled nursing services, including the initial client nursing assessment and development of the nursing plan of care, must be provided or supervised by a registered nurse in accordance with nursing practice standards under chapter 246-840 WAC.

(4) A skilled nursing service is not a qualifying adult day health service merely because the service is ordered by ~~((a physician))~~ an authorizing practitioner or is provided by a nurse. If, by way of example, the service can be performed by the client or at the client's direction by a person other than a licensed nurse, ~~((or the client does not meet eligibility criteria))~~ it is not a qualifying adult day health service.

(5) Skilled nursing services must be medically necessary as defined under WAC ~~((388-500-0005))~~ 182-500-0070. Medically necessary skilled nursing services ~~((may, but do not necessarily,))~~ include but at not limited to:

- (a) ~~((Care and assessment))~~ Assessment, care and evaluation with collaboration of services of an acute or chronic unstable or unpredictable medical condition, with time ~~((limited))~~ specific measurable treatment goals, requiring frequent skilled intervention by a registered nurse or by a licensed practical nurse under the supervision of a registered nurse according to WAC 246-840-705 and ordered by the authorizing practitioner;

(b) Evaluation and management of the care plan when unstable medical conditions or complications require complex nonskilled care and skilled nurse oversight to ensure that the nonskilled care is achieving its purpose;

(c) Time-limited training by licensed nursing staff to teach the client and/or the client's caregiver self-care for newly diagnosed, acute, or episodic medical conditions that require the skills of a licensed nurse to teach, and that will optimize client function, as illustrated by the following examples:

- (i) Self administration of an injection;
- (ii) Prefilling insulin syringes;
- (iii) Irrigating a catheter;
- (iv) Caring for a colostomy or urostomy;
- (v) Wound dressing changes or aseptic technique; or
- (vi) Disease self-management.

(d) Skilled interventions provided directly by a licensed nurse such as:

- (i) Inserting or irrigating a catheter;
- (ii) Administering medications or oxygen;
- (iii) Administering and managing infusion therapy; or
- (iv) Treating ~~((decubitis))~~ decubitus ulcers, or other types of wound care.

(e) Provide holistic collaborative care of the client's acute, chronic, unstable or unpredictable medical condition or disease.

(6) Medically necessary skilled nursing services, by way of example, do **not** include:

- (a) Reminding or coaching the client;
- (b) Monitoring of a medical condition that does not require frequent skilled nursing intervention or a change in ~~((physician))~~ authorizing practitioner treatment orders, or where there is no reasonable expectation that skilled services will maintain, improve, or slow the effect of a progressive disabling condition on the pain, health or functioning of a client;

(c) Medication assistance when the client is capable of self-administration or is having this need met through paid or unpaid caregivers;

(d) Evaluation and management of the care plan when the complexity of care to be provided by nonskilled persons does not require skilled nurse oversight beyond routine health monitoring;

(e) Continued training by nursing staff to teach self-care for newly diagnosed, acute, or episodic medical conditions when it is apparent that the training should have achieved its purpose or that the client is unwilling or unable to be trained;

(f) ~~((Core))~~ ADC services that can be provided by an adult day care center, such as routine health monitoring, general health education, or general therapeutic activities; or

(g) Group therapy or training where three or more clients are being simultaneously treated or trained by the nurse.

(7) Skilled nursing services must be documented as provided under WAC 388-71-0746 and ~~((chapter 388-502))~~ WAC 182-502-0020.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0714 ~~((Adult day health—Rehabilitative therapy))~~ What is considered rehabilitative therapy in adult day health? (1) Skilled rehabilitative therapy services are medically necessary services provided by or under the supervision of a licensed physical, occupational, or speech-language pathology or audiology therapist that the therapist acting within the scope of practice can provide or supervise directly or indirectly. ~~((Physician))~~ Authorizing practitioner orders must be initially obtained and updated when a significant change occurs or at least annually when

required by applicable state practice laws for licensed therapists.

(a) Persons that can provide rehabilitative care under the direction and supervision of a licensed therapist include occupational therapy aides, occupational therapy assistants, physical therapy aides, physical therapy assistants, and nurses within their respective scopes of practice. Adult day health program aides, specifically trained in rehabilitative techniques, may also provide care under the direction and supervision of a licensed therapist.

(b) Services, group or individual, must be related to an active written plan of care with time ~~((limited))~~ specific measurable treatment goals approved by the ~~((physician))~~ authorizing practitioner;

(c) Services, group or individual, must require the assessment, knowledge and skills of a licensed therapist; and

(d) Services, group or individual, must be provided with the reasonable expectation that the services will improve, restore, ~~((or))~~ maintain function, or slow decline. Rehabilitative services are:

- (i) Specific to a client diagnosis;
- (ii) Individualized to the client with planned, measurable outcomes; and
- (iii) ~~((Evaluated))~~ Re-evaluated every ninety days for effect on improvement of health status or ~~((prevention of))~~ slowing the decline.

(2) Skilled rehabilitative therapy is not a qualifying adult day health service merely because the therapy is ordered by ~~((a physician))~~ an authorizing practitioner or is provided by a therapist or under the supervision of a therapist. If, by way of example, the therapy can be performed independently by the client or at the client's direction by a person other than a licensed therapist, ~~((or the client does not meet eligibility criteria.))~~ it is not a qualifying adult day health service.

Skilled rehabilitative therapy services must be medically necessary as defined under WAC ~~((388-500-0005))~~ 182-500-0070.

(3) Medically necessary physical therapy services may, but do not necessarily include:

(a) Assessing baseline mobility level, strength, range of motion, endurance, balance, and ability to transfer;

(b) One to one and group treatment to relieve pain, ~~((or))~~ develop, restore, or maintain functioning, with individualized and measurable client treatment goals;

(c) Establishing a maintenance or restorative program with measurable treatment goals, and providing written and oral instruction to the client, caregivers, or program staff as needed to assist the client in implementing the program;

(d) Training the client or the client's caregivers in the use of supportive, adaptive equipment or assistive devices;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that the non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of a physical therapist acting within the therapist's scope of practice.

(4) Medically necessary occupational therapy services may, but do not necessarily include:

(a) Administering a basic evaluation to determine baseline level of functioning, ability to transfer, range of motion, balance, strength, coordination, activities of daily living and cognitive-perceptual functioning;

(b) Teaching and training the client, caregivers, or program staff in the use of therapeutic, creative, and self-care activities to improve or maintain the client's capacity for self-care and independence, and to increase the range of motion, strength and coordination;

(c) One to one and group treatment to develop, restore, or maintain functioning with individualized and measurable client treatment goals;

(d) Training the client or the client's caregivers in the use of supportive, adaptive equipment or assistive devices;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that the non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of an occupational therapist acting within the therapist's scope of practice.

(5) Medically necessary speech-language pathology or audiology services may, but do not necessarily include;

(a) Assessing baseline level of speech, swallowing, auditory, or communication disorders;

(b) Establishing a treatment program to improve speech, swallowing, auditory, or communication disorders;

(c) Providing speech therapy procedures that include auditory comprehension tasks, visual and/or reading comprehensive tasks, language intelligibility tasks, training involving the use of alternative communication devices, or swallowing treatment;

(d) Training the client or the client's caregivers in methods to assist the client in improving speech, communication, or swallowing disorders;

(e) Evaluation and management of the care plan when medical conditions or complications require complex non-skilled care and skilled therapist oversight to ensure that non-skilled care is achieving its purpose; or

(f) Providing other medically necessary services that can only be provided by or under the direct or indirect supervision of a speech-language pathology or audiology therapist acting with the therapist's scope of practice.

(6) Medically necessary skilled rehabilitative therapy services, by way of example, do **not** include:

(a) Reminding or coaching the client in tasks that are not essential to the skilled therapy or intervention in the client's service plan;

(b) Monitoring of a medical condition that does not require frequent skilled therapist intervention or a change in ~~((physician))~~ authorizing practitioner treatment orders, or where there is no reasonable expectation that skilled services will maintain, improve, or slow the effect of a progressive disabling condition on the pain, health or functioning of a client;

(c) Massage therapy;

(d) Evaluation and management of the care plan when the complexity of the care to be provided by non-skilled per-

sons does not require the skills of a licensed therapist for oversight;

(e) Continued training by therapy staff to teach self-care for newly diagnosed, acute, or episodic medical conditions when it is apparent that the training should have achieved its purpose or that the client is unwilling or unable to be trained;

(f) ~~((Core))~~ ADC services that can be provided by an adult day care center, such as routine health monitoring, general health education, or general therapeutic activities; or

(g) Group therapy or training where the ratio of licensed therapists and assisting program staff to clients is inadequate to ensure that:

(i) The group activity contributes to the individual client's planned therapy goals; and

(ii) The complexity of the individual client's need can be met.

(7) Skilled therapy services must be documented as provided under WAC 388-71-0746 and ~~((chapter 388-502))~~ WAC 182-502-0020.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0716 ~~((Adult day care—Assessment and service plan.))~~ What kind of assessment and service plan is required to determine a client's unmet needs for adult day care? (1) The department or an authorized case manager must perform a comprehensive assessment reporting evaluation (CARE) ~~((assessment))~~ to determine a client's need for adult day care, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day care services or whether the client's needs can be met in other ways.

(2) If the case manager determines an unmet need for ~~((a core))~~ an ADC service that may be provided at a day care center, the case manager works with the client and/or the client's representative to develop a service plan that documents the needed services and the number of days per week that the services are to be provided. The case manager refers the client to a waiver-contracted day care center that the client and the case manager agree can potentially meet the client's needs.

(3) Clients receiving adult day care services must be reassessed at least annually.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0718 ~~((Adult day care—Negotiated care plan.))~~ What is the adult day care center's responsibility in developing the client's negotiated care plan? (1) Upon referral of a COPEs or RCL eligible client by the department or authorized case manager, the ~~((day care))~~ ADC center will respond in writing to the department or authorized case manager within two working days of receipt of the referral and its ability to process and evaluate the referred client. The ADC center must conduct an intake evaluation based on

an interview with the client and/or the client's representative to assess the center's ability to meet the client's needs as identified in the department service plan.

(2) The case manager will provide the client's service plan to the adult day care provider within five working days after the client or client's representative has signed it.

~~((2))~~ Within two working days of the referral, the day care center must respond to the referral and notify the case manager of its ability to process and evaluate the referral.)

(3) The ADC center will schedule intake evaluations visits with the referral client and/or their representative to evaluate the ADC center's ability to meet the needs of the client as defined in the client's service plan.

(4) Within ten working days ~~((of))~~ from the initial date of client attendance at the day care center, the center must determine whether it can meet the client's needs, how those needs will be met, and whether to accept the client to the program. The center must not accept a client whose needs the center cannot meet. The center will document in the client's file the date he/she was accepted into the ADC program.

~~((4))~~ (5) Within thirty calendar days of acceptance into the program, the day care center must work with the client and/or their representative to develop and complete a negotiated care plan signed by the client or the client's representative and the day care center.

(6) This care plan must be updated annually and when their is a significant change in the client's condition and needs. the care plan when updated, annually or after significant change, must be shared with the client's case manager. The care plan must:

(a) Be consistent with the department-authorized service plan and include all day care services authorized in the service plan;

(b) Document the client's needs as identified in the service plan, the adult day care services that will be provided to meet those needs, and when, how, and by whom the services will be provided;

(c) Document the client's choices and preferences concerning the provision of care and services, and how those preferences will be accommodated;

(d) Document potential behavioral issues identified in the assessment, service plan, or through the intake evaluation, and how those issues will be managed;

(e) Document contingency plans for responding to a client's emergent care needs or other crises; and

(f) Be approved by the client's case manager.

~~((5))~~ (7) The adult day care center must keep at least the current negotiated care plan in the client's file, must offer a copy of the plan to the client or client representative, and must provide a copy to the client's case manager. The case manager must review the negotiated care plan for inclusion of services that are appropriate and authorized for the client's care needs.

~~((6))~~ (8) The negotiated care plan must limit the frequency of services to the number of days authorized in the department-authorized service plan.

~~((7))~~ (9) The day care center must review each service in the negotiated care plan if the client's condition changes, and determine if the care plan continues to meet the client's needs. Changes in the client's condition or unanticipated

absences of more than three consecutive days of scheduled service must be reported to the client's case manager within one week. Unanticipated absences by way of example may include absences due to client illness or injury, or a change in transportation access. The case manager may follow-up with the client and ~~((determine))~~ determines if any updates to the assessment, service plan, and service authorization are needed.

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

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0720 ~~((Adult day health — Assessment and service plan.))~~ What is the adult day health center's responsibility in working with the department or their designee to obtain, use and update the CARE assessment?

(1) The department or an authorized case manager must perform a CARE assessment to determine a client's need for adult day health, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day health services or whether the client's needs can be met in other ways.

(2) If the client **has** a department or area agency on aging case manager, the adult day health center or other referral source must notify the case manager of the client's potential adult day health service need. The case manager must assess the client's need for skilled nursing or skilled rehabilitative therapy within the department's normal time frames for client reassessments.

(3) If the client **does not have** a department or area agency on aging case manager, the adult day health center or other referral source must notify the department of the referral and the client's potential adult day health service need, or refer the client to the department for intake. The department's assigned case manager must assess the client's need for adult day health services within the department's normal time frames for initial client eligibility assessments.

(4) The case manager may consult with the client's authorized practitioner, department or area agency on aging nursing services staff, or other pertinent collateral contacts, concerning the client's need for skilled nursing or rehabilitative therapy.

(5) If the department or area agency on aging case manager determines and documents a potential unmet need for day health services, the case manager works with the client and/or the client's representative to develop a service plan that documents the potential unmet needs and the anticipated number of days per week that the services are needed. The case manager refers the client to a department contracted adult day health center for evaluation and the development of a preliminary ~~((negotiated))~~ service plan ~~((of care))~~.

(6) The department or area agency on aging case manager must reassess adult day health clients at least annually. Clients must also be reassessed if they have a break in service of more than thirty days. The adult day health center must inform the case manager of the break in service so payment authorization can be discontinued.

(7) ~~((Recipients))~~ COPEs and RCL recipients of adult day health services must be assessed by the department or an authorized case manager for initial or continued ((or initial)) eligibility as follows:

(a) Annual reassessment for department clients; or

~~(b) ((Adult day health quarterly review for current non-departmental clients as resources allow; and~~

~~(c) New referrals for adult day health services are to be forwarded to))~~ A new client to the center who potentially could be eligible for state paid ADH services are to be referred to the local department offices for intake and assessment for eligibility.

(8) The department or area agency on aging case manager must review a client's continued eligibility for adult day health services every ninety days, coinciding with the quarterly review completed by the adult day health program. At the case manager's discretion, additional information will be gathered through face to face, collateral or other contact methods to determine continued eligibility. Services will be continued, adjusted, or terminated based upon the case manager's determination during the eligibility review.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0722 ~~((Adult day health — Negotiated care plan))~~ What is the adult day health center's responsibility in developing the client's negotiated care plan? (1) ~~((Upon referral of a client by the department or an authorized case manager, the day health center must conduct an intake evaluation and multidisciplinary assessment based on an interview with the client or the client's representative to determine the center's ability to meet the client's core service needs and potential adult day health needs as identified in the preliminary department service plan. The case manager will provide the client's service plan to the day health center within five working days after the client or client's representative has signed it. The day health center must evaluate the client's skilled and core service needs, and may provide up to ten days of paid service to complete the evaluation and develop a preliminary or negotiated plan of care to be provided to the client and the case manager.~~

~~(2) Within two working days of the referral, the day health center must respond to the referral and notify the case manager of its ability to process and evaluate the referral.~~

~~(3) Within ten paid days of service, the day health center must determine whether it can meet the client's needs, how those needs will be met, and whether to accept the client to the program. The center must not accept a client whose needs the center cannot meet. The center will be reimbursed under WAC 388-71-0724 for any service days provided from the start of the evaluation if the case manager has authorized services. The evaluation includes acceptance of the client to the center, the development of the initial assessment, and the preliminary negotiated plan of care.)~~ Upon referral of a COPEs or RCL eligible client by the department or an authorized case manager, the ADH center will respond in writing to the department or authorized case manager within two working days of receipt of the referral regarding its ability to process and evaluate the referred client.

(2) The department case manager will send the client's signed service plan to the ADH center within five working days after signature.

(3) The ADH center will schedule intake evaluation visits with the referred client and/or their representative to assess the ADH center's ability to meet the needs of the client as defined in the client's service plan.

(4) Within ten paid days of service, the day health center must determine if it can meet the client's needs, whether to accept the client to the program, and how those needs will be met. The center must document in the client's file the date of acceptance into their program. The center must not accept a client whose needs the center cannot meet. The center will be reimbursed under WAC 388-71-0724 for any service days provided from the start of the intake evaluation if the case manager has authorized services. The written intake evaluation includes acceptance of the client to the center or reason/s why not accepted, the development of the evaluation, and the preliminary service plan.

(5) When the ADH center conducts the intake evaluation visits there must be a multidisciplinary assessment conducted based on an interview and evaluation of the client's strengths and deficits with the client or the client's representative to determine the center's ability to meet the client's adult day care service needs and potential adult day health needs as identified in the department service plan. If the department service plan indicates a nursing and/or rehabilitative need then during the intake evaluation period these professionals will conduct evaluations and assessment of the client's clinical/rehabilitative needs to determine if they can be met at the center.

(6) The ADH center may provide up to ten days of paid service to the client to complete the evaluation with the development of a preliminary service plan to be provided to the client and the case manager.

~~((4))~~ (7) Upon approval by the case manager of the adult day health preliminary ((or negotiated care)) service plan, the day health center multidisciplinary team must obtain and provide to the case manager any required practitioner's orders for skilled nursing and rehabilitative therapy along with a copy of the ((negotiated)) preliminary service plan ((or care)), according to department documentation requirements. Orders must indicate how often the client is to be seen by the authorized practitioner. The case manager or nursing services staff may follow up with the practitioner or other pertinent collateral contacts concerning the client's need for skilled services. Services may not be authorized for payment without current practitioner orders and the client's consent to follow up with the practitioner.

~~((5))~~ (8) Within thirty calendar days of the client's acceptance into the program, the day health multidisciplinary team must work with the client and/or their representative to develop a negotiated care plan signed by the client or the client's representative and the day health center. The negotiated care plan can be developed initially in lieu of developing a preliminary service plan. The care plan must:

(a) Be consistent with the department-authorized service plan and include all day health services authorized in the service plan;

(b) Include an authorized practitioner's order(s) for skilled nursing and/or skilled rehabilitative therapy according to applicable state practice laws for licensed nurses or therapists. These authorizing practitioner orders must be reviewed, updated or revised when a significant change occurs or at least annually, or sooner if required by the prescriber;

(c) Document that the client or the client's representative has consented to follow up with the primary authorizing practitioner;

(d) Document the client's needs as identified in the service plan, the authorized services that will be provided to meet those needs, and when, how, and by whom the services will be provided;

(e) Establish time(~~(-limited, client)~~) specific, measurable individualized client goals, not to exceed ninety days from the date of signature of the negotiated care plan, for accomplishing the (~~(objectives)~~) goals of adult day health skilled services and/or discharging or transitioning the client to other appropriate settings or services;

(f) Document the client's choices and preferences concerning the provision of care and services, and how those preferences will be accommodated;

(g) Document potential behavioral issues identified in the assessment, service plan, or through the intake evaluation, and how those issues will be managed;

(h) Document contingency plans for responding to a client's emergent care needs or other crises; and

(i) Be approved by the case manager.

~~((6))~~ (9) The adult day health center must keep the negotiated care plan in the client's file, ~~((the plan))~~ provide a copy to the client or client representative, and ~~((must provide))~~ a copy to the client's case manager, including any required authorizing practitioner orders. The department case manager must review the negotiated care plan for inclusion of services that are appropriate and authorized for the client's care needs.

~~((7))~~ (10) The negotiated care plan must limit the frequency of department-funded services to the number of days in the department-authorized service plan.

~~((8))~~ (11) The day health center must review each service in the negotiated care plan every ninety days or more often if the client's condition changes, or if the client is reassessed for eligibility after a break in service of more than thirty days. Changes in the client's condition or unanticipated absences of more than three consecutive days of scheduled service must be reported to the client's case manager within one week. Unanticipated absences by way of example may include absences due to client illness or injury. The case manager may follow-up with the client and ~~((determine))~~ determine if any updates to the assessment, service plan, and service authorization are needed.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0724 (~~(Adult day services—Contracting and rates.)~~) How do I apply for an adult day program

state contract? (1) The department, or an area agency on aging (or other department designee) as authorized by the department, must determine that the adult day care or day health center meets the applicable adult day care or day health requirements and any additional requirements for contracting with the area agency on aging, according to each AAA's procurement procedure, through a ~~((COPES))~~ state contract.

(2) All ADH centers must also have a core provider agreement with the health care authority in order to bill for providing care and services to the COPES or RCL participants. ~~((or with the department through a medicaid provider contract.))~~

(3) If a center is contracting for both day care and day health, requirements of both adult day services must be met.

~~((4))~~ (4) A prospective provider desiring to provide adult day services shall be provided an application form from the department or the area agency on aging. A prospective provider convicted of abuse or neglect of a vulnerable adult is not eligible to provide adult day services in any capacity within the organization per chapter 74.34 RCW.

~~((5))~~ (5) The prospective provider will provide the area agency on aging with evidence of compliance with, or administrative procedures to comply with, the adult day service rules under this chapter.

~~((6))~~ (6) The area agency on aging will conduct a site inspection of the adult day center and review of the requirements for contracting.

~~((7))~~ (7) Within thirty days of completing the site visit, the area agency on aging will advise the prospective provider in writing of any deficiencies in meeting contracting requirements.

~~((8))~~ (8) The area agency on aging will verify correction of any deficiencies within thirty days of receiving notice from the prospective provider that deficiencies have been corrected, before contracting can take place.

~~((9))~~ (9) The area agency on aging will provide the department with a written recommendation as to whether or not the center meets contracting requirements.

~~((10))~~ (10) Minimum application information required to apply for contract/s with the department, or an area agency on aging includes:

(a) Mission statement, ~~((articles of incorporation))~~ business structure, ~~((and))~~ bylaws, ~~((as))~~ articles of organization or articles of incorporation if applicable and current business license;

(b) Names and addresses of the center's owners, officers, and directors as applicable;

(c) Organizational chart;

(d) Fiscal policies and procedures;

(e) A business plan to address the future financial needs of the center. This plan must include projected program growth, capital purchases, projected revenue, projected expenses, and plans for fund raising, if applicable. Also include an annual ~~((Total))~~ program operating budget including all anticipated revenue sources and expenditures and any fees generated;

~~((f))~~ (f) The most current financial statement prepared in accordance with generally accepted account principles

(GAAP) or the latest audit report of the organization by a certified public accountant;

~~((g))~~ (g) Program policies and operating procedure manual;

~~((f))~~ (h) Personnel policies and job descriptions and qualifications of each paid staff position and volunteer position functioning as staff;

~~((g))~~ (i) Policies and procedures meeting the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and local law enforcement for other participants;

~~((h))~~ ~~Audited financial statement;~~

~~((i))~~ (j) Floor plan of the facility;

~~((j))~~ (k) Local building inspection, fire department, and health department reports with food handler permits if applicable;

~~((k))~~ (l) Updated TB test results for each staff member according to ~~(local public health requirements)~~ WAC 388-71-0750;

~~((l))~~ (m) Sample client case file including all forms that will be used; ~~(and)~~

~~((m))~~ (n) Activities calendar for the month prior to application, or a sample calendar if the day service provider is new.

(o) Role and function of the board of directors if applicable and advisory committee;

(p) Monthly menu or sample if center is new; and

(q) Certificates of insurance per WAC 388-71-0736.

~~((3))~~ (10) The area agency on aging or other department designee monitors the adult day center at least annually to determine continued compliance with adult day care and/or adult day health requirements and the requirements for contracting with the department or the area agency on aging.

(a) The area agency on aging will send a written notice to the provider indicating either compliance with ~~((contacting))~~ contracting requirements or any deficiencies based on the annual monitoring visit and request a corrective action plan. The area agency on aging will determine the date by which the corrective action must be completed

(b) The area agency on aging will notify the department of the adult day center's compliance with contracting requirements or corrected deficiencies and approval of the corrective action plan for continued contracting.

~~((4))~~ (11) Adult day care services are reimbursed on an hourly basis up to four hours per day. Service provided four or more hours per day will be reimbursed at the daily rate.

~~((5))~~ ~~Payment rates are established on an hourly and daily basis for adult day care centers as may be adopted in rule. Rate adjustments are)~~ (12) Adult day center reimbursements are adopted by rule with adjustments determined by the state legislature. Providers seeking current reimbursement rates can refer to ~~((SSPS))~~ the billing instructions.

~~((6))~~ Rates as of July 1, 2002, are as follows:

Counties	COPEs Adult Day Care	
	Daily Rate	Hourly Rate
King	\$36.48	\$9.10

Counties	COPEs Adult Day Care	
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whateom, & Yakima	\$32.45	\$8.11
All other counties	\$30.75	\$7.69

~~(7) Payment rates are established on a daily basis for adult day health centers as may be adopted in rule. Rate adjustments are determined by the state legislature. Providers seeking current reimbursement rates can refer to MAA billing instructions or <http://maa.dshs.wa.gov>.~~

~~(8) Rates as of July 1, 2002, are as follows:~~

Counties	Day Health Daily	
King		\$47.48
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whateom, & Yakima		\$43.06
All other counties		\$40.68

(13) A one-time only initial intake evaluation provided by an adult day health center, including development of a negotiated care plan, is reimbursed at an established rate as may be adopted in rule. ~~((The rate as of July 1, 2002 is eighty-nine dollars and thirty-eight cents.))~~ Rate adjustments are determined by the state legislature. Separate reimbursement is not available for subsequent evaluations.

~~((9))~~ (14) Transportation to and from the program site is not reimbursed under the adult day care rate. Transportation arrangements are made with locally available transportation ~~((providers))~~ companies or informal resources.

~~((10))~~ (15) Transportation to and from the program site is ~~((not))~~ reimbursed under the adult day health daily rate. ~~((Transportation arrangements for eligible medicaid clients are made with local medicaid transportation brokers, informal providers, or other available resources per chapter 388-546 WAC))~~ Adult day health is required to assist clients in arranging or providing transportation to and from the program sites.

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.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0728 ((Coordination of services.)) Can a client receive both adult day care and adult day health?

(1) A ~~((COPEs-))~~ COPEs or RCL-eligible client may receive adult day care services on some days and adult day health services on different days if the service plan documents which level of service ~~((is))~~ are to be provided on which days. However, ~~((ore))~~ ADC services must be provided on all days that adult day health skilled services are provided, and reimbursement is limited to the day health rate on days that day health services are provided.

(2) Clients receiving services from the department in an adult family home, ~~((boarding home))~~ assisted living, or

other licensed community residential facility may not receive ~~((COPEs-))~~ COPEs or RCL-funded adult day care, but may receive ~~((medicaid))~~ COPEs funded adult day health services when the skilled nursing or rehabilitative services are approved by the client's case manager as part of the client's service plan.

(3) A licensed ~~((boarding home))~~ assisted living facility providing department-approved day care under chapter 388-78A WAC is subject to any applicable provisions of that chapter and is also subject to the rules under this chapter if the facility contracts with an area agency on aging or the department to provide COPEs waiver or ~~((other medicaid-))~~ RCL funded adult day services.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0730 ~~((Senior Citizens Services Act/Respite care.))~~ What other funds are available through the area agency on aging? (1) Except as provided under this section, the adult day services rules under this chapter do not apply to adult day care or day health services funded under chapters 74.38 and 74.41 RCW.

(2) An area agency on aging that elects to provide adult day services using Senior Citizens Services Act funding under chapter 74.38 RCW or respite care funding under chapter 74.41 RCW must contract with an adult day center that meets all administrative and facility requirements under WAC 388-71-0736 through 388-71-0774.

(3) The adult day care or day health services funded under chapters 74.38 or 74.41 RCW must be the same as the day care services required under WAC 388-71-0704 or the day health services required under WAC 388-71-0706. The area agency on aging may require additional services by contract.

(4) The area agency on aging may, by contract, establish eligibility and assessment requirements for day care or day health services in accordance with locally identified needs. However, funding provided under chapters 74.38 or 74.41 RCW may only be used to meet the needs of individuals who are not eligible for adult day care under WAC 388-71-0708 or for adult day health under WAC 388-71-0710, or who are eligible for those services and are not receiving them because of funding limitations.

(5) Nothing in this section or chapter may be construed as requiring an area agency on aging to contract with an adult day center, whether or not the center has a COPEs ~~((or other medicaid))~~ and RCL contract. Nor may anything in this section or chapter be construed as creating an entitlement to state-funded adult day services authorized under chapters 74.38 and 74.41 RCW.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0732 ~~((Hearing rights.))~~ What are the client's hearing rights? (1) If the department or area agency on aging denies, terminates, or reduces ~~((an))~~ a COPEs or RCL individual client's adult day care or day health services, the client has the right to ~~((a fair))~~ an administrative hearing as provided under chapter 388-02 WAC. If a client funded

with senior citizen services act or respite care has a complaint, grievance or dispute, the resolution process is a hearing as outlined in the departments area agency on aging polity and procedure manual chapter 6. The area agency on aging would work with the client through this process.

(2) An adult day care or day health center has those hearing or dispute resolution rights that are afforded under RCW 43.20B.675 and the center's contract with the area agency on aging or the department. An adult day health center has any other applicable hearing or dispute resolution rights under ~~((chapter 388-502))~~ WAC 182-502-0220.

(3) Adult day health centers are subject to all applicable provisions of chapter ~~((388-502))~~ 182-502 WAC, and the department's aging and ~~((adult services))~~ long term support administration may exercise the department's authority under that chapter to the same extent as the ~~((medical assistance administration))~~ health care authority.

AMENDATORY SECTION (Amending WSR 05-02-064, filed 1/4/05, effective 2/4/05)

WAC 388-71-0734 ~~((Limiting expenditures.))~~ Would the department limit expenditures in the adult day service program? (1) In order to provide adult day services within the limits of available funding, the department may limit services when program expenditures exceed the budget appropriation or when limiting services is required to prevent expenditures from exceeding the appropriation.

(2) When adult day health program expenditures exceed available funding, the department may limit adult day health services based on the four care level system as determined through the established department assessment and described in chapter 388-105 WAC.

(a) Using the care level determined by the department assessment tool, the department will limit adult day services on a statewide basis to clients whose total scores exceed the assessed need level identified by the department as necessary to provide adult day health services to the extent of available funding.

(b) At least thirty days before implementing the limitation on services under this subsection, the department will notify the area agencies on aging, adult day health centers, and the affected adult day health clients that services are being limited and for what period of time the limitation is estimated to remain in effect.

(c) For purposes of RCW 74.08.080, the reduction in services shall be deemed an assistance adjustment for an entire class of recipients that is required by state laws prohibiting the department from expending funds in excess of appropriations.

(3) The department may adopt additional or alternative rules to control costs, such as, but not limited to, imposing a moratorium on contracting with new adult day centers, limiting services to clients based on level of care need, or reducing the numbers of days per week that clients may receive services.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0736 (~~Adult day centers—Administrative policies and procedures.~~) What business and administrative documentation does the center need? (1) Adult day centers must have written (~~policies, procedures, and~~) documentation of the organizational structure and administration of the program.

(2) (~~Administrative policies and procedures~~) Organizational and administrative documentation must include but are not limited to:

(a) (~~Mission statement~~) Core values and mission statement of the organization;

(b) (~~Articles of incorporation and bylaws, as applicable~~) Ethical standards of the center and professional standards of conduct;

(c) Short and long-range program goals;

(d) Definition of the target population, including number, age, and needs of participants;

(e) Geographical definition of the service area;

(f) Hours and days of operation (Centers or a combination of centers under single ownership must operate at least three days a week for four consecutive hours, with each center providing at least four hours of programming a day.);

(g) Description of basic services and any optional services;

(h) Description of service delivery;

(i) Business structure, articles of organization or bylaws, as applicable;

(~~(e)~~) (j) Current business license;

(~~(d)~~) (k) Names and addresses of the center's owners, officers, and directors, as applicable;

(~~(e)~~) (l) Certificates of insurance, including but not limited to property and general liability insurance; business auto if the center uses vehicles to transport clients; professional liability; workers' compensation; employers' liability if applicable; coverage for acts and omissions of employees and volunteers; and certificates of insurance for any subcontractors;

(~~(f)~~) (m) Minutes of last three meetings of the board of directors, if applicable, and the advisory committee;

(~~(g)~~) (n) Role and functions of an advisory committee, which must meet at least twice a year and which must be representative of the community and include family members of current or past clients and nonvoting staff representatives (When an adult day center is a subdivision of a multifunction organization, a committee or subcommittee of the governing body of the multifunction organization may serve as the advisory committee. A single purpose agency may utilize its governing board as an advisory committee.);

(~~(h)~~) (o) An organizational chart illustrating the lines of authority and communication channels of the center, which must be available to all staff and clients;

(~~(i)~~) (p) A calendar of programming (or sample calendar if the center is new);

(~~(j)~~) (q) A monthly menu (or sample menu if the center is new);

(~~(k)~~) (r) Current building, health, food service and fire safety inspection reports, and food handler permits, as applicable; and

(~~(l)~~) (s) Quality improvement plans and results.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0738 (~~Adult day centers—Operating policies and procedures.~~) What operating policies and procedures does the center need? (1) All policies and procedures must (~~be~~) include date of initial development and/or revision along with date of being reviewed and approved on a regular basis, at least annually, by the advisory committee, and conform to the requirements outlined in WAC 388-71-0702 through 388-71-0774, as applicable.

(2) Policies and procedures must include:

(a) (~~Core values and mission of the organization;~~

(b) Ethical standards of the center and professional standards of conduct;

(c) Short and long-range program goals;

(d) Definition of the target population, including number, age, and needs of participants;

(e) Geographical definition of the service area;

(f) Hours and days of operation (Centers or a combination of centers under single ownership must operate at least three days a week for four consecutive hours, with each center providing at least four hours of programming a day.);

(g) Description of basic services and any optional services;

(h) Description of service delivery;

(i) Procedures for (~~assessments, reassessments~~) evaluations, re-evaluation, and the development of a negotiated care plan with clients and/or representatives, including provisions for the utilization of a multidisciplinary team for this process;

(~~(j)~~) (b) If applicable, research procedures that comply with chapter 388-04 WAC;

(~~(k)~~ ~~Staffing pattern~~) (c) Procedure for developing staffing schedules with staff to participant ratios being at a minimum one staff to six participants;

(~~(l)~~ ~~A plan for utilizing~~) (d) Policy regarding the utilization of community resources;

(~~(m)~~) (e) Gift policy;

(~~(n)~~) (f) Marketing (~~plan~~) policy and procedures;

(~~(o)~~ ~~Contracting~~) (g) Policy and procedure for contracting for services; (~~and~~

(~~(p)~~) (h) Medication policy including but not limited to: disposal of wasted or contaminated medications;

(i) Emergency and evacuation policy and procedures for fire safety as approved by the local fire authority must be adopted and posted, including provisions for fire drills, inspection and maintenance of fire extinguishers, and periodic inspection and training by fire department personnel. The center must conduct and document quarterly fire drills and document the center's ability to meet procedures. Improvements must be based on the fire evaluation drills;

(j) Grievance and complaint (~~processes~~) policies and procedures for staff and participants(-);

(k) Admission and discharge criteria policy and procedure. Discharge policies must include specific measurable criteria that establish when the participant is no longer eligi-

ble for services and under what circumstances the participant may be discharged. Unless the discharge is initiated by the client's department or authorized case manager, the center must notify the client, client representative if applicable, and case manager in writing of the specific reasons for the discharge. The center must also provide the client with adequate information about appeal and hearing rights. The discharge may occur due to the client's choice, other criteria as defined in the center's policy such as standards of conduct or inappropriate behavior, or changes in circumstances making the client ineligible for services under WAC 388-71-0708 or 388-71-0710:

(l) Health Insurance Portability and Accountability Act (HIPAA) policy and procedure;

(m) Confidentiality policy and procedure;

(n) Policy regarding how the center will comply with all applicable nondiscrimination laws, including but not limited to age, race, color, gender, religion, national origin, creed, marital status, sexual orientation, Vietnam era or disabled veteran's status, or sensory, physical, or mental handicap;

(o) A policy and procedure to afford the participants' their bill of rights describing the client's rights and responsibilities must be developed, posted, distributed to, and explained to participants, families, staff, and volunteers. Participants will be provided the bill of rights in the language understood by the individual upon request;

(p) Policies and procedures to ensure that the client's record/chart is appropriately organized and thinned according to the center's policy.

(q) Client record policy and procedures for:

(i) Confidentiality and the protection of records that define procedures governing the use and removal, and conditions for release of information contained in the records;

(ii) The release of client information and circumstances under which a signed authorization from the client or client representative is required; and

(iii) The retention, storage and access to records per the agency's contract with the department and/or the department's designee, including contingency plans in the event the center discontinues operation.

(r) The center must have an advance directive policy as required by the Patient Self Determination Act of 1990 (see 42 C.F.R. § 489.102 and chapter 70.122 RCW); and

(s) A policy and procedure for illness/injury/medical emergency/death must be followed in the event a participant becomes ill, is injured, or dies. The procedures must describe arrangements for hospital inpatient and emergency room service and include directions on how to secure ambulance transportation and complete incident reports.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0740 (~~(Adult day centers—Fiscal operations:))~~ What are the center's fiscal operational responsibilities? (1) Adult day centers must demonstrate fiscal responsibility (~~(by using generally accepted accounting principles)~~). Fiscal policies, procedures, reports, statements and records must be developed (~~((to))~~) in accordance with generally accepted accounting principles (GAAP) and enable the

administrator to meet the fiscal reporting needs of the governing body.

(2) Adult day centers must develop a yearly plan to address the future financial needs of the center. The plan must include projected program growth, capital purchases, projected revenue, projected expenses, and plans for fund raising, if applicable.

(3) Adult day centers must create a total center operating budget, including all expenditures, revenue sources and participant fees generated annually.

(4) ~~((A))~~ An annual financial statement or the latest audit report of the organization by a certified public accountant performed at least every two years must be available.

(5) A statement of charges for services (fee schedule), including private pay rates and/or ancillary charges for additional services outside the scope of these rules, must be available.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0744 (~~(Adult day center—Client records:))~~ What are the center's requirements for client records? (1) The adult day center must ~~((have))~~ follow their policies and procedures to ensure that the client's record/chart is appropriately organized and that confidentiality of information is maintained.

(2) Client information forms must be standardized, with each page showing the client's name or identification number.

(3) Individual client files must include:

(a) Personal/biographical data, including addresses, phone numbers, emergency contacts, and client representatives, reviewed and updated as needed;

(b) Application, enrollment, and consent to services forms;

(c) Department-authorized service plan and service authorization;

(d) All client information, including but not limited to the intake evaluation, date of acceptance to the center, negotiated care plan, attendance and service records, progress notes, and correspondence;

(e) Signed authorizations concerning the release of client information, photographs, and receipt of emergency medical care, as appropriate;

(f) Client photograph, with client or client representative permission, updated as needed per change in the client's appearances or picture being difficult to clearly view;

(g) Transportation plans regarding how the client will be transported back and forth from the center and who is responsible for the transportation;

(h) Fee determination forms;

(i) Appropriate medical information, with client consent, including but not limited to significant illnesses, accidents, treatments, medical conditions, ~~((immunizations,))~~ allergies, medications, tobacco use, and alcohol or substance use;

(j) Advance directives (if any) and a statement signed by the client that he or she has received the center's policies concerning advance directives; and, as applicable,

(k) ~~((Physician))~~ Authorizing practitioner orders for skilled nursing and/or rehabilitative therapy containing department-required information and in accordance with applicable licensing and practice act regulations.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0746 ~~((Adult day center—Documentation—))~~ **What are the adult day center's client records requirements?** (1) ~~((Entries in))~~ If the client's record is handwritten it must be ((typewritten or)) legibly written in ink, dated, and signed by the recording person with his/her title. Identification of the author may be a signature, initials, or other unique identifier within the requirements of applicable licensing standards and center policy. All hand-written documentation must be legible to someone other than the author. If signature is a unique identifier, such as initials, there must be a key readily available for use by the department of their designee. The negotiated care plan must have the center's author's full name and title on the signature line.

(2) If the client's record is an automated electronic record then it must be within a secured client record system to ensure confidentiality for all records, in accordance with state and federal laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA). If electronic signature is a unique identifier then there must be a key readily available for use by the Department or their designee. The Negotiated Care Plan must have the center's author's full name and title on the signature line.

(3) Progress notes must be ((chronological)) entered into the file chronologically and timely((-and recorded at least weekly by adult day health centers and at least monthly by adult day care center)). Adult day health centers' professional interventions must be charted directly after providing the service. Adult day care centers must have progress summary notes at least monthly. Client dates and hours of attendance are to be kept daily.

~~((3))~~ (4) Consultation, ((and/or)) care plan reviews and updating orders, hardcopy or electronic records, must be dated and initialed by the ((physician or other authorizing practitioner who reviewed them. If the reports are presented electronically, there must be representation of review by the ordering practitioner)) center's reviewer/s or authorizing practitioner. The authorizing practitioner must update the skilled clinical orders at least annually or when a significant change occurs warranting a change in the skilled clinical intervention. The authorizing practitioner does not need to review the care plan but does need to update skilled clinical orders as outlined above.

~~((4))~~ (5) Documentation of medication use must include the name of the medication, dosage, frequency of administration, route of administration, site of injection if applicable, date and time and signature or initials of the person administering the medication, title, and date.

~~((5))~~ The record must be legible to someone other than the writer.

(6) If the client records are thinned or achieved, per your policy and procedure, all records must be readily available to the federal, state or their designee for monitoring purposes.

(7) Department-contracted adult day health centers must comply with all other applicable documentation requirements under WAC ((388-502-0020)) 182-502-0020.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0748 ~~((Adult day centers—Record retention—))~~ **What are the adult day centers' record retention requirements?** (1) The adult day center must maintain a secure client record system to ensure confidentiality for all records, whether paper or electronic, in accordance with state and federal laws, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA).

(2) The adult day center must maintain a permanent registry of all clients with dates of admission, attendance and discharge.

(3) The adult day center must ((have)) follow their written policies concerning((-

(a) Confidentiality and the protection of records that define procedures governing the use and removal, and conditions for release of information contained in the records;

(b) The release of client information and circumstances under which a signed authorization from the client or client representative is required; and

(c) The retention and storage of records for at least six years from the last date of service to the client, including contingency plans in the event the center discontinues operation)) record and maintenance and retention, see WAC 388-71-0738 operating policy section.

(4) Client records maintained on the center's premises must be in a secure storage area that includes locking cabinets or storage. Computerized records must be backed up, daily for any changes made in the record that day and a full backup on a weekly basis. Weekly backup records would be ((and)) stored offsite either in a physical, (cd, tape or thumb drive) or electronic file, (through the cloud backup system) compliant with HIPAA.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0750 ~~((Adult day centers—Personnel policies and procedures—))~~ **What are the adult day center's personnel policies and procedures requirements?** (1) Personnel policies and procedures must be in place to ensure that staff ((are)) is trained and knowledgeable to provide quality services in a safe environment. Policies must include at least the following:

(a) The center must have policies concerning the recruitment, orientation, training, evaluation, and professional development of staff and volunteers.

(b) The center must have job descriptions for each paid staff and volunteer position, which functions as staff, that are in accordance with ADA requirements and that specify qualifications for the job, delineation of tasks, essential functions and lines of supervision and authority.

(c) Each employee must receive, review, and sign a copy of the job description at the time of employment and whenever job descriptions are modified. Volunteers who function as staff must receive written descriptions of responsibilities.

(d) Probationary evaluations and annual performance evaluations, in accordance with job descriptions, must be conducted and must conform to the policy of the funding or parent organization. Both the employee and supervisor will sign and date the written evaluation. Copies will be kept in locked personnel files.

(e) Each staff person or volunteer, who functions as a staff person, is to have ~~((a tuberculin test within thirty days of employment. If a test has been performed within twelve months of employment, the results of that test may be accepted. Tuberculin tests will be repeated according to local public health requirements))~~ tuberculosis (TB) testing according to current local health authorities recommendations.

(f) The center must have policies to restrict a staff person or participant's contact with clients when the staff person or participant has a known communicable disease in the infectious stage that is likely to spread in the center.

(g) Policies must also be established concerning hand washing, universal precautions, infection control, infectious waste disposal, bloodborne pathogens, and laundry and handling of soiled and clean items.

(2) The center must have policies and procedures concerning suspected participant abuse, neglect, or exploitation reporting that include provisions preventing access to any participant until the center investigates and takes action to assure the ~~((participant's))~~ participants' safety.

(3) The center must not interfere with the lawful investigation of a complaint, coerce a participant, or conceal evidence of alleged improprieties occurring within the center.

(4) The center must have policies that meet the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and to local law enforcement for other participants.

(5) Each employee must receive or have access to a copy of the program's personnel policies at the time of employment.

(6) Whenever volunteers function in the capacity of staff, all applicable personnel policies ~~((must))~~ pertain.

(7) The center must conform to federal and state labor laws and be in compliance with equal opportunity guidelines.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0752 ~~((Adult day center—Staffing requirements))~~ **What are the adult day centers' staffing qualifications and requirements?**

(1) Staff selection is dependent on participant needs, program design, and contracting requirements. The center must have the proper balance of professionals and paraprofessionals or nonprofessionals to adequately meet the needs of participants. Services must be delivered by those with adequate professional training. A staff person can have multiple functions, such as an administrator who is also responsible for providing nursing services or social services.

(2) To ensure continuity of direction and supervision, there must be a clear division of responsibility between the governing body and the adult day center administrator.

(3) The administrator must be given full authority and responsibility to plan, staff, direct, and implement the program. The administrator must also have the responsibility for establishing collaborative relations with other community organizations to ensure necessary support services to participants and their families/caregivers.

(4) The administrator must be on site to manage the center's day-to-day operations during hours of operation. If the administrator is responsible for more than one site, or has duties not related to adult day center administration or provision of services, a program director must be designated for each additional site and must report to the administrator.

(5) The administrator must be responsible for the development of a written plan of operation with approval of the governing body and the development, coordination, supervision, fiscal control, and evaluation of services provided through the adult day center.

(6) A nurse or other personnel ~~((trained in))~~ with a current first aid and CPR card must be on ~~((hand))~~ site whenever participants are ~~((present))~~ attending the adult day care or health program.

~~((7))~~ ~~((Background checks pursuant to RCW 43.43.830 and 43.43.832 must be performed for all applicants hired, existing employees, and volunteers. Unsupervised access to participants is prohibited until a background check has been completed and the employee's suitability for employment has been determined.))~~

~~((8))~~ Required credentials must be verified to ensure that they are current and in good standing for licensed and certified staff.

~~((9))~~ (8) Adult day centers may utilize a range of staff under contract or consulting from a larger parent organization or from a private entity to provide services.

~~((10))~~ (9) Staff commonly utilized by both adult day care and adult day health centers must meet the following requirements:

(a) An activity coordinator must have a bachelor's degree in recreational therapy or a related field and one year of experience (full-time equivalent) in social or health services; or an associate degree in recreational therapy or a related field plus two years of appropriate experience; or three years of paid experience in an activity program and expertise with the population served at the center.

(b) The nurse must be a registered nurse (RN) with valid state credentials in good standing and have at least one-year applicable experience (full-time equivalent) in ambulatory care or hospital nursing or geriatric or preferably in home health or older adult community based nursing and/or work with disabled clients. In addition to a registered nurse, an adult day center can utilize a licensed practical nurse (LPN), but the LPN must be supervised in compliance with all applicable nurse practice acts and standards. The LPN must have valid state credentials in good standing and at least one-year applicable experience (full-time equivalent) in ambulatory care of hospital nursing or geriatric or preferably in home health or older adult community based nursing and/or work with disabled clients. In the adult day care center the RN/LPN does not need to be on site during all hours of operation. In the adult day health center the RN and/or LPN must be on site when the attending participants' who need nursing ser-

vices are attending the ADH program. If there are no participants who have nursing service interventions identified on their negotiated care plan in attendance then the nurse is not required to be on site during the ADH program time.

(c) The social services professional must have a master's degree in social work, gerontology, or other human services field, or counseling and at least one year of professional work experience (full-time equivalent), or a bachelor's degree in social work, counseling, or a related field and two years of experience in a human services field.

(d) Program assistant/aides or personal care aides must have ~~((one or more years of experience (full-time equivalent) in working with adults in a health care or social service setting))~~ the appropriate knowledge, skills and training to meet the individual needs of the participants before they are allowed to provide care and services. The assistant/aide competencies must be documented demonstrating their qualification to meet the needs of the center's participants within their job description.

(e) Consultants from a larger parent organization without formal contracts may be utilized whenever the center is part of a larger organization that has the ability to provide professional services within the larger framework.

(f) Consultants, with appropriate, valid state credentials may be utilized as needed to meet the requirements outlined in this chapter. The rehabilitative consultants must perform the professional assessment of the participant, train the staff regarding the participants therapy needs and therapeutic intervention/s, monitor the rehabilitation program and evaluate the participants progress for discharge planning.

(g) Secretary/bookkeepers must have at least a high school diploma or equivalent and skills and training to carry out the duties of the position.

(h) If the adult day center provides transportation drivers must have a valid and appropriate state driver's license, a safe driving record, and training in first aid and CPR. The driver must meet all state requirements for licensure or certification.

(i) Volunteers may be individuals or groups who desire to work with adult day center clients and must take part in program orientation and training. Volunteers and staff must mutually determine the duties of volunteers. Duties to be performed under the supervision of a staff member must either supplement staff in established activities or provide additional services for which the volunteer has special talents. Volunteers will be included in the staff ratio only when they conform to the same standards and requirements as paid staff, meet the job qualification standards of the organization, and have designated responsibilities.

(j) Dietitians must be certified with valid state credentials and have a minimum of one year applicable experience (full-time equivalent).

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0754 ((Staffing ratios.)) What are the adult day center's staff ratio requirements? (1) ~~((Staffing levels))~~ Direct care staff in adult day centers will vary based upon the number of participants and ~~((the))~~ their care ((provided)) and service requirements. The centers must provide

sufficient numbers of qualified staff to meet the participants' needs, but at a minimum must have one staff to six clients for:

- (a) Adequate nutrition and hydration;
- (b) Health monitoring, education and referral to health services if needed;
- (c) Assistance with activities of daily living;
- (d) Socialization, recreation, therapeutic activities and stimulation;
- (e) Transportation assistance;
- (f) Supervision and protection; and
- (g) Provision of a safe environment.

(2) The staffing level must be sufficient to serve the number and functioning levels of adult day center participants, meet program objectives, and provide access to other community resources.

(3) There must be sufficient maintenance and house-keeping personnel to assure that the facility is clean, sanitary, and safe at all times.

(4) To ensure adequate care and safety of participants, there must be provision for qualified substitute staff.

(5) As the number of participants with functional impairments, skilled nursing or skilled rehabilitative therapy needs increases, the required staff-participant ratio must be adjusted accordingly.

~~((All centers must have written policies regarding staff-participant ratios. The ratio must be a minimum of one staff to six participants. The provider must ensure that appropriate professionals provide needed services to the participants based upon the participants' service and care plans. The center is also required to employ sufficient staff to meet the needs of the participants))~~ Direct service staff to participant ratio must be met according to each program the center is contracted to provide, i.e. COPES/RCL and memory care and wellness services (MCWS). The center is required to have daily documentation outlining how they met the staff to resident ratio. This data would include but not be limited to names/titles of employees with date and hours worked and participants' names and date and hours attended.

(7) Staff counted in the staff-participant ratio ~~((are))~~ is those who are trained and able to provide direct service to participants. When there is ~~((more than))~~ one participant present, to ensure safety of participant, there must be at least two organizational staff members ~~((on the premises, one of whom is directly supervising the participants))~~ who have the skills, knowledge and ability to meet the clients need and at least one is currently certified in CPR and First Aid.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0756 ((Adult day care—Staffing requirements.)) What are the adult day care centers' minimum staff requirements? (1) ~~((Minimum))~~ The minimum staffing requirements for adult day care centers include an administrator/program director, activity coordinator, a consulting registered nurse, and a consulting social worker.

(2) The administrator/program director must have a master's degree and one year of supervisory experience in health or social services (full-time equivalent); or a bachelor's degree in health, social services or a related field, with two

years of supervisory experience (full-time equivalent) in a social or health service setting; or a high school diploma or equivalent and four years of experience in a health or social services field, of which two years must be in a supervisory position, and have expertise with the populations served at the center.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0758 (~~Adult day health — Staffing requirements~~) **What are the adult day health centers' minimum staff requirements?** (1) (~~Minimum~~) The minimum staffing requirements for adult day health centers include an administrator, program director, registered nurse, activity coordinator, a PT/OT or speech therapist, and a social worker. The administrator and program director may be the same person.

(2) The program administrator must have a master's degree and one year of supervisory experience in health or social services (full-time equivalent), or a bachelor's degree and two years of supervisory experience in a social or health service setting. The degree may be in nursing.

(3) The program director must have a bachelor's degree in health, social services or a related field with one year of supervisory experience (full-time equivalent) in a social or health service setting. Upon approval by the department, a day health center may request an exception for an individual with an associate's or vocational degree in health, social services, or a related field with four years of experience in a health or social service setting, of which two years must be in a supervisory position.

(4) Registered nurses and licensed practical nurses per WAC 388-71-0752.

(5) Therapists, regardless of specific expertise, such as physical therapists, occupational therapists, speech therapists, recreation therapists, mental health therapists, or any other therapists used, must have valid state credentials and one year of experience in a social or health setting.

(~~5~~) (6) Rehabilitative therapeutic assistants must be certified with valid state credentials, have at least one year of applicable experience (full-time equivalent), and meet the requirements of chapter 246-915, 246-847, or 246-828 WAC.

(~~6~~) (7) A certified or registered nursing assistant must meet the requirements of chapter 18.88A, RCW (~~18.88A-020~~).

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

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0760 (~~Adult day centers — Employee records~~) **What are the adult day centers' employee file requirements?** (1) Each employee must have an individual file containing the employee's application, verification of references, TB status, signed job description, and all performance evaluations. Copies of current license, (~~or~~) certificate, or registration and verification of current good standing,

and a current certification of CPR and first aid training, if applicable, must also be in the file.

(2) Centers must maintain employee records for the duration of staff employment and at least seven years after termination of employment.

(3) Employee records must contain (~~all records of training, such as staff orientation and training pertinent to duties or regulatory compliance, including CPR, first aid, and universal precautions training~~) documentation demonstrating the employee was oriented to the facility, job and possesses the knowledge, skills and ability to perform their assigned duties. The record should also contain documentation demonstrating the employee understands and will follow the center's policies and procedures regarding but not limited to medication disposal, the emergency and evacuation plan, the abuse, neglect, abandonment and financial exploitation of vulnerable adults and universal precaution policies and procedures.

(4) (~~Employee records must contain criminal history disclosure and background checks~~) Background checks pursuant to RCW 43.43.830 and 43.43.832 must be performed for all applicants hired, existing employees, and volunteers who function as staff or who have unsupervised access to participants. Unsupervised access to participants is prohibited until a background check has been completed and the employee's suitability for employment has been determined. Background checks must be updated every two years and documentation maintained in the employees' or volunteers' functioning as staff, record.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0762 (~~Adult day centers — Education and training~~) **What are the adult day centers' employee education and training requirements?** (1) Provision must be made for orientation of new employees, contractors, and volunteers.

(2) (~~At~~) Every year, all staff, contractors, and volunteers, functioning as staff, must receive, at a minimum, quarterly in-service training and staff development that meets their individual training needs to support program services. This must be documented and readily accessible in the personnel file (~~and in a general file~~).

(3) Staff, contractors, and volunteers, who function as staff, must receive training (~~about documentation, reporting requirements, and universal precautions~~) regarding the following at a minimum:

- (a) How to document in participants' records;
- (b) What the center's emergency plan and evacuation procedure is and how to implement;
- (c) How to respond to aggressive or assaultive participants;
- (d) How to receive and respond to grievances;
- (e) What are universal precautions and how to implement in the day to day operations in the center;
- (f) Reporting requirements such as but not limited to:
 - (i) Mandatory reporting for abuse, neglect, abandonment, and exploitation of vulnerable adults; and

(ii) Local health department procedure for disease outbreak.

(4) At a minimum, one staff person per shift must ~~((be trained and certified))~~ have current training and certification in CPR/First Aid.

(5) Staff and volunteers functioning as staff, must receive education and training on all applicable policies and procedures within two weeks of employment.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0764 (~~(Adult day centers — Medication:))~~ How will medications be provided in an adult day center? (1) The center must develop written medication policies that ~~((are))~~ support and promote safe medication storage and administration for each participant and meet the requirements of chapter 69.41 RCW and chapter 246-88 WAC and other applicable statutes. These policies must be explained and accessible to all staff, contractors, volunteers, and participants that have responsibility in this area. ((At a minimum, policies must meet the following requirements:

~~(a) Medications must be kept in locked storage. If medications need to be refrigerated, they should be in a locked box, if not in a separate refrigerator dedicated to medication refrigeration.~~

~~(b) Medication policies must describe:~~

~~(i) Under what conditions licensed program staff will administer medications;~~

~~(ii) How medications brought to the program by a client must be labeled;~~

~~(iii) How nonprescription medications such as aspirin or laxatives are to be used;~~

~~(iv) How the administration of medications will be entered in participant case records as described in WAC 388-71-0744(4); and~~

~~(v) Medication policies must be consistent with laws governing medication administration under RCW 69.41.010 and chapter 246-888 WAC:))~~

(2) Participants who need to take medications while at the center, and who are able to self medicate, must be encouraged and expected to bring and take their own medications as prescribed. Some participants may need assistance with their medications, and ~~((a few))~~ some may need to have their medications administered by qualified program staff.

(3) In order for the center staff to administer any prescribed medication, there must be a written authorization from the participant's authorizing practitioner stating that the medication is to be administered at the program site.

(4) Staff must be trained to observe medication usage and effects, and to document and report any concerns or difficulties with medications.

(5) At a minimum, medication policies must include the following:

(a) How medications will be labeled and stored. Medications must be:

(i) Labeled according to your policy including prescribed and over the counter medications;

(ii) Kept in a locked storage area organized so client's medications are not mixed together; and

(ii) If refrigeration is necessary, medications should be in a locked box, if not in a separate refrigerator dedicated to medication refrigeration.

(b) Procedures for administration of medications, including:

(i) What program staff are allowed and able to administer medications and under what circumstances;

(ii) How nonprescription medications such as aspirin or laxatives are to be used; and

(iii) How the administration of medications will be entered in participant case records as described in WAC 388-71-0744.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0766 (~~(Adult day centers — Facility:))~~ What are the adult day centers' facility requirements? (1)

Selection of a location for a center must be based on information about potential participants in the service area and be made in consultation with other agencies, organizations, and institutions serving older individuals and those with functional impairments, as well as considering the availability of a suitable location.

(2) Centers must have available a current floor plan of the facility indicating usage of space with interior measurements, building inspection report from the local, city or county, building department, if applicable, fire department inspection report, and the local health department kitchen inspection report and permit if operating ~~((a))~~ an on-site kitchen.

~~(3) ((The facility must comply with applicable state, county, and local building regulations, zoning, fire, and health codes or ordinances.~~

~~(4))~~ When possible, the facility should be located at street level. If the facility is not located at street level, it is essential to have a ramp and/or elevators. All new adult day service centers contracted with the department after February 1, 2014 must have a ramp, at least a 1:12 slope, for emergency evacuation if the center has any step or stairs to be navigated during an emergency evacuation. An evacuation plan for relocation of participants to another building must also be in place in the event of an emergency. The center must post a floor plan of the center and indicate the evacuation route from each room to the outside meeting place.

(5) Each adult day center co-located in a facility housing other services must have its own separate identifiable space for main activity areas during operational hours. Certain space can be shared, such as the kitchen and therapy rooms.

(6) Each center must provide appropriate hardware on doors of storage rooms, closets, bathrooms, and other rooms to prevent participants from being accidentally locked in.

(7) When possible, the location should be within a transit authority's core service area.

(8) The facility must have sufficient space to accommodate the full range of program activities and services. The facility must be adaptable to accommodate variations of activities (group and/or individual) and services. The program must provide and maintain essential space necessary to provide services and to protect the privacy and dignity of the

participants receiving services. There must be sufficient private space to permit staff to work effectively and without interruption. There must be sufficient space available for private discussions.

(9) The facility must provide at least sixty square feet of program space for multipurpose use for each day center participant. In determining adequate square footage, only those activity areas commonly used by participants are to be included. Hallways, dining and kitchen areas are to be included only if these areas are used by clients for activities other than meals. Reception or lobby areas, storage areas, offices, restrooms, passageways, treatment rooms, service areas, or specialized spaces used only for therapies are not to be included when calculating square footage.

(10) Storage space.

(a) There must be adequate storage space for program and operating supplies.

(b) Toxic substances, whether for activities or cleaning, must be stored in an area not accessible to participants. Substances must be clearly marked, the contents identified, and stored in original containers.

(11) Restrooms.

(a) The facility's restrooms must be located as near the activity area as possible, preferably no more than forty feet away. The facility must include at least one toilet for every ten participants. The facility must provide privacy for the participant when using the restroom facilities.

(b) Programs that have a large number of participants who require more scheduled toileting or assistance with toileting must have at least one toilet for every eight participants.

(c) The toilets shall be equipped for use by mobility-limited persons and easily accessible from all program areas. One toilet area should be designed to allow assistance from one or two staff. More accessible units may be required based upon the needs of the participants.

(d) Each restroom must contain an adequate supply of soap, toilet tissues, and paper towels.

(e) After Month/Day/Year all newly contracted adult day service facilities or contracted adult day service provider opening another site must have at least one roll in shower for participant use. Showers are to be accessible to those who require bathing as an ADC service.

(12) Rest area.

(a) In addition to space for program activities, the facility must have a rest area and designated areas to permit privacy and to isolate participants who become ill or disruptive, or who may require rest.

(b) The rest area must be located away from activity areas and near a restroom and the nurse's office. There must be at least one bed, couch, or recliner for every ten participants that can be used for resting or the isolation of a participant who is ill or suspected of coming down with a communicable disease.

(c) If beds are used, the mattresses and pillow must be protected, cleaned and disinfected after each participant use. The bed linens must be clean and changed after each use by different participants to prevent the spread of infection.

(13) Loading zones/parking/entrances/exits.

(a) A loading zone with sufficient space for getting in and out of a vehicle must be available for the safe arrival and departure of participants and the use of emergency personnel.

(b) There must be sufficient parking available to accommodate family caregivers, visitors, and staff.

(c) When necessary, arrangements must be made with local authorities to provide safety zones for those arriving by motor vehicle and adequate traffic signals for people entering and exiting the facility.

(d) Adequate lighting must be provided in all loading and parking zones, entrances, and exits.

(e) An adult day center must be visible and recognizable as a part of the community. The entrance to the facility must be clearly identified. The center must also be appealing and protective to participants and others.

(f) At least two well-identified exits must be accessible from the building.

(14) Atmosphere and design.

(a) The center's design must facilitate the participants' movement throughout the facility and encourage involvement in activities and services.

(b) The environment must reinforce orientation and awareness of the surroundings by providing cues and information about specific rooms, locations, and functions that help the participant to get his/her orientation to time and space.

(c) A facility must be architecturally designed in conformance with the requirements of section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act to accommodate individuals with a disability and meet any state and local barrier-free requirements.

(d) Illumination levels in all areas must be adequate, and careful attention must be given to avoiding glare. Attention must be paid to lighting in transitional areas, such as outside to inside and between different areas of the facility.

(e) Sound transmission must be controlled. Excessive noise, such as fan noise, must be avoided.

(f) Comfortable conditions must be maintained within a comfortable temperature range. Excessive drafts must be avoided uniformly throughout the facility.

(g) Sufficient furniture must be available for the entire population present. Furnishings must accommodate the needs of participants and be attractive, comfortable, sturdy, clean and safe. Straight-backed chairs with arms must be used during activities and meals.

(h) A telephone must be available for participant use. Local calls are to be available at no cost to the participant.

(15) Safety and sanitation.

(a) The facility and grounds must be safe, clean, and accessible to all participants, and must be designed, constructed, and maintained in compliance with all applicable local, state, and federal health and safety regulations.

(b) Nonslip surfaces must be provided on stairs, ramps, and interior floors.

(c) Alarm/warning systems are necessary to ensure the safety of the participants in the facility in order to alert staff to potentially dangerous situations. This system needs to be activated when the center's staff have determined a participant/s have the potential safety issues with wandering. It is

recommended that call bells be installed or placed in the rest areas, restroom stalls, and showers.

(d) An emergency evacuation plan with outside meeting location at a safe distance from the building must be strategically posted in each facility so that all participants, staff, and visitors can view it. If the center provides services to primarily non-English speaking clients the evacuation plan must also contain instructions in the primary language used by clients of the center. The center's emergency disaster plan must be readily available to all staff and reviewed routinely to ensure a safe and secure environment during a disaster.

(e) The facility must be free of hazards, such as high steps, steep grades, and exposed electrical cords. Steps and curbs must be painted and the edges of stairs marked appropriately to highlight them. All step, stairs, ramps, and bathrooms accessible to those with disabilities must be equipped with securely anchored handrails on both sides.

(f) Emergency first-aid kits and manuals must be visible and accessible to staff. Contents of the kits must be replenished after use and reviewed as needed.

(g) Maintenance and housekeeping must be carried out on a regular schedule and in conformity with generally accepted sanitation standards, without interfering with the program.

(h) If smoking is permitted, the center must follow RCW 70.160-Smoking in Public Places.

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.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0770 ((~~Adult day center—Food and nutrition services.~~) What are the adult day centers' food and nutrition service requirements?) Centers must provide meal service to all participants as outlined in WAC 388-71-0704 and 388-71-0706

(1) All meals provided are to meet one-third of the minimum required daily allowance or dietary reference intake as determined by the Food and Nutrition Board of the Institute of Medicine.

(2) The center must ensure that food served meets nutritional needs, takes into consideration individual and ethnic preferences to the extent reasonably possible, caloric need, special dietary requirements, and any physical condition making food intake difficult.

(3) The center must provide a variety of foods and not repeat menus for a minimum of three weeks.

(4) Participant input must be gathered when planning meals.

(5) Menus must be posted at least one week in advance; indicate the date, day of the week, month and year; and include all food and snacks served that contribute to nutritional requirements.

(6) Nutrient concentrates, supplements, and dysphagia-modified diets related to a choking or aspiration risk, are to be served only with the written approval of the participant's ~~(physician)~~ authorizing practitioner.

(7) Safe and sanitary handling, storage, preparation, and serving of food must be assured. If meals are prepared on the premises, kitchen appliances, food preparation area, and equipment must meet state and local requirements and pass inspections annually.

(8) All staff and volunteers handling or serving meals must have the appropriate food handler's permits, if applicable.

(9) In the event meals are prepared at a separate kitchen facility, the adult day center must ensure that persons preparing food have a food handler's permit and that the food is transported in airtight containers to prevent contamination.

(10) The center must ensure that the food is transported and served at the appropriate and safe temperature.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0772 ((~~Adult day centers—Emergency procedures.~~) What are the adult day centers' emergency procedures requirements?) (1) A written emergency/disaster/earthquake plan must be ~~((posted))~~ readily available to all staff at each program site and in all program owned vehicles. Staff must be trained to ensure smooth implementation of the emergency plan.

(2) All staff and volunteers must be trained in evacuation/fire safety procedures.

(3) ~~((A))~~ The center's written illness/injury/medical emergency/death procedure must be followed in the event a participant becomes ill, is injured, or dies. The procedures must be ~~((posted in at least one visible location at all program sites))~~ readily available to all staff during program hours and must be explained to staff, volunteers, and participants. ~~((The procedures must describe arrangements for hospital inpatient and emergency room service and include directions on how to secure ambulance transportation and complete incident reports.))~~

(4) Procedures for fire safety as approved by the local fire authority must be adopted and ~~((posted))~~ readily available to all staff, including provisions for fire drills, inspection and maintenance of fire extinguishers, and periodic inspection and training by fire department personnel. The center must conduct and document quarterly fire drills and document the center's ability to meet procedures. Improvements must be based on the fire drill evaluation. The center must post their building's floor plan with evacuation route from each room to the outside pre-determined meeting place. Smoke detectors must also be used and serviced on a routine basis per the center's policy.

(5) Each center must provide adequate emergency lighting or flashlights in all areas.

(6) Each center must provide and maintain first aid kits with manuals in adequate numbers to meet the needs of the participant and staff.

(7) Each center must ensure, in accordance with local emergency procedures, that supplies, food, water and equipment are available in the event power, heat and/or electricity are not available during an emergency.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0774 ~~((Adult day centers—Quality assurance and improvement.))~~ **What are the adult day centers' quality assurance plan requirements?** (1) ~~((Every))~~ All adult day ~~((center))~~ centers must develop ~~((a))~~ an annual quality improvement plan~~((, with))~~ that identifies specific concerns regarding the quality of care and services to clients. The plan must also include a description of the plan of action that would address the concerns. The plan must have specific measurable objectives, designed to meet requirements of any licensing, funding sources, professional standards, or regulatory compliance.

(2) Policies and procedures for monitoring program quality and determining further action must be developed by the administrator with the advice of the multidisciplinary staff team and the advisory committee, and with the approval of the governing body and center clients and/or representatives.

(3) Quality assurance and improvement plans may include but are not limited to annual program evaluations, utilization reviews, ~~((participant))~~ participants' and former participants' satisfaction surveys, and sampling participant ~~((improvement and/or care plan audits))~~ care plans to audit for assurances of meeting the WAC requirements.

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0776 **Effective date.** WAC 388-71-0702 through 388-71-0776 ~~((are))~~ is effective February 1, 2014.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 388-71-0726 Adult day health transportation.
- WAC 388-71-0742 Adult day centers—Client policies and procedures.
- WAC 388-71-0768 Adult day centers—Physical environment requirements.

WSR 15-02-006
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)

[Filed December 26, 2014, 9:11 a.m., effective January 26, 2015]

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

Purpose: Amendments in Title 388 WAC remove medical references, support the creation of the housing and essential needs (HEN) referral program and remove references to the Alcohol and Drug Addiction Treatment and Support Act (ADATSA). These amendments are currently in effect via emergency rule making filed on October 31, 2014, as WSR 14-22-067. This permanent filing supersedes the emergency filing currently in effect.

Chapter 15, Laws of 2011, (2E2SHB 1738) designated the health care authority (HCA) as the single state agency responsible for the administration of Washington's medical assistance programs. This law also gave HCA the authority to adopt rules to carry out the medical assistance programs. HCA recodified medical assistance program rules to Title 182 WAC. The department is eliminating corresponding medical assistance rules under Title 388 WAC. Amendments also support the creation of the new HEN referral program created under chapter 10, Laws of 2013, (SHB 2069) and also remove references related to ADATSA, as the legislature did not appropriate funds for ADATSA. Beginning January 1, 2014, ADATSA-related medical care services recipients are medicaid eligible under the Affordable Care Act.

Additional amendments spell out the acronym, ABD, identifying it as the aged, blind or disabled program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0005, 388-406-0035, 388-406-0045, 388-424-0010, 388-424-0015, 388-436-0030, 388-450-0015, 388-450-0025, 388-450-0040, 388-450-0156, 388-450-0170, 388-472-0005, and 388-473-0010.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030.

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011; chapter 10, Laws of 2013; and RCW 41.05.021, 74.04.050, 74.08.090, 74.09.035, 74.09.530, and the 2013 biennial budget.

Adopted under notice filed as WSR 14-12-076 on June 3, 2014.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-450-0156 (1)(d) was amended to eliminate "Washington apple health coverage" as a result of comments received.

WAC 388-418-0005 is withdrawn from this permanent rule making, as it will be pursued in another rule-making action.

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 13, 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 13, Repealed 0.

Date Adopted: December 23, 2014.

Katherine I. Vasquez
Rules Coordinator

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

WAC 388-406-0005 Can I apply for cash(~~(or medical)~~) or Basic Food? (1) You can apply for any benefit the department offers, including cash assistance(~~(or medical assistance)~~) or Basic Food.

(2) You must meet certain eligibility requirements in order to receive a program benefit.

(3) You can apply for someone else if you are:

(a) A legal guardian, caretaker, or authorized representative applying for:

(i) A dependent child; or

(ii) An incapacitated person(~~(or~~

~~iii) Someone who is deceased)~~).

(b) Applying for someone who cannot apply for some other reason. We may ask why the applicant is unable to apply on their own behalf.

(4) ~~((If you get supplemental security income (SSI), you do not need to apply for medical benefits. We automatically open medical benefits for you.~~

~~(5))~~ A person or agency may apply for aged, blind, or disabled (ABD) cash (~~(or medical assistance)~~) for you if:

(a) You temporarily live out-of-state; and

(b) You are a Washington state resident.

~~((6))~~ (5) When you are confined or incarcerated in a Washington state public institution, you may apply for cash (~~(or medical assistance)~~) if you meet the following criteria:

(a) You are confined by or in the following public institutions:

(i) Department of corrections;

(ii) City or county jail; or

(iii) Institution for mental diseases (IMD).

(b) Staff at the public institution provide medical records including diagnosis by a mental health professional that you have a mental disorder (as defined in the Diagnostic and Statistical Manual of Psychiatric Disorders, most recent edition) that affects your thoughts, mood or behavior so severely that it prevents you from performing any kind of work.

~~((7) We will make an eligibility determination for medical assistance prior to your release from confinement and will authorize medical benefits upon your release from confinement when you:~~

~~(a) Meet the criteria of subsection (6) in this section; and~~

~~(b) Were receiving medicaid immediately before confinement or within the five years prior to confinement.~~

~~(8) If you meet the criteria in subsection (6) but did not receive medicaid within the five years prior to confinement, the department will process your request for medical assistance within the time frames in WAC 388-406-0035.~~

~~(9) If you are applying for assistance for a youth leaving incarceration in a juvenile rehabilitation administration or county juvenile detention facility, you may apply for assistance within forty-five days prior to release. We will process~~

~~your application for medical assistance when we receive it, and if eligible, we will authorize medical benefits upon the youth's release from confinement.)~~

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

WAC 388-406-0035 How long does the department have to process my application? (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your eligibility determination is delayed for good cause under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

(a) ~~((If you are pregnant, we must process your application for medical within fifteen working days;~~

~~(b))~~ If you are applying for aged, blind, or disabled (ABD) cash assistance, (~~(alcohol or drug addiction treatment (ADATSA), or medical assistance)~~) or a referral to the housing and essential needs (HEN) program, we must process your application within forty-five calendar days unless there is good cause as described in WAC 388-406-0045(~~(and~~

~~(e) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days)~~).

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for supplemental security income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

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

WAC 388-406-0045 Is there a good reason my application for cash (~~(or medical)~~) assistance has not been processed? If your application for cash (~~(or medical)~~) assistance is not processed within the time limits under WAC 388-406-0035, the department must decide if there is a good reason for the delay. This good reason is also called "good cause."

(1) We do not have a good reason for not processing your application for TANF or SFA within thirty days if:

(a) We did not give or send you a notice of what information we needed to determine your eligibility within twenty days from the date of your application;

(b) We did not give or send you a notice that we needed additional information or action within five calendar days of the date we learned that more information was needed to determine eligibility;

(c) We did not process your application within five calendar days from getting the information needed to decide eligibility; and

(d) We decide good cause exists but do not document our decision in the case record on or before the time limit for processing the application ends.

(2) We do have a good reason for not processing your application timely if:

(a) You do not give us the information or take an action needed for us to determine eligibility;

(b) We have an emergency beyond our control; or

(c) There is no other available verification for us to determine eligibility and the eligibility decision depends on information that has been delayed such as:

(i) Medical documentation;

(ii) For cash assistance, extensive property appraisals; or

(iii) Out-of-state documents or correspondence.

(3) ~~((For medical assistance, good cause exists only when the department otherwise acted promptly at all stages of the application process.~~

(4)) For aged, blind, or disabled (ABD) cash assistance, or a referral to the housing and essential needs (HEN) program, good cause exists if you apply when you are confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a).

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

WAC 388-424-0010 Citizenship and alien status—Eligibility for TANF(~~(, Medicaid, and CHIP)~~). (1) To receive temporary assistance for needy families (TANF)~~(, Medicaid, or children's health insurance program (CHIP) benefits)~~, an individual must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

(a) A United States (U.S.) citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien";

(e) A victim of trafficking; or

(f) A Hmong or Highland Lao.

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF~~(, Medicaid, and CHIP)~~.

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF~~(, Medicaid, or CHIP)~~ for five years after obtaining status as a qualified alien unless the criteria in WAC 388-424-0006(4) are met.

~~(4) ((A lawfully present "nonqualified alien" child or pregnant woman as defined in WAC 388-424-0001 who meet residency requirements as defined in WAC 388-468-0005 may receive Medicaid or CHIP.~~

~~(5))~~ An alien who is ineligible for TANF~~(, Medicaid or CHIP)~~ because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) ~~((and WAC 388-438-0110 (alien medical program)))~~; or

(b) State-funded cash ~~((or chemical dependency benefits))~~ as described in WAC 388-424-0015 (state family assistance (SFA), and aged, blind, or disabled (ABD) cash~~(, and~~

~~the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)), and medical benefits as described in WAC 182-503-0532; or~~

~~(c) Pregnancy medical benefits for noncitizen women as described in WAC 388-462-0015(3); or~~

~~(d) State-funded apple health for kids as described in WAC 388-505-0210(5)).~~

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

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

WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash(~~(, and ADATSA)~~) and PWA(~~(, and ADATSA)~~) programs. (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3); or

(b) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005, including a noncitizen American Indian who does not meet the criteria in WAC 388-424-0001.

(2) To receive aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be:

(a) A U.S. citizen;

(b) A U.S. national;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien" or similarly defined lawful immigrant such as victim of trafficking as defined in WAC 388-424-0001; or

(e) A nonqualified alien described in WAC 388-424-0001 who:

(i) Has verified their intent to stay in the United States indefinitely; and

(ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.

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

WAC 388-436-0030 How does my eligibility for other possible cash benefits impact my eligibility for CEAP? (1) You are ineligible for CEAP if you, or a household member, are eligible for any of the following programs:

(a) TANF or SFA, unless the family has had its case grant terminated due to WAC 388-310-1600;

(b) Pregnant women assistance (PWA);

(c) RCA;

(d) Aged, blind, or disabled (ABD) cash;

(e) Supplemental security income (SSI);

~~((f) Medical assistance for those applicants requesting help for a medical need;~~

~~(g))~~ (f) Food assistance for those applicants requesting help for a food need;

~~((h))~~ (g) Housing assistance from any available source for those applicants requesting help for a housing need;

~~((+))~~ (h) Unemployment compensation, veteran's benefits, industrial insurance benefits, Social Security benefits, pension benefits, or any other source of financial benefits the applicant is potentially eligible to receive.

(2) The department may require the applicant, or anyone in the assistance unit, to apply for and take any required action to receive benefits from programs described in the above subsection (1)(a) through (h).

(3) The department may not authorize CEAP benefits to any household containing a member who is:

(a) Receiving cash benefits from any of the following programs:

- (i) TANF/SFA;
- (ii) PWA;
- (iii) RCA;
- (iv) DCA; or
- (v) ABD cash.

(b) Receiving reduced cash benefits for failure to comply with program requirements of TANF/SFA, or RCA.

(4) The department may authorize CEAP to families reapplying for TANF/SFA who are not eligible for TANF cash benefits under WAC 388-310-1600 until they complete the four week participation requirement.

AMENDATORY SECTION (Amending WSR 12-08-002, filed 3/21/12, effective 4/21/12)

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? This section applies to cash assistance(~~(- children's, family, or pregnancy medical,))~~ and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA,

aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and SSI;

(k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

(l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(m) Payments we are directly told to exclude as income under state or federal law.

(n) ~~((For cash and Basic Food:))~~ Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

(o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

~~((p) For medical assistance: Only the portion of income used to repay the cost of obtaining that income source.~~

~~(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.)~~

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

WAC 388-450-0025 What is unearned income? This section applies to cash assistance(~~(- and medical programs for families, children, and pregnant women))~~ and food assistance(~~(- and medical programs for families, children, and pregnant women))~~).

(1) Unearned income is income you get from a source other than employment or self-employment. Some examples of unearned income are:

(a) Railroad retirement;

(b) Unemployment compensation;

(c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);

(d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or

(e) Veteran Administration benefits.

(2) For food assistance we also count the total amount of cash benefits due to you before any reductions caused by your failure (or the failure of someone in your assistance unit) to perform an action required under a federal, state, or local means-tested public assistance program, such as TANF/SFA, ABD assistance, PWA, and SSI.

(3) When we count your unearned income, we count the amount you get before any taxes are taken out.

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

WAC 388-450-0040 Native American benefits and payments. This section applies to TANF/SFA, RCA, PWA, ABD cash, ~~((medical,))~~ and food assistance programs.

(1) The following types of income are not counted when a client's benefits are computed:

(a) Up to two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian ~~((judgement))~~ judgment funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per individual per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(2) Other Native American payments and benefits that are excluded by federal law are not counted when determining a client's benefits. Examples include but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540; and

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503~~((; and~~

~~((d) For medical assistance, receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations)).~~

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

WAC 388-450-0156 When am I exempt from deeming? (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with United States Citizenship and Immigration Services (USCIS):

(i) Refugee;

(ii) Parolee;

(iii) Asylee;

(iv) Cuban/Haitian entrant; or

(v) Special immigrant from Iraq or Afghanistan.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, or nonemergency medicaid benefits. We count a quarter of work by the following people toward your forty qualifying quarters:

(i) Yourself;

(ii) Each of your parents for the time they worked before you turned eighteen years old (including the time they worked before you were born); and

(iii) Your spouse if you are still married or your spouse is deceased.

(e) You become a United States (U.S.) Citizen;

(f) Your sponsor is dead; or

(g) If USCIS or a court decides that you, your child, or your parent was a victim of domestic violence from your sponsor and:

(i) You no longer live with your sponsor; and

(ii) Leaving your sponsor caused your need for benefits.

(2) You are exempt from the deeming process while you are in the same AU as your sponsor~~((;~~

~~((3) For children and pregnancy medical programs, you are exempt from sponsor deeming requirements)).~~

~~((4))~~ (3) For Basic Food, you are exempt from deeming while you are under age eighteen.

~~((5))~~ (4) For state family assistance, aged, blind, or disabled (ABD) cash, pregnant women assistance (PWA)~~((;~~) and state-funded Basic Food benefits, ~~((and state-funded medical assistance for legal immigrants))~~ you are exempt from the deeming process if:

(a) Your sponsor signed the affidavit of support more than five years ago;

(b) Your sponsor becomes permanently incapacitated; or

(c) You are a qualified alien according to WAC 388-424-0001 and you:

(i) Are on active duty with the U.S. armed forces or you are the spouse or unmarried dependent child of someone on active duty;

(ii) Are an honorably discharged veteran of the U.S. armed forces or you are the spouse or unmarried dependent child of an honorably discharged veteran;

(iii) Were employed by an agency of the U.S. government or served in the armed forces of an allied country during a military conflict between the U.S. and a military opponent; or

(iv) Are a victim of domestic violence and you have petitioned for legal status under the Violence Against Women Act.

~~((6))~~ (5) If you, your child, or your parent was a victim of domestic violence, you are exempt from the deeming process for twelve months if:

(a) You no longer live with the person who committed the violence; and

(b) Leaving this person caused your need for benefits.

~~((7))~~ (6) If your AU has income at or below one hundred thirty percent of the federal poverty level (FPL), you are exempt from the deeming process for twelve months. This is called the "indigence exemption." You may choose to use this exemption or not to use this exemption in full knowledge of the possible risks involved. See risks in subsection (9) below. For this rule, we count the following as income to your AU:

(a) Earned and unearned income your AU receives from any source; and

(b) Any noncash items of value such as free rent, commodities, goods, or services you receive from an individual or organization.

~~((8))~~ (7) If you use the indigence exemption, and are eligible for a federal program, we are required by law to give the United States attorney general the following information:

(a) The names of the sponsored people in your AU;

(b) That you are exempt from deeming due to your income;

(c) Your sponsor's name; and

(d) The effective date that your twelve-month exemption began.

~~((9))~~ (8) If you use the indigence exemption, and are eligible for a state program, we do not report to the United States attorney general.

~~((10))~~ (9) If you choose not to use the indigence exemption:

(a) You could be found ineligible for benefits for not verifying your sponsor's income and resources; or

(b) You will be subject to regular deeming rules under WAC 388-450-0160.

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

WAC 388-450-0170 Does the department provide an earned income deduction as an incentive for persons who receive TANF/SFA to work? This section applies to TANF/SFA, RCA(~~(7)~~) and PWA(~~(7)~~ and medical programs for children, pregnant women, and families except as specified under WAC 388-450-0210).

(1) If a client works, the department only counts some of the income to determine eligibility and benefit level.

(2) We only count fifty percent of your monthly gross earned income. We do this to encourage you to work.

(3) If you pay for care before we approve your benefits, we subtract the amount you pay for those dependent children or incapacitated adults who get cash assistance with you.

(a) The amount we subtract is:

(i) Prorated according to the date you are eligible for benefits;

(ii) Cannot be more than your gross monthly income; and

(iii) Cannot exceed the following for each dependent child or incapacitated adult:

Dependent Care Maximum Deductions

Hours Worked Per Month	Child Two Years of Age & Under	Child Over Two Years of Age or Incapacitated Adult
0 - 40	\$ 50.00	\$ 43.75
41 - 80	\$ 100.00	\$ 87.50
81 - 120	\$ 150.00	\$ 131.25
121 or More	\$ 200.00	\$ 175.00

(b) In order to get this deduction:

(i) The person providing the care must be someone other than the parent or stepparent of the child or incapacitated adult; and

(ii) You must verify the expense.

AMENDATORY SECTION (Amending WSR 12-06-070, filed 3/6/12, effective 4/6/12)

WAC 388-472-0005 What are my rights and responsibilities? For the purposes of this chapter, "we" and "us" refer to the department and "you" refers to the applicant or recipient.

(1) If you apply for or get cash, a referral to the housing and essential needs (HEN) program, or food (~~or medical~~) assistance benefits you have the right to:

(a) Have your rights and responsibilities explained to you and given to you in writing;

(b) Have us explain the legal use of DSHS benefits to you;

(c) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender, disability or birthplace;

(d) Request benefits by giving us an application form using any method listed under WAC 388-406-0010. You can ask for and get a receipt when you give us an application or other documents;

(e) Have your application processed as soon as possible. Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty days, except:

(i) If you are eligible for expedited services under WAC 388-406-0015, you get food assistance within seven days. If we deny you expedited services, you have a right to ask that the decision be reviewed by the department within two work-

ing days from the date we denied your request for expedited services;

(ii) ~~((If you are pregnant and otherwise eligible, you get medical within fifteen working days;~~

~~((iii))) Aged, blind, or disabled (ABD) assistance, or ((alcohol or drug addiction treatment (ADATSA), or medical assistance)) referral to the housing and essential needs (HEN) program, may take up to forty-five days~~((; and~~~~

~~((iv) ((iii) Medical assistance requiring a disability decision may take up to sixty days)).~~

(f) Be given at least ten days to give us information needed to determine your eligibility and be given more time if you ask for it. If we do not have the information needed to decide your eligibility, then we may deny your request for benefits;

(g) Have the information you give us kept private. We may share some facts with other agencies for efficient management of federal and state programs;

(h) Ask us not to collect child support ~~((or))~~ (which includes medical support, as defined in WAC 388-14A-1020) if you fear the noncustodial parent may harm you, your children, or the children in your care;

(i) Ask for extra money to help pay for temporary emergency shelter costs, such as an eviction or a utility shutoff, if you get TANF;

(j) Get a written notice, in most cases, at least ten days before we make changes to lower or stop your benefits;

(k) Ask for an administrative hearing if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(l) Have interpreter or translator services given to you at no cost and without delay;

(m) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits; and

(n) Get help from us to register to vote.

(2) If you get cash~~((;))~~ or food~~((, or medical))~~ assistance, you are responsible to:

(a) Tell us if you are ~~((pregnant, in need of immediate medical care;))~~ experiencing an emergency such as having no money for food, or facing an eviction so we can process your request for benefits as soon as possible;

(b) Report the following expenses so we can decide if you can get more food assistance:

(i) Shelter costs;

(ii) Child or dependent care costs;

(iii) Child support that is legally obligated;

(iv) Medical expenses; and

(v) Self-employment expenses.

(c) Report changes as required under WAC 388-418-0005 and 388-418-0007.

(d) Give us the information needed to determine eligibility;

(e) Give us proof of information when needed. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

~~((or medical support))~~ (f) Cooperate in the collection of child support ~~((or medical support))~~ unless you fear the noncustodial parent may harm you, your children, or the children in your care;

(g) Apply for and get any benefits from other agencies or programs prior to getting cash assistance from us;

(h) Complete reports and reviews when asked;

(i) Look for, get, and keep a job or participate in other activities if required for cash or food assistance;

~~((Give your Provider One services card to your medical care provider;~~

~~((or))~~ (k) Cooperate with the quality control review process;

~~((or))~~ (l) (k) Keep track of your EBT card for cash and food assistance and keep your personal identification number (PIN) secure. If you receive multiple replacement EBT cards, this may trigger an investigation to determine if you are trafficking benefits as described under WAC 388-412-0046 (2)(d); and

~~((or))~~ (l) Use your cash and food assistance benefits only as allowed under WAC 388-412-0046.

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

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

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

WAC 388-473-0010 What are ongoing additional requirements and how do I qualify? "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

(a) Temporary assistance for needy families (TANF), or tribal TANF;

(b) State family assistance (SFA);

(c) Pregnant women assistance (PWA);

(d) Refugee cash;

(e) Aged, blind, or disabled (ABD) cash assistance; or

(f) Supplemental security income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your cash ~~((or medical))~~ assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

(a) The circumstances that create the need; and

(b) How the need affects your health, safety and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by increasing your monthly cash assistance benefit.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

REVIEW CYCLE	
Program	Frequency (Months)
TANF/RCA	6 Months
ABD	12 Months
SSI	24 Months
All	Any time need or circumstances are expected to change

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.

WSR 15-03-003

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2014-12—Filed January 7, 2015, 1:42 p.m., effective February 7, 2015]

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

Purpose: Amendment of existing rules to change the trend test for fraternal benefit societies used to compute their risk-based surplus to comport with NAIC model laws.

Citation of Existing Rules Affected by this Order: Amending WAC 284-36A-040.

Statutory Authority for Adoption: RCW 48.36A.100.

Other Authority: RCW 48.36A.100 and 48.05.340.

Adopted under notice filed as WSR 14-24-106 on December 2, 2014.

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 rules coordinator@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 0, Amended 1, Repealed 0.

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

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

Date Adopted: January 7, 2014 [2015].

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 98-09-016, filed 4/6/98, effective 5/7/98)

WAC 284-36A-040 Society action level event. (1) "Society action level event" means any of the following events:

(a) The filing of an RBS report by a fraternal benefit society which indicates that the fraternal benefit society's has total adjusted surplus which is greater than or equal to its society action level RBS but less than the product of its authorized control level RBS and ~~((2-5))~~ 3.0 and has a negative trend;

(b) The notification by the commissioner to the fraternal benefit society of an adjusted RBS report that indicates an event in (a) of this subsection, provided the insurer does not challenge the adjusted RBS report under WAC 284-36A-060; or

(c) If, pursuant to WAC 284-36A-060, a fraternal benefit society challenges an adjusted RBS report that indicates the event in (a) of this subsection, the notification by the commissioner to the fraternal benefit society that the commissioner has, after a hearing, rejected the fraternal benefit society's challenge.

(2) In the event of a society action level event, the fraternal benefit society shall prepare and submit to the commissioner an RBS plan which shall:

(a) Identify the conditions which contribute to the society action level event;

(b) Contain proposals of corrective actions which the fraternal benefit society intends to take and would be expected to result in the elimination of the society action level event;

(c) Provide projections of the fraternal benefit society's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, and surplus. (The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

(d) Identify the key assumptions impacting the fraternal benefit society's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the fraternal benefit society's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBS plan shall be submitted:

(a) Within forty-five days of the society action level event; or

(b) If the fraternal benefit society challenges an adjusted RBS report pursuant to WAC 284-36A-060, within forty-five days after notification to the fraternal benefit society that the commissioner has, after a hearing, rejected the fraternal benefit society's challenge.

(4) Within sixty days after the submission by a fraternal benefit society of an RBS plan to the commissioner, the commissioner shall notify the fraternal benefit society whether the RBS plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner deter-

mines the RBS plan is unsatisfactory, the notification to the fraternal benefit society shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBS plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the fraternal benefit society shall prepare a revised RBS plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBS plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the fraternal benefit society challenges the notification from the commissioner under WAC 284-36A-060, within forty-five days after a notification to the fraternal benefit society that the commissioner has, after a hearing, rejected the fraternal benefit society's challenge.

(5) In the event of a notification by the commissioner to a fraternal benefit society that the fraternal benefit society's RBS plan or revised RBS plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the fraternal benefit society's rights to a hearing under WAC 284-36A-060, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every fraternal benefit society that files an RBS plan or revised RBS plan with the commissioner shall file a copy of the RBS plan or revised RBS plan with the insurance commissioner in any state in which the fraternal benefit society is authorized to do business if:

(a) Such state has an RBS provision substantially similar to WAC 284-36A-035(1); and

(b) The insurance commissioner of that state has notified the fraternal benefit society of its request for the filing in writing, in which case the fraternal benefit society shall file a copy of the RBS plan or revised RBS plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBS plan or revised plan with the state; or

(ii) The date on which the RBS plan or revised RBS plan is filed under subsections (3) and (4) of this section.

WSR 15-03-013

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed January 8, 2015, 11:04 a.m., effective February 8, 2015]

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

Purpose: Chapter 246-854 WAC, Osteopathic physician assistants (PA). The board of osteopathic medicine and surgery is revising this chapter pursuant to SHB 1737 (chapter 203, Laws of 2013) to update osteopathic PA rules to incorporate national standards and best practices.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-854-040, 246-854-050 and 246-854-060; and amending WAC 246-854-010, 246-854-015, 246-854-025, 246-854-030, 246-854-035, 246-854-080, 246-854-085, 246-854-110, 246-854-115, 246-854-220, and 246-854-230.

Statutory Authority for Adoption: RCW 18.57.005, 18.57A.020, 18.57A.040, and 18.130.050.

Other Authority: SHB 1737 (chapter 203, Laws of 2013).

Adopted under notice filed as WSR 14-21-108 on October 16, 2014.

Changes Other than Editing from Proposed to Adopted Version:

- A comment was received requesting that the board change the word "immediate," which is used in WAC 246-854-025 (2)(b), to "timely" as it relates to remote site communication requirements between osteopathic PAs and their supervising physician(s). The word "timely" is used in the medical quality assurance commission's PA rules and the board agreed to make the requested change because it is an appropriate term and it satisfies the intent of the rule.
- A comment was received asking that the board add language under WAC 246-854-115(3) to clarify how many category I continuing education requirements are required each reporting period. The proposal stated "A minimum of thirty hours must be earned in:". The proposal was meant to state "A minimum of thirty hours must be earned in category I:", which is the requirement in the current osteopathic PA rules. Staff explained to the board that the omission of this language from the proposal was a technical error and that it is being corrected. The board agreed that this correction is necessary.

Both of these revisions are considered minimal with no material or substantive change to the adopted rules.

A final cost-benefit analysis is available by contacting Brett Cain, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4766, fax (360) 236-2901, e-mail brett.cain@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 9, Amended 10, Repealed 3.

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 9, Amended 11, Repealed 3.

Date Adopted: December 5, 2014.

Catherine Hunter, DO
Chair

NEW SECTION

WAC 246-854-005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Board" means the Washington state board of osteopathic medicine and surgery.

(2) "Delegation agreement" means a mutually agreed upon plan, as detailed in WAC 246-854-021, between a sponsoring osteopathic physician and an osteopathic physician assistant, which describes the manner and extent to which the osteopathic physician assistant will practice and be supervised.

(3) "NCCPA" means National Commission on Certification of Physician Assistants.

(4) "Osteopathic physician assistant" means a person who is licensed under chapter 18.57A RCW by the board to practice medicine to a limited extent only under the supervision of a physician as detailed in a delegation agreement approved by the board.

(5) "Remote site" means a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the osteopathic physician assistant.

(6) "Supervising physician" means a sponsoring or alternate physician providing clinical oversight for a physician assistant.

(a) "Sponsoring physician" means any osteopathic physician licensed under chapter 18.57 RCW and identified in a delegation agreement as providing primary clinical and administrative oversight for a physician assistant.

(b) "Alternate physician(s)" means any physician licensed under chapter 18.57 or 18.71 RCW who provides clinical oversight of a physician assistant in place of or in addition to the sponsoring physician.

NEW SECTION

WAC 246-854-007 Application withdrawals. An applicant for a license or interim permit may not withdraw his or her application if grounds for denial exist.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-010 Approved training and additional skills or procedures. (1) "Board approved program" means a physician assistant program accredited by:

(a) The committee on allied health education and accreditation (CAHEA);

(b) The commission on accreditation of allied health education programs (CAAHEP);

(c) The accreditation review committee on education for the physician assistant (ARC-PA); or

(d) ~~((Any successor accrediting organization utilizing the same standards.))~~ Other substantially equivalent organization(s) approved by the board.

(2) An individual enrolled in ~~((an accredited))~~ a board approved program for physician assistants may function only in direct association with his or her ~~((preceptorship))~~ precepting physician or a delegated alternate physician in the immediate clinical setting. A trainee may not function in a remote ~~((location))~~ site or in the absence of the preceptor.

(3) If an osteopathic physician assistant is being trained to perform additional skills or procedures beyond those

established by the board, the training must be carried out under the direct, personal supervision of the supervising osteopathic physician or other qualified physician familiar with the ~~((practice plan))~~ delegation agreement of the osteopathic physician assistant. The training arrangement must be mutually agreed upon by the supervising osteopathic physician and the osteopathic physician assistant.

(4) ~~((Requests for approval of))~~ To become approved to perform newly acquired skills or procedures an osteopathic physician assistant shall ~~((be submitted))~~ submit a request in writing to the board ~~((, including))~~ . The request must include a certificate by the program director or other acceptable evidence showing that he or she was trained in the additional skill or procedure for which authorization is requested. The board will review the evidence to determine whether the applicant has adequate knowledge to perform the additional skill or procedure.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-015 ((Utilization)) Use and supervision of an osteopathic physician assistant. (1) Unless otherwise stated, for the purposes of this section reference to "osteopathic physician assistant" means ~~((a licensed))~~ an osteopathic physician assistant or interim permit holder.

(2) ~~((A credentialed osteopathic physician assistant may not practice until the board approves a practice plan jointly submitted by the osteopathic physician assistant and osteopathic physician or physician group under whose supervision the osteopathic physician assistant will practice. The osteopathic physician assistant must submit the fee under WAC 246-853-990(5) with the practice plan.~~

(3) An osteopathic physician may supervise three osteopathic physician assistants. The board may consider requests to supervise more than three osteopathic physician assistants based on the individual qualifications and experience of the osteopathic physician and osteopathic physician assistant, community need, and review mechanisms identified in the approved practice plan.

(4) ~~The osteopathic physician assistant shall practice only in the locations designated in the practice plan.~~

(5) The osteopathic physician assistant and supervising osteopathic physician shall ensure that:

(a) The supervising osteopathic physician timely reviews all reports of abnormalities and significant deviations, including the patient's chart;

(b) The charts of all patients seen by the osteopathic physician assistant are immediately and properly documented to include the activities, functions, services and treatment measures performed by the osteopathic physician assistant;

(c) All telephone advice given through the osteopathic physician assistant by the supervising osteopathic physician, alternate supervising physician, or member of a supervising physician group are documented in the patient's record;

(d) The supervising osteopathic physician provides adequate supervision and review of the osteopathic physician assistant's practice. The supervising osteopathic physician or designated alternate physician shall review and countersign:

(i) All charts of the licensed osteopathic physician assistant within seven working days for the first thirty days of practice and thereafter ten percent of their charts, including clinic, emergency room, and hospital patients within seven working days.

(ii) Every chart entry of an interim permit holder within two working days;

(e) The osteopathic physician assistant, at all times when meeting or treating patients, wears identification or a badge identifying him or her as an osteopathic physician assistant;

(f) The osteopathic physician assistant is represented in a manner which would not be misleading to the public as to his or her title.

(6) The osteopathic physician assistant shall notify the supervisor within twenty-four hours of any significant deviation in a patient's ongoing condition as identified by EKGs, laboratory tests, or X rays not read by a radiologist.

(7) In the temporary absence of the supervising osteopathic physician, the osteopathic physician assistant may carry out those tasks for which he or she is credentialed, if the supervisory and review mechanisms are provided by a designated alternate supervisor. If an alternate osteopathic physician is not available in the community or practice, the board may authorize a physician licensed under chapter 18.71 RCW or physician group to act as the alternate physician supervisor. If a physician group is proposed as a designated alternate supervisor, the practice plan must specify how supervising responsibility is to be assigned among the members of the group.

(8) The supervising osteopathic physician and the osteopathic physician assistant shall advise the board of the termination date of the working relationship. The notification must be submitted in writing within thirty days of termination and include a written report indicating the reasons for termination.

(9) In the event that an osteopathic physician assistant who is currently credentialed desires to become associated with another osteopathic physician or physician group, he or she must submit a new practice plan and submit the fee under WAC 246-853-990(5). Board approval of the new relationship is required before the osteopathic physician assistant may begin practice under the new supervising physician. A physician assistant being supervised by an allopathic physician (MD) must be licensed and have an approved practice plan as provided in chapter 18.71A RCW.

(10) An osteopathic physician assistant working in or for a hospital, clinic or other health organization must be credentialed. His or her responsibilities to any other physicians must be defined in the board approved practice plan.) A licensed osteopathic physician assistant may not practice until the board approves a delegation agreement jointly submitted by the osteopathic physician assistant and sponsoring physician or physician group under whose supervision the osteopathic physician assistant will practice.

(3) An osteopathic physician may enter into delegation agreements with up to five physician assistants, but may petition the board for a waiver of this limit. However, no osteopathic physician may have under his or her supervision:

(a) More than three physician assistants who are working in remote sites as provided in WAC 246-854-025; or

(b) More physician assistants than the osteopathic physician can adequately supervise. The board may consider petitions to supervise more than five osteopathic physician assistants based on the individual qualifications and experience of the osteopathic physician and osteopathic physician assistant, community need, and review mechanisms identified in the proposed delegation agreement.

(4) The osteopathic physician assistant shall practice only in the locations designated in the delegation agreement.

(5) The osteopathic physician assistant and supervising osteopathic physician shall ensure that the supervising osteopathic physician provides adequate supervision and review of the osteopathic physician assistant's practice.

(6) An osteopathic physician assistant must clearly identify himself or herself as an osteopathic physician assistant and must appropriately display on his or her person identification as an osteopathic physician assistant.

(7) An osteopathic physician assistant must not present himself or herself in any manner which would tend to mislead the public as to his or her title.

(8) In the event that an osteopathic physician assistant desires to become sponsored by another osteopathic physician, he or she must submit a new delegation agreement. Board approval of the new relationship is required before the osteopathic physician assistant may begin practice under the new sponsoring physician.

NEW SECTION

WAC 246-854-021 Delegation agreements. (1) The osteopathic physician assistant and sponsoring physician must submit a joint delegation agreement on forms provided by the board. An osteopathic physician assistant may not begin practicing without written board approval of a delegation agreement.

(2) The delegation agreement must specify:

(a) The names and Washington state license number of the sponsoring physician and alternate physician, if any. In the case of a group practice, the alternate physicians do not need to be individually identified;

(b) A detailed description of the scope of practice of the osteopathic physician assistant;

(c) A description of the supervision process for the practice, including chart review; and

(d) The location of the primary practice and all remote practice sites and the amount of time spent by the osteopathic physician assistant at each site.

(3) The sponsoring physician and the osteopathic physician assistant shall determine which services may be performed and the degree of supervision under which the osteopathic physician assistant performs the services.

(4) The osteopathic physician assistant's scope of practice may not exceed the scope of practice of the supervising physician.

(5) An osteopathic physician assistant practicing in a multi-specialty group or organization may need more than one delegation agreement depending on the osteopathic physician assistant's training and the scope of practice of the physician(s) the osteopathic physician assistant will be working with.

(6) It is the joint responsibility of the osteopathic physician assistant and the physician(s) named in the delegation agreement to notify the board in writing of any significant changes in the scope of practice of the osteopathic physician assistant. The board or its designee will evaluate the changes and determine whether a new delegation agreement is required.

(7) An osteopathic physician may enter into delegation agreements with up to five physician assistants, but may petition the board for a waiver of this limit. However, no osteopathic physician may have under his or her supervision:

(a) More than three physician assistants who are working in remote sites as provided in WAC 246-854-025; or

(b) More physician assistants than the osteopathic physician can adequately supervise.

(8) Within thirty days of termination of the working relationship, the sponsoring physician and the osteopathic physician assistant shall submit a letter to the board indicating the relationship has been terminated.

(9) Whenever an osteopathic physician assistant is practicing in a manner inconsistent with the approved delegation agreement, the board may take disciplinary action under chapter 18.130 RCW.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-025 Remote ((practice)) site((—Utilization)). ((1) "Remote practice site" means a setting physically separate from the supervising osteopathic physician's primary practice location or a setting where the osteopathic physician is present less than twenty five percent of the practice time of the osteopathic physician assistant.

(2) The board may approve a practice plan proposing utilization of an osteopathic physician assistant at a remote practice site if:

(a) There is a demonstrated need for this utilization;

(b) There is adequate means for immediate communication between the primary osteopathic physician or alternate physician and the osteopathic physician assistant;

(c) The supervising osteopathic physician spends at least ten percent of the documented and scheduled practice time of the osteopathic physician assistant in the remote office site. In the case of part time or unique practice settings, the osteopathic physician may petition the board to modify the on-site requirement provided adequate supervision is maintained by an alternate method. The board will consider each request on an individual basis;

(d) The names of the supervising osteopathic physician and osteopathic physician assistant must be prominently displayed at the entrance to the clinic or in the reception area.

(3) No osteopathic physician assistant holding an interim permit shall be utilized in a remote practice site.)) (1) An osteopathic physician assistant may not work in a remote site without the approval by the board or its designee. An osteopathic physician may not supervise more than three physician assistants who are working in remote sites; or more physician assistants than the osteopathic physician can adequately supervise.

(2) The board or its designee may approve the use of an osteopathic physician assistant in a remote site if:

(a) There is a demonstrated need for such use;

(b) There are adequate means for timely communication between the supervising physician and the osteopathic physician assistant;

(c) The supervising physician spends at least ten percent of the practice time of the osteopathic physician assistant in the remote site. In the case of part time or unique practice settings, the osteopathic physician may petition the board to modify the on-site requirement provided adequate supervision is maintained by an alternate method including, but not limited to, telecommunication. The board will consider each request on an individual basis; and

(d) The names of the supervising physician and osteopathic physician assistant must be prominently displayed at the entrance to the clinic or in the reception area of the remote site.

(3) An osteopathic physician assistant holding an interim permit may not work in a remote site.

AMENDATORY SECTION (Amending WSR 07-08-052, filed 3/29/07, effective 4/29/07)

WAC 246-854-030 ((Osteopathic physician assistant)) Prescriptions. (1) An osteopathic physician assistant may ((issue written or oral prescriptions as provided in this section when designated by the supervising physician on the practice plan and approved by the board.

(a) An osteopathic physician assistant certified by the National Commission on Certification of Physician Assistants (P.A.-C.) may issue prescriptions for legend drugs and Schedule II through V controlled substances.

(b) A noncertified osteopathic physician assistant (P.A.) may issue prescriptions for legend drugs and Schedule III through V controlled substances.

(2) Written prescriptions shall comply with state and federal prescription writing laws. The osteopathic physician assistant shall sign a prescription by using his or her own name followed by the letters "P.A." to designate a noncertified osteopathic physician assistant, or "P.A.-C." to designate a certified osteopathic physician assistant and the physician assistant's license number.

(3) Prescriptions for Schedule II through V controlled substances must include the osteopathic physician assistant drug enforcement administration registration number or, if none, the supervising physician's drug enforcement administration registration number.

(4) An osteopathic physician assistant may issue prescriptions for a patient who is under his or her care, or the care of the supervising osteopathic physician.

(5) An osteopathic physician assistant employed or having been extended privileges by a hospital, nursing home or other health care institution may, if permissible under the bylaws and rules of the institution, order pharmaceutical agents for inpatients under his or her care or the care of the supervising osteopathic physician.

(6) An osteopathic physician assistant may dispense legend drugs and controlled substances from office supplies. An osteopathic physician assistant may dispense prescription

drugs for treatment up to forty-eight hours. The medication so dispensed must comply with the state law prescription labeling requirements.

~~(7) The supervising physician shall assume full responsibility for review of the osteopathic physician assistant's prescription writing practice on an ongoing basis.)~~ prescribe, order, administer and dispense legend drugs and Schedule II, III, IV, or V controlled substances consistent with the scope of practice in an approved delegation agreement provided:

(a) The osteopathic physician assistant has an active DEA registration; and

(b) All prescriptions comply with state and federal prescription regulations.

(2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the osteopathic physician assistant will be similarly limited in his or her prescribing privileges, unless otherwise authorized in writing by the board.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-035 Osteopathic physician assistant—Scope of practice. (1) For the purpose of this section, reference to "osteopathic physician assistant" means a licensed osteopathic physician assistant or interim permit holder.

(2) The osteopathic physician assistant may perform services for which they have been trained and approved in a ~~((practice plan))~~ delegation agreement by the board. Those services ~~((summarized in the standardized procedures reference and guidelines established by the board))~~ may be performed by the osteopathic physician assistant unless limited in the approved ~~((practice plan))~~ delegation agreement.

(3) An osteopathic physician assistant may sign and attest to any document that might ordinarily be signed by a licensed osteopathic physician, to include, but not be limited to, such things as birth and death certificates.

(4) An osteopathic physician assistant may prescribe legend drugs and controlled substances as permitted in WAC 246-854-030.

NEW SECTION

WAC 246-854-075 Background check—Temporary practice permit. The board may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the board may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the board is valid for six months. A one-time extension of six months may be granted if the national background check report has not been received by the board.

(2) The temporary practice permit allows the applicant to work in the state of Washington as an osteopathic physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as an osteopathic physician assistant provided that the temporary practice permit holder has a delegation agreement approved by the board.

(3) The board issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-080 Osteopathic physician assistant ~~((licensure—Qualifications and))~~—Requirements for licensure. (1) Individuals applying to the board ~~((under chapter 18.57A RCW after July 1, 1999, must have graduated from an accredited board approved physician assistant program and successfully passed the National Commission on Certification of Physician Assistants examination;~~

~~(2) Subsection (1) of this section does not apply to an osteopathic physician assistant licensed prior to July 1, 1999.~~

~~(3) An applicant applying for licensure as an osteopathic physician assistant must submit an application on forms supplied by the board. The application must detail the education, training, and experience of the osteopathic physician assistant and provide other information as may be required. The application must be accompanied by a fee determined by the secretary under RCW 43.70.250 as specified in WAC 246-853-990(5).~~

~~(4) Each applicant shall furnish proof of the following, which must be approved by the board:~~

~~(a) The applicant has completed an accredited board approved physician assistant program;~~

~~(b) The applicant has successfully passed the National Commission on Certification of Physician Assistants examination;~~

~~(c) The applicant has not committed unprofessional conduct as defined in RCW 18.130.180; and~~

~~(d) The applicant is physically and mentally capable of practicing as an osteopathic physician assistant with reasonable skill and safety.~~

~~(5) The board will only consider complete applications with all supporting documents for licensure.~~

~~(6) An osteopathic physician assistant may not begin practice without written board approval of the practice plan for each working relationship.)~~ for licensure as an osteopathic physician assistant must have graduated from an accredited board approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as an osteopathic physician assistant must submit to the board:

(a) A completed application on forms provided by the board;

(b) Proof the applicant has completed an accredited board approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-853-990;

(d) Proof of completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8; and

(e) Other information required by the board.

(3) The board will only consider complete applications with all supporting documents for licensure.

(4) An osteopathic physician assistant may not begin practicing without written board approval of the delegation agreement.

NEW SECTION

WAC 246-854-081 How to return to active status when a license has expired. To return to active status the osteopathic physician assistant must meet the requirements of chapter 246-12 WAC, Part 2, which includes paying the applicable fees under WAC 246-853-990 and meeting the continuing medical education requirements under WAC 246-854-115.

NEW SECTION

WAC 246-854-082 Requirements for obtaining an osteopathic physician assistant license for those who hold an active allopathic physician assistant license. A person who holds a full, active, unrestricted physician assistant license that is in good standing issued by the Washington state medical quality assurance commission and meets current licensing requirements may apply for licensure as an osteopathic physician assistant through an abbreviated application process.

(1) An applicant for an osteopathic physician assistant license must:

(a) Hold an active, unrestricted license as a physician assistant issued by the Washington state medical quality assurance commission;

(b) Submit a completed application on forms provided by the board; and

(c) Submit any fees required under WAC 246-853-990.

(2) A physician assistant may not begin practice without written board approval of the delegation agreement.

AMENDATORY SECTION (Amending WSR 07-11-057, filed 5/11/07, effective 6/11/07)

WAC 246-854-085 Osteopathic physician assistant interim permit—Qualifications and ~~((interim permit))~~ requirements. ~~(((1) Individuals applying to the board for an interim permit under RCW 18.57A.020(1) must have graduated from an accredited board approved physician assistant program.~~

~~(2) Interim permit holders will have one year from issuance of the interim permit to successfully pass the National Commission on Certification of Physician Assistants examination.~~

~~(3) An applicant applying for an osteopathic physician assistant interim permit must submit an application on forms~~

~~supplied by the board. The application must detail the education, training, and experience of the osteopathic physician assistant and provide other information as may be required. The application must be accompanied by a fee determined by the secretary under RCW 43.70.250 as specified in WAC 246-853-990(5).~~

~~(4) Each applicant shall furnish proof of the following, which must be approved by the board:~~

~~(a) The applicant has completed an accredited physician assistant program approved by the board;~~

~~(b) The applicant is eligible to take the National Commission on Certification of Physician Assistants examination;~~

~~(c) The applicant has not committed unprofessional conduct as defined in RCW 18.130.180; and~~

~~(d) The applicant is physically and mentally capable of practicing as an osteopathic physician assistant with reasonable skill and safety.~~

~~(5) The board will only consider complete applications with all supporting documents for the interim permit.~~

~~(6) An osteopathic physician assistant may not begin practice without written board approval of the practice plan for each working relationship.)) An interim permit is a limited license. The permit allows an individual who has graduated from a board approved program within the previous twelve months to practice prior to successfully passing the board approved licensing examination.~~

~~(1) An individual applying to the board for an interim permit under RCW 18.57A.020(1) must have graduated from an accredited board approved physician assistant program.~~

~~(2) An interim permit is valid for one year from completion of a board approved training program. The interim permit may not be renewed.~~

~~(3) An applicant for an osteopathic physician assistant interim permit must submit to the board:~~

~~(a) A completed application on forms provided by the board;~~

~~(b) Applicable fees as specified in WAC 246-853-990; and~~

~~(c) Requirements as specified in WAC 246-854-080.~~

~~(4) An interim permit holder may not work in a remote site.~~

NEW SECTION

WAC 246-854-095 Scope of practice—Allopathic alternate physician. The osteopathic physician assistant licensed under chapter 18.57A RCW shall practice under the delegation agreement and prescriptive authority approved by the board whether the alternate supervising physician is licensed as an osteopathic physician under chapter 18.57 RCW or an allopathic physician under chapter 18.71 RCW.

NEW SECTION

WAC 246-854-105 Practice limitations due to disciplinary action. (1) To the extent a supervising physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physician's agreement to such limitation, the physician assistant will be

similarly limited in his or her prescribing privileges, unless otherwise authorized in writing by the board.

(2) The osteopathic physician assistant shall notify their sponsoring physician whenever the osteopathic physician assistant is the subject of an investigation or disciplinary action by the board. The board may notify the sponsoring physician or other supervising physicians of such matters as appropriate.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-854-110 Osteopathic physician assistant renewal and continuing medical education ((required) cycle. ~~((1) Licensed osteopathic physician assistants must complete fifty hours of continuing education annually as required in chapter 246-12 WAC, Part 7.~~

~~(2) Certification of compliance with the requirement for continuing education of the American Osteopathic Association, Washington State Osteopathic Association, National Commission on Certification of Physician Assistants, Washington Academy of Physician Assistants, American Academy of Physician's Assistants, and the American Medical Association, or a recognition award or a current certification of continuing education from medical practice academies shall be deemed sufficient to satisfy the requirements of these regulations.~~

~~(3) In the case of a permanent retirement or illness, the board may grant indefinite waiver of continuing education as a requirement for licensure, provided an affidavit is received indicating that the osteopathic physician assistant is not providing osteopathic medical services to consumers. If such permanent retirement or illness status is changed or osteopathic medical services are resumed, it is incumbent upon the licensee to immediately notify the board and show proof of practice competency as determined necessary by the board.~~

~~(4) Prior approval not required.~~

~~(a) The Washington state board of osteopathic medicine and surgery does not approve credits for continuing education. The board will accept any continuing education that reasonably falls within these regulations and relies upon each individual osteopathic physician assistant's integrity in complying with this requirement.~~

~~(b) Continuing education program sponsors need not apply for nor expect to receive prior board approval for continuing education programs. The continuing education category will depend solely upon the determination of the accrediting organization or institution. The number of creditable hours may be determined by counting the contact hours of instruction and rounding to the nearest quarter hour.)~~ (1) Under WAC 246-12-020, an initial credential issued within ninety days of the osteopathic physician assistant's birthday does not expire until the osteopathic physician assistant's next birthday.

(2) An osteopathic physician assistant must renew his or her license every year on his or her birthday. Renewal fees are accepted no sooner than ninety days prior to the expiration date.

(3) Each osteopathic physician assistant will have one year to meet the continuing medical education requirements

in WAC 246-854-115. The review period begins on the first birthday after receiving the initial license.

NEW SECTION

WAC 246-854-112 Retired active license. (1) To obtain a retired active license an osteopathic physician assistant must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) An osteopathic physician assistant with a retired active license must have a delegation agreement approved by the board in order to practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180 (5)(a) and engaged in authorized emergency management activities.

(3) An osteopathic physician assistant with a retired active license may not receive compensation for health care services.

(4) An osteopathic physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time nonpermanent basis.

(5) A retired active license expires each year on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ninety days prior to the expiration date.

(6) An osteopathic physician assistant with a retired active license shall report fifty hours of continuing education at every renewal.

AMENDATORY SECTION (Amending WSR 93-24-028, filed 11/22/93, effective 12/23/93)

WAC 246-854-115 ((Categories of creditable continuing professional education activities.)) Continuing medical education requirements. ~~((The following are categories of creditable continuing education activities approved by the board. The credits must be earned in the twelve-month period preceding application for renewal of licensure. One clock hour shall equal one credit hour for the purpose of satisfying the fifty-hour continuing education requirement.~~

~~Category 1—A minimum of thirty credit hours are mandatory under this category:~~

~~1-A Formal educational program sponsored by nationally recognized organizations or institutions which have been approved by the American Osteopathic Association, Washington State Osteopathic Association, Washington Academy of Physician Assistants, National Commission on Certification of Physician Assistants, American Medical Association, and the American Academy of Physician's Assistants:~~

~~1-B Preparation in publishable form of an original scientific paper:~~

~~a. A maximum of five credit hours for initial presentation or publication of a paper in a professional journal.~~

~~1-C Serving as a teacher, lecturer, preceptor or a moderator-participant in a formal educational program or preparation and scientific presentation at a formal educational program sponsored by one of the organizations or institutions~~

specified in Category 1-A. One hour credit per each hour of instruction may be claimed.

a. A maximum of five credit hours per year.

~~Category 2 – Home study:~~

~~2-A A maximum of twenty credit hours per year may be granted.~~

~~a. Reading – Medical journals and quizzes.~~

~~1) One half credit hour per issue~~

~~2) One half credit hour per quiz~~

~~b. Listening – audio tape programs.~~

~~1) One half credit hour per tape program~~

~~2) One half credit hour per tape program quiz~~

~~e. Other – subject – oriented and refresher home study courses.~~

~~1) Credit hours indicated by sponsor will be accepted~~

~~2-B Preparation and presentation of a scientific exhibit at professional meetings:~~

~~a. Maximum of five credit hours per exhibit per year.~~

~~2-C Observation at medical centers; programs dealing with experimental and investigative areas of medical practice and programs conducted by nonrecognized sponsors.~~

~~a. Maximum of five credit hours per year.)) (1) An osteopathic physician assistant must complete fifty hours of continuing education every year as required in chapter 246-12 WAC, Part 7, which may be audited for compliance at the discretion of the board.~~

~~(2) In lieu of the continuing medical education requirements, the board will accept:~~

~~(a) Current certification with the NCCPA; or~~

~~(b) Compliance with a continuing maintenance of competency program through the American Academy of Physician Assistants (AAPA) or the NCCPA; or~~

~~(c) Other programs approved by the board.~~

~~(3) The board approves the following categories of creditable continuing medical education. A minimum of thirty credit hours must be earned in Category I.~~

~~Category I - Continuing medical education activities with accredited sponsorship.~~

~~Category II - Continuing medical education activities with nonaccredited sponsorship and other meritorious learning experience.~~

~~(4) The board adopts the standards approved by the AAPA for the evaluation of continuing medical education requirements in determining the acceptance and category of any continuing medical education experience.~~

~~(5) An osteopathic physician assistant does not need prior approval of any continuing medical education. The board will accept any continuing medical education that reasonably falls within the requirements of this section and relies upon each osteopathic physician assistant's integrity to comply with these requirements.~~

~~(6) A continuing medical education sponsor does not need to apply for or expect to receive prior board approval for a formal continuing medical education program. The continuing medical education category will depend solely upon the accredited status of the organization or institution. The number of hours may be determined by counting the contact hours of instruction and rounding to the nearest quarter hour. The board relies upon the integrity of the program sponsors to present continuing medical education for the osteopathic~~

~~physician assistant that constitutes a meritorious learning experience.~~

~~(7) In the case of a permanent retirement or illness, the board may grant an indefinite waiver of continuing education as a requirement for licensure, provided that an affidavit is received indicating that the osteopathic physician assistant is not providing osteopathic medical services to consumers. If such permanent retirement or illness status is changed or osteopathic medical services are resumed, it is incumbent upon the licensee to immediately notify the board and show proof of practice competency as determined necessary by the board.~~

AMENDATORY SECTION (Amending WSR 08-20-125, filed 10/1/08, effective 11/1/08)

WAC 246-854-220 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this section, laser, light, radiofrequency, and plasma (LLRP) devices are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescriptive devices.

(2) Because an LLRP device is used to treat disease, injuries, deformities and other physical conditions of human beings, the use of an LLRP device is the practice of osteopathic medicine under RCW 18.57.001. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than those in subsection (1) of this section constitutes surgery and is outside the scope of this section.

OSTEOPATHIC PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) An osteopathic physician assistant may use an LLRP device with the consent of the sponsoring or supervising osteopathic physician who meets the requirements under WAC 246-853-630, is in compliance with the (~~practice arrangement plan~~) delegation agreement approved by the board, and in accordance with standard medical practice.

(5) An osteopathic physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(6) Prior to authorizing treatment with an LLRP device, an osteopathic physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that (~~an allied health care practitioner~~) a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

OSTEOPATHIC PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) An osteopathic physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained (~~(allied health care)~~) and licensed professional (~~(licensed under the authorization of RCW 18.130.040)~~), whose licensure and scope of practice allows the use of a prescriptive LLRP medical device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised (~~(allied health care)~~) professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised (~~(allied health care)~~) professional has appropriate training including, but not limited to:

(i) Application techniques of each LLRP device;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for such procedures;

(iv) Preprocedural and postprocedural care;

(v) Potential complications; and

(vi) Infectious disease control involved with each treatment;

(e) The delegating osteopathic physician assistant has written office protocol for the supervised (~~(allied health care)~~) professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual osteopathic physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised (~~(allied health care)~~) professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised (~~(allied health care)~~) professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure on the patient's record or medical chart;

(f) The osteopathic physician assistant is responsible for ensuring that the supervised (~~(allied health care)~~) professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The osteopathic physician assistant shall be on the immediate premises during any use of an LLRP device and

be able to treat complications, provide consultation, or resolve problems, if indicated.

AMENDATORY SECTION (Amending WSR 11-08-024, filed 3/31/11, effective 5/1/11)

WAC 246-854-230 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of an osteopathic physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfigurement, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.57.001.

(2) This section does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-853-630 and 246-854-220;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes.

(b) "Physician" means an individual licensed under chapter 18.57 RCW.

(c) "Physician assistant" means an individual licensed under chapter 18.57A RCW.

(d) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) An osteopathic physician assistant may perform a nonsurgical medical cosmetic procedure only after the board approves a (~~(practice plan)~~) delegation agreement permitting the osteopathic physician assistant to perform such procedures. An osteopathic physician assistant must ensure that the supervising or sponsoring osteopathic physician is in full compliance with WAC 246-853-640.

(5) An osteopathic physician assistant may not perform a nonsurgical medical cosmetic procedure unless his or her supervising or sponsoring osteopathic physician is fully and appropriately trained to perform that same procedure.

(6) Prior to performing a nonsurgical medical cosmetic procedure, an osteopathic physician assistant must have appropriate training in, at a minimum:

(a) Techniques for each procedure;

(b) Cutaneous medicine;

(c) Indications and contraindications for each procedure;

- (d) Preprocedural and postprocedural care;
 - (e) Recognition and acute management of potential complications that may result from the procedure; and
 - (f) Infectious disease control involved with each treatment.
- (7) The osteopathic physician assistant must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the board.
- (8) Prior to performing a nonsurgical medical cosmetic procedure, either the osteopathic physician assistant or the delegating osteopathic physician must:
- (a) Take a history;
 - (b) Perform an appropriate physical examination;
 - (c) Make an appropriate diagnosis;
 - (d) Recommend appropriate treatment;
 - (e) Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;
 - (f) Provide instructions for emergency and follow-up care; and
 - (g) Prepare an appropriate medical record.
- (9) The osteopathic physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:
- (a) A statement of the activities, decision criteria, and plan the osteopathic physician assistant must follow when performing procedures under this rule;
 - (b) Selection criteria to screen patients for the appropriateness of treatment;
 - (c) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and
 - (d) A statement of the activities, decision criteria, and plan the osteopathic physician assistant must follow if performing a procedure delegated by an osteopathic physician pursuant to WAC 246-853-640, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.
- (10) An osteopathic physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.
- (11) An osteopathic physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance, whether or not approved by the federal Food and Drug Administration for the particular purpose for which it is used, so long as the osteopathic physician assistant's sponsoring or supervising osteopathic physician is on-site.
- (12) An osteopathic physician assistant must ensure that each treatment is documented in the patient's medical record.
- (13) An osteopathic physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.
- (14) An osteopathic physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

- (15) An osteopathic physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-853-640.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-854-040 Osteopathic physician assistant use of drugs or autotransfusion to enhance athletic ability.
- WAC 246-854-050 AIDS education and training.
- WAC 246-854-060 Application for licensure.

WSR 15-03-017

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 8, 2015, 2:33 p.m., effective February 8, 2015]

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

Purpose: The department of revenue is proposing to amend these rules to incorporate current and past legislation:

WAC 458-30-232 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program. Updated rule by adding statutory language from RCW 84.34.041 and added language from WAC 458-30-240 and 458-30-250.

WAC 458-30-240 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program.

WAC 458-30-275 incorporates 2ESHB 1117 (2014), which allows classified land to be transferred without the signing of a notice of classification continuance if it is a transfer by a transfer on death deed; E2SHB 1597 (2010), which allows classified land to be subject to the same gross income requirements applicable before death if classified farm and agricultural land is transferred to a surviving state registered domestic partner; and EHB 1815 (2009), which allows a minimum investment requirement for land at least five but less than twenty acres that contains a standing crop. Updated rule to reflect existing language in RCW 84.34.020, 84.34.041, 84.34.080, and 84.34.108. Updated examples, deleted outdated references, and clarified various subsections.

WAC 458-30-280 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program. Updated rule by adding statutory language from RCW 84.34.070.

WAC 458-30-285 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program. Updated rule by adding statutory language from RCW 84.34.070 and 84.34.108, and also updated examples.

WAC 458-30-295 incorporates 2ESHB 1117 (2014), which allows classified land to be transferred without the signing of a notice of classification continuance if it is a transfer by a transfer on death deed; and SSB 6333 (2014),

which added language to RCW 84.40.038 regarding electronic transmission of value change notices or other notices. Updated rule by adding language from RCW 84.34.108, WAC 458-30-270, 458-30-275, and 458-30-285; and clarified various subsections.

WAC 458-30-300 incorporates 2ESHB 1117 (2014), which allows classified land to be transferred without the signing of a notice of classification continuance if it is a transfer by a transfer on death deed; SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program; and HB 1277 (2013), which allows federally recognized Indian tribes to acquire classified land for conservation purposes without payment of additional tax, interest, and penalty. Updated rule using language from RCW 84.34.108, 84.33.145, WAC 458-30-245, 458-30-275, and 458-30-295 to clarify removal process, and added an example.

WAC 458-30-325 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program. Deleted outdated language and reference, added an example, and updated an example; and updated rule using language from RCW 84.34.030 and 84.33.145.

WAC 458-30-500 incorporates 2SHB 1416 (2013), which removed irrigation districts from the definition of "local government;" and deleted definitions that are already defined in a prior section.

WAC 458-30-520 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program; added clarifying language from RCW 84.34.030, 84.34.035, and 84.34.041; and deleted language that conflicts with statute.

WAC 458-30-550 incorporates SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program.

WAC 458-30-700 incorporates 2ESHB 1117 (2014), which allows classified land to be transferred without the signing of a notice of classification continuance if it is a transfer by a transfer on death deed; SB 6180 (2014), which allows counties to merge its timber land classification and its designated forest land program; SSB 6333 (2014), which added language to RCW 84.40.038 regarding electronic transmission of value change notices or other notices and also clarified that treasurers mail out the notice of the amount of compensating tax due; HB 1277 (2013), which allows federally recognized Indian tribes to acquire designated forest land for conservation purposes without payment of compensating tax; 2SSB 5367 (2013), which allows community forest trust lands to be removed from designation without compensating tax if acquired by certain entities; ESHB 2502 (2012), which allows forest land to be removed from designation if transferred to certain entities for conservation purposes in a county with a population of at least two hundred forty-five thousand that borders Puget Sound; SHB 1733 (2009), which allowed forest land to be removed without compensating tax if the assessor discovered the forest land was designated in error through no fault of the owner; updated removal dates, chart, and language to be consistent with RCW 84.33.140, 84.33.220, and existing language in WAC 458-30-700, added an example, and deleted an outdated reference.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-232 Application for timber land classification, 458-30-240 Agreement relating to open space and timber land classifications, 458-30-275 Continuing classification upon sale or transfer of ownership of classified land—Actions of landowner and county officials to be taken prior to recording a conveyance of classified land, 458-30-280 Notice to withdraw from classification, 458-30-285 Withdrawal from classification, 458-30-295 Removal of classification, 458-30-300 Additional tax—Withdrawal or removal from classification, 458-30-325 Transfers between classifications—Application for reclassification, 458-30-500 Definitions of terms used in WAC 458-30-500 through 458-30-590, 458-30-520 Notification of district—Certification by assessor—Estimate by district, 458-30-550 Exemption—Removal or withdrawal, and 458-30-700 Designated forest land—Removal—Change in status—Compensating tax.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.08.080, 84.34.141, 84.34.360.

Adopted under notice filed as WSR 14-22-094 on November 4, 2014.

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 12, 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 12, 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: January 8, 2015.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-30-232 Application for timber land classification. Introduction. This ~~((section))~~ rule explains the application process used by an applicant who seeks to have land classified or reclassified as timber land under RCW 84.34.020(3).

(1) Definitions. For purposes of this ~~((section))~~ rule, the following definitions apply:

~~((H))~~ **(a) "Stand of timber"** means a stand of trees that will yield log and/or fiber:

~~((#))~~ **(i)** Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; and

~~((b))~~ **(ii)** Of sufficient value to cover at least all the costs of harvest and transportation to available markets.

~~((z))~~ **(b) "Timber management plan"** means a plan prepared by a professional forester, or by another person who has adequate knowledge of timber management practices,

concerning the use of the land to grow and harvest timber. ~~((Such a))~~ This plan is described in RCW 84.34.041 and includes the following elements:

~~((a))~~ (i) A legal description of the land;
~~((b))~~ (ii) A statement that the timber land is held in contiguous ownership of at least five acres and is primarily devoted to and used to grow and harvest timber;

~~((c))~~ (iii) A brief description of the timber on the timber land or, if the timber has been recently harvested, the owner's plan to restock the land with timber;

~~((d))~~ (iv) A statement about whether the timber land is also used to graze livestock;

~~((e))~~ (v) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

~~((f))~~ (vi) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the timber land within three years.

~~((3))~~ (2) Where to submit. An application for classification or reclassification of land as timber land under RCW 84.34.020(3) is submitted to the county legislative authority of the county in which the land is located.

~~((4))~~ (3) Granting authority. The identity of the entity that will act as the granting authority will be determined by the location of the land the applicant seeks to classify or reclassify as timber land. The granting authority will be determined as follows:

(a) If the parcel(s) of land is located in an unincorporated area of county, the county legislative authority is the granting authority.

(b) If the parcel(s) of land is located in an incorporated area, a copy of the application for classification is forwarded to the city legislative authority in which the land is located. Applications must be acted upon by:

(i) A granting authority composed of three members of the county legislative ~~((body))~~ authority and three members of the city legislative authority in a meeting where members may be physically absent but participating through a telephonic connection; or

(ii) Separate affirmative acts by both the county and city legislative authorities whereby each authority affirms the entirety of the application without modification or each authority affirms the application with identical modifications.

~~((5))~~ (4) Application process.

(a) **Consider all relevant evidence.** The granting authority will act upon the application with due regard to all relevant evidence.

(b) **Information that must accompany application.** An application for classification or reclassification of a parcel(s) of land as timber land is made on forms ~~((prepared))~~ provided by the department. An application must include the following information and be accompanied by a timber management plan as defined in subsection (2) of this ~~((section))~~ rule:

(i) A legal description of or the parcel number(s) of all land the applicant desires to be classified as timber land;

(ii) The date or dates the land was acquired;

(iii) A brief description of the timber on the land or, if the timber has been harvested, the owner's plan for restocking;

(iv) If the timber or forest management plan for the land has existed for more than one year, the application must indicate the nature and extent to which the plan has been implemented or changed;

(v) Whether the land is used for grazing;

(vi) Whether the land has been subdivided or a plat has been filed with respect for the land;

(vii) Whether the land and the applicant have complied with the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW;

(viii) Whether the land is subject to forest fire protection assessments under RCW 76.04.610;

(ix) Whether the land is subject to a lease, option, or other right that permits the land to be used for a purpose other than growing and harvesting timber;

(x) A summary of the applicant's past experience and activities in growing and harvesting timber;

(xi) A summary of the applicant's current and continuing activities in growing and harvesting of timber; and

(xii) A statement that the applicant is aware of the potential tax liability involved if the land ceases to be classified as timber land.

(c) **Solitary factors that will result in automatic denial.** An application may be denied for any of the following reasons without regard to any other factor:

(i) The land does not contain a stand of timber as defined in subsection (1) of this ~~((section))~~ rule, as well as in chapter 76.09 RCW, and WAC 222-16-010. This reason alone is not sufficient to deny the application if:

(A) The land has been recently harvested or supports a growth of brush or noncommercial type timber and the application includes a plan for restocking within three years or a longer period necessitated because seed or seedlings are unavailable; or

(B) Only isolated areas within the land do not meet minimum standards due to rock outcroppings, swamps, unproductive soil, or other natural conditions.

(ii) The applicant, with respect to the land for which classification or reclassification is sought, has failed to comply with a final administrative or judicial order regarding a violation of the restocking, forest management, fire protection, insect and disease control, weed control, and forest debris provisions of Title 76 RCW or applicable rules under Title 76 RCW.

(iii) The land abuts a body of salt water and lies between the line of ordinary high tide and a line paralleling the ordinary high tide line and two hundred feet horizontally landward from the high tide line.

~~((6))~~ (5) Public hearing required. An application for classification of land as timber land will be approved or denied after a public hearing on the application is held. A notice of this hearing is to be announced once by publication in a newspaper of general circulation in the region, city, or county at least ten days before the hearing. The owner who submitted the application for classification or reclassification is to be notified in writing of the date, time, and location of the public hearing.

~~((7))~~ **(6) Timber management plan required.** A timber management plan must be filed with the county legislative authority either:

(a) When an application for classification is submitted;

~~((e))~~ (b) When a sale or transfer of timber land occurs and a notice of continuance is signed; or

(c) Within sixty days of the date an application for reclassification under chapter 84.34 RCW or from designated forest land under chapter 84.33 RCW is received. The application for reclassification will be accepted, but may not be processed until the timber management plan is received. If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

~~((e))~~ (d) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for classification or reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for a timber management plan, the ~~((county legislative))~~ granting authority should delay processing the application until this plan is received. If this plan is not received by the date set by the assessor, the application for classification or reclassification will be automatically denied.

~~((8))~~ (e) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when a notice of continuance is received. The applicant will be notified of this extension in writing.

(7) Approval or denial of application. The granting authority will either approve or ~~((disapprove))~~ deny the application for classification or reclassification within six months of the date ~~((it is received by the county legislative authority))~~ the completed application is received.

(a) The granting authority may approve the application for classification or reclassification in whole or in part. If any part of the application is denied, the applicant may withdraw the entire application.

(b) In approving the application in whole or in part, the granting authority may also require that certain conditions be met. The granting authority may not require the granting of easements for land classified as timber land.

(c) When an application for classification or reclassification as timber land has been approved, the granting authority will prepare an agreement. Refer to WAC 458-30-240 for a detailed description of this agreement.

(d) The granting or denial of an application for classification ~~((as open space land))~~ or reclassification as timber land is a legislative determination and is reviewable only for arbitrary and capricious actions. The applicant may appeal only to the superior court of the county in which the land is located and the application was made.

(e) No application may be approved for classification or reclassification as timber land if a county has merged its timber land classification and designated forest land program as described in subsection (8) of this rule.

(8) Termination of timber land classification.

(a) A county legislative authority has the option to merge its timber land classification with the designated forest land program, pursuant to RCW 84.34.400. To merge the pro-

grams, the county legislative authority must enact an ordinance that:

(i) Terminates the timber land classification; and

(ii) Declares that the land that had been classified as timber land is now designated as forest land under chapter 84.33 RCW.

(b) Once the timber land classification is terminated:

(i) Land that has been classified as timber land within the county is now designated as forest land under chapter 84.33 RCW. The date the property was classified as timber land is considered to be the date the property was designated as forest land. For example, if a county enacts an ordinance on October 15, 2014, terminating its timber land classification and declares that any timber land is now considered designated forest land, then a parcel of timber land classified on January 1, 2006, would be considered designated as forest land as of January 1, 2006.

(ii) Any agreement prepared by the granting authority when land was approved as timber land is terminated and no longer in effect; and

(iii) The county must notify the department after taking action under this subsection. The department will maintain a list on its agency internet web site of all counties that have merged their timber land classification with their designated forest land program.

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-240 Agreement relating to open space and timber land classifications. (1) **Introduction.** This ~~((section))~~ rule explains the contents of and the procedures relating to the agreement that is executed when an application for classification or reclassification as open space land under RCW 84.34.037 or timber land under RCW 84.34.041 has been approved by the granting authority.

(2) **Preparation and contents.** When an application for classification or reclassification as open space or timber land has been approved by the granting authority, the granting authority ~~((shall))~~ must prepare an agreement. For purposes of this ~~((section))~~ rule, the date of approval ~~((shall))~~ will be the date on which the granting authority approves the application for classification or reclassification.

(a) The agreement ~~((shall))~~ must state all conditions attached to the approval of the application. The conditions of approval and any requirements of the classification detailed in the agreement ~~((shall))~~ will be binding upon any heir, successor, or assignee of the parties of the original agreement.

(b) The agreement ~~((shall))~~ will apply to the parcel(s) of land described in the agreement.

(c) The agreement may include, but is not limited to, a description of the ways the classified land may be used to retain its classified status, the actions that will cause removal of the land from classification, and the consequences of a change in the classified use of the land.

(3) Submit agreement to owner for signature.

(a) Within five calendar days after the approval of the application for classification or reclassification, in whole or in part, the granting authority ~~((shall))~~ will deliver by certi-

fied mail, return receipt requested, the agreement to the owner for signature.

(b) The owner may accept or reject the agreement.

(c) If accepted, the agreement ~~((shall))~~ must be signed and returned to the granting authority within thirty calendar days after receipt.

(d) If the agreement is not signed and returned to the granting authority within thirty calendar days of the date the unsigned agreement was mailed to the owner, the granting authority ~~((shall))~~ will conclusively presume the agreement has been rejected unless the owner can show proof that he or she was prevented from returning the agreement by events beyond his or her control.

(e) To be properly executed, the agreement ~~((shall))~~ must be signed by the owner and ~~((shall))~~ will become effective on the date the granting authority receives the signed agreement from the owner of the classified parcel(s) of land.

(4) **Executed agreement to be sent to assessor.** The granting authority ~~((shall))~~ must, within ten calendar days after receiving the signed agreement, send one copy to the assessor of the county in which the land is located.

(5) Termination of agreement. In counties that have merged their timber land classification and designated forest land program pursuant to RCW 84.34.400, any land approved as timber land prior to the merger will be considered designated forest land and no longer subject to the agreement described in this rule.

AMENDATORY SECTION (Amending WSR 10-07-133, filed 3/23/10, effective 4/23/10)

WAC 458-30-275 Continuing classification upon sale or transfer of ownership of classified land—Actions of landowner and county officials to be taken prior to recording a conveyance of classified land. (1) **Introduction.** If land classified under chapter 84.34 RCW is sold or transferred and the new owner wants to retain the classified status of the land, certain procedures must be followed before the conveyance may be recorded or filed. This rule explains the necessary procedures and required forms.

(2) **General requirements - New owner elects to have the land remain classified.** The county recording authority ~~((shall))~~ may not accept an instrument conveying ownership of land classified under chapter 84.34 RCW unless certain conditions are satisfied. When land classified under chapter 84.34 RCW is sold or transferred and the new owner elects to have the land retain its classified status, prior to recording or filing the conveyance, the new owner or the new owner's agent must:

(a) Sign the notice of continuance that is part of the real estate excise tax (REET) affidavit or sign a separate notice of continuance and attach it to the REET affidavit. (Subsection (9) of this rule contains an explanation about REET.) Both the REET affidavit and the notice of continuance are forms ~~((prepared))~~ provided by the department of revenue and supplied to the counties. ~~((Both forms are available from the department by sending a written request to:~~

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478.

~~A copy of the notice of continuance may be obtained from the county assessor or it may be downloaded from the internet at <http://dor.wa.gov/index.asp> under property tax, "forms.")~~ A copy of the REET affidavit may be obtained from the county treasurer. If the classified land is owned by multiple owners, all owners or their agent(s) must sign the notice of continuance ~~((on the))~~ that is part of the REET affidavit or the separate notice of continuance attached to the REET affidavit.

Except, a notice of continuance is not required when the transfer of classified land is to a new owner who is an heir or devisee of a deceased owner or is a transfer by a transfer on death deed; however, the land must continue to meet the requirements of classification to avoid removal. The treasurer determines that a transfer is by inheritance because the claim for the inheritance exemption is filled out on the REET affidavit with supporting documentation. The treasurer should notify the assessor when classified land has been transferred by inheritance or by a transfer on death deed without a notice of continuance; and

(b) Provide the assessor with a signed statement that explains how the new owner intends to use the classified land and any other information the assessor deems necessary to determine whether the land will continue to be eligible for classification under chapter 84.34 RCW. ~~((See))~~ RCW 84.34.121 and WAC 458-30-270. ~~((§))~~

(3) **Required duties of the assessor before a conveyance of classified land may be filed or recorded.** The new owner must supply the assessor with the information outlined in subsection (2) of this rule if the new owner elects to have the land remain classified under chapter 84.34 RCW.

(a) After receiving all required documentation, the assessor is allowed up to fifteen calendar days to determine whether the land should retain its classified status or whether the land should be removed from classification as of the date of conveyance.

(b) To make this determination, the assessor may, but is not required to, consult with the county legislative authority if the land is classified as either open space or timber land or a combination of the county and city legislative ~~((bodies))~~ authorities if the classified open space land or timber land is within an incorporated part of the county. Both the assessor and the granting authority may require the new owner to submit additional information about the use of the classified land after the sale or transfer is complete. This information will be used to determine whether the land should remain classified under chapter 84.34 RCW.

(4) **When may a county recording authority accept an instrument conveying ownership of classified land?** A county recording authority ~~((shall))~~ may not accept an instrument of conveyance regarding the sale or transfer of land classified under chapter 84.34 RCW for filing or recording until the new owner ~~((signs a notice of continuance))~~ complies with subsection (2) of this rule and the assessor determines that the land will or will not continue to qualify for classification. ~~((If the assessor decides that the land must be removed from classification, the assessor will note that the~~

land does not qualify for continuance on the REET affidavit and begin the removal procedures set forth in WAC 458-30-295.)

(a) If the new owner signs the notice of continuance and the assessor agrees that the land should remain classified, the assessor checks the box on the REET affidavit that the land qualifies for continued classified (~~current use~~) status. The completed affidavit is then presented to the county recording authority so that it may record or file the conveyance. A completed REET affidavit includes a stamp, placed on it by the treasurer, indicating that any REET or additional tax, interest, and penalty owed as a result of the sale or transfer has been paid. (See subsection (9) of this rule for a more detailed explanation of the real estate excise tax.)

(b) If the assessor decides that the land must be removed or the owner submits a written request to remove the land from classification, the assessor will check the appropriate box on the REET affidavit that the land does not qualify for continuance, sign the REET affidavit, and begin the removal procedures set forth in WAC 458-30-295. Unless the removal results solely from one of the circumstances listed in RCW 84.34.108(6), the additional tax, interest, and penalty are due and payable by the seller or transferor at the time of sale.

(5) Land removed from classification with no back taxes imposed. If the removal results solely from one of the circumstances or actions listed in RCW 84.34.108(6), no additional tax, interest, or penalty is imposed. The assessor will:

(a) Follow the procedures set forth in WAC 458-30-295 and 458-30-300 for removing land from classification;

(b) Notify the treasurer and the seller or transferor that no additional tax, interest, or penalty will be imposed; and

(c) If the land is acquired for conservation purposes by any of the entities listed in RCW 84.34.108 (6)(f), inform the new owner that a lien equal to the amount of additional tax, interest, and penalty has been placed on the land, even though the additional tax, interest, and penalty will not be collected at this time. This lien becomes due and payable if and when the land ceases to be used for one of the purposes outlined in RCW 64.04.130 or 84.34.210.

(6) Sales or transfers of timber land. When a parcel(s) of classified timber land is sold or transferred, the new owner must submit a timber management plan to the assessor and comply with the general requirements listed in subsection (2) of this rule to retain the land's classified status. The assessor sends a copy of the timber management plan to the granting authority of the county in which the classified land is located. WAC 458-30-232 contains a list of the types of additional information an assessor may require the new owner to submit to enable the assessor to determine whether the land will be used to grow and harvest timber for commercial purposes. Generally, the new owner is required to submit a timber management plan ~~(at the time of sale or transfer. If circumstances require it,)~~ when a sale or transfer of timber land occurs and a notice of continuance is signed. However, because a notice of continuance is not required when classified land is transferred by a transfer on death deed or transferred to a new owner who is the heir or devisee of a deceased owner, a timber management plan would not be required under these circumstances.

The assessor may allow an extension of time for submitting ~~(this)~~ the timber management plan when a notice of continuance is received. The ~~(applicant)~~ new owner will be notified of this extension in writing. ~~(When the assessor extends the filing deadline for a timber management plan, the county legislative authority should delay processing the application until this plan is received.)~~ If the timber management plan is not received by the date set by the assessor, the notice of continuance will be automatically denied.

(7) Sales or transfers of farm and agricultural land. When a parcel(s) of classified farm and agricultural land is sold or transferred, the new owner must comply with the general requirements listed in subsection (2) of this rule. The size of the classified land ~~(dictates)~~ determines whether any additional requirements must also be satisfied. After all required information is submitted, the assessor determines whether the land qualifies for continued classification.

(a) If the classified land sold or transferred is twenty acres or more, the new owner must satisfy the general requirements listed in subsection (2) of this rule.

(b) If the sale or transfer involves less than twenty ~~(contiguous)~~ acres, the new owner will be required to comply with the general requirements of subsection (2) of this rule and the seller or buyer may be asked to provide gross income ~~(data)~~ or investment information relating to the productivity of the ~~(farm or agricultural operation for three of the past five years)~~ classified land. This income ~~(data)~~ and investment information is used to determine whether the land meets the ~~(income production)~~ requirements listed in RCW 84.34.020 (2)(b) ~~(and)~~, (c) ~~(for classification)~~, and (d). However, if the income ~~(data)~~ or investment information is unavailable but the new owner is willing to sign the notice of continuance and accept the responsibility for any additional tax ~~(and)~~, interest, and penalty owed for prior years that will be due if the land is later found to be ineligible for continued classification, the classified status of the land will continue until the assessor determines that the ~~(use of the land has changed or has not produced the requisite minimum income)~~ land is no longer eligible.

(i) RCW 84.34.020 (2)(b) and (c) set forth the minimum gross income ~~(production)~~ requirements for classified farm and agricultural land of less than twenty acres. ~~(Any sale or transfer of classified land is subject to these income limits. However,)~~ If classified land is transferred to a surviving spouse or state registered domestic partner, the gross income ~~(production)~~ requirements will not be examined ~~(when classified land is being transferred to a surviving spouse or state registered domestic partner, but such land is)~~ at the time of transfer, and the land will be subject to the same ~~(production)~~ gross income requirements that were applicable before the death of the spouse or domestic partner. For example, a sixteen acre parcel of classified farm and agricultural land ~~(, which was)~~ classified in ~~(1998)~~ 1988, is transferred to a surviving spouse in 2005. The classified land is still required to produce a minimum of ~~(two)~~ one hundred dollars per acre per year ~~(even though)~~ and the assessor is not required to review the income ~~(production data)~~ information at the time of sale or transfer.

(ii) Sale or transfer of land classified prior to January 1, 1993. As of January 1, 1993, the legislature imposed higher

gross income (~~(production)~~) requirements on classified farm and agricultural land of less than twenty acres. When land classified prior to January 1, 1993, is sold or transferred to a new owner, excluding a transfer to a surviving spouse or state registered domestic partner, the higher minimum income requirements set forth in RCW 84.34.020 (2)(b)(~~(H)~~) (i)(B) and (c)(ii) will be deferred for a period of three years. The new owner is required to produce either two hundred dollars per acre per year if the parcel is five acres or more but less than twenty acres, or fifteen hundred dollars per year if the parcel is less than five acres, at least once during the three calendar years immediately following the sale or transfer. For example, if classification was granted in (~~(1978)~~) 1991 to a fifteen acre parcel that produced a gross income of one hundred (~~(thirty)~~) dollars per acre per year until it was sold on April 15, (~~(1999)~~) 2009, the higher minimum gross income requirements will be deferred until (~~(2002)~~) 2012. By the end of (~~(2002)~~) 2012, the new owner must show that the parcel produced at least two hundred dollars per acre for at least one year during the three-year period (~~(between 2000 and 2002)~~) of 2010 through 2012. If the land produced a gross income of two hundred dollars per acre, the land remains classified as farm and agricultural land. If the land failed to produce this amount at least once during this three-year period, the land will be removed from classification and the owner will be required to pay additional tax, interest, and penalty.

(iii) Sale or transfer of land classified on or after January 1, 1993. The higher minimum gross income (~~(production)~~) requirements of RCW 84.34.020 (2)(b)(~~(H)~~) (i)(B) and (c)(ii) apply to (~~(all)~~) land classified on or after January 1, 1993. When (~~(such)~~) the land is sold or transferred, the assessor may ask the seller or buyer to provide gross income (~~(data)~~) information relating to the (~~(productivity of the)~~) farm (~~(or)~~) and agricultural operation for three of the past five years. This information will be used to determine whether the land should retain its status as classified farm and agricultural land. For example, a ten acre parcel that was classified as farm and agricultural land on May 1, 1995, is sold on February 23, 2001. The assessor asks the seller of the classified land to provide information about the gross income the land produced during the five calendar years preceding the sale (i.e., (~~(1995)~~) 1996 through 2000). To retain the farm and agricultural classification, the land must have produced a minimum gross income of two hundred dollars per acre per year at least three of the five calendar years preceding the date of sale. However, if the gross income (~~(data)~~) information is unavailable but the new owner is willing to sign the notice of continuance and accept the responsibility for any additional tax (~~(and)~~) interest, and penalty owed for prior years that will be due if the land is later found to be ineligible for continued classification, the classified status of the land will continue until the assessor determines that the (~~(use of the)~~) land (~~(has changed or has not produced the requisite minimum income)~~) is no longer eligible.

(iv) RCW 84.34.020 (2)(d) sets forth the minimum investment requirement for classified farm and agricultural land, at least five but less than twenty acres, that has a standing crop. If classified farm and agricultural land meeting this description is sold or transferred, the assessor may ask the buyer or seller to provide information that demonstrates that

an investment in the production of the standing crops equivalent to one hundred dollars or more per acre in the current or previous calendar year was made.

(c) Segregation of land. If the sale or transfer of classified land involves a segregation, the owner of the newly created parcel(s) and the owner of the parcel from which the land was segregated must comply with the requirements for classification, including the (~~(production of)~~) minimum gross income or investment requirements, to enable the assessor to continue the classified status of the land.

(8) **New owner's acknowledgment.** The new owner, by signing the notice of continuance, acknowledges that future use of the land must conform to the provisions of chapter 84.34 RCW.

(9) **Real estate excise tax (REET).** An excise tax is generally imposed in accordance with chapter 82.45 RCW whenever real property is sold or transferred. The amount of this tax is based upon the selling price of the real property. Real estate excise tax is due at the time of sale. This tax is paid to and collected by the treasurer of the county in which the real property is located. (~~(See)~~) Refer to RCW 82.45.010 for a listing of transactions that are not considered a sale or transfer upon which REET is imposed.)

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-280 Notice to withdraw from classification. (1) **Introduction.** When an owner of classified land wishes to withdraw all or part of this land from the current use program, the owner must submit a request to withdraw classification to the assessor. This (~~(section)~~) rule explains when an owner may request a withdrawal from classification under the provisions of chapter 84.34 RCW and what the assessor must do upon receipt of this request.

(2) **Definition.** For purposes of this (~~(section)~~) rule, the following definition applies: "Withdrawal" or "withdrawn" occurs when the owner of land classified under the provisions on chapter 84.34 RCW has filed a notice of request to withdraw all or a portion of the land from classification. In order to qualify for withdrawal, the parcel(s) of land must have been classified for a minimum of ten years and the owner must have filed a notice of request to withdraw with the assessor at least two years prior to the (~~(assessment year when the parcel will be valued at the assessed value as determined in accordance with the county's approved revaluation cycle)~~) year the land is to be withdrawn. Land is withdrawn from classified status by a voluntary act of the owner.

(3) **Requirements - Ten years and notice of request for withdrawal.** Except as otherwise provided, land classified under the provisions of chapter 84.34 RCW (~~(shall)~~) must remain classified and (~~(shall)~~) may not be applied to any other use, except reclassifications as described in RCW 84.34.070(2), for at least ten assessment years from the effective date of classification.

(a) During the ninth or later assessment year of classification, the owner may file with the assessor a notice of request for withdrawal. The request for withdrawal may involve all or part of the land.

(b) Upon receiving the request for withdrawal, the assessor ~~((shall))~~ will, within seven working days, transmit one copy of the request to the granting authority that approved the original application for classification.

(4) Termination of timber land classification and notice of withdrawal. An owner of land classified under RCW 84.34.020(3) who has provided a notice of request to withdraw under subsection (3) of this rule within two years prior to the date of the merger described in RCW 84.34.400, will have their land removed by the assessor as designated forest land under the provisions of chapter 84.33 RCW and not as timber land under the provisions of chapter 84.34 RCW. The land will be removed as designated forest land when two assessment years have elapsed following receipt of this notice.

AMENDATORY SECTION (Amending WSR 01-24-030, filed 11/27/01, effective 12/28/01)

WAC 458-30-285 Withdrawal from classification. (1) **Introduction.** RCW 84.34.070(1) states that once land has been classified under chapter 84.34 RCW, it must remain ~~((so))~~ classified for a minimum of ten years from the date of classification. The land will remain classified until and unless the owner submits to the assessor a notice of request for withdrawal of all or a portion of the land from classification. After a request to withdraw classification is received, the assessor is required to make a series of determinations. This rule explains the procedures the assessor must follow upon receipt of a request for withdrawal.

(2) **Withdrawal process.** Land classified under chapter 84.34 RCW must be applied to the classified use and remain in its classified status for at least ten years from the date of classification. During the ninth or later year of classification, the owner may request to have all or a portion of the land withdrawn from the current use program. The owner must submit a written request to withdraw classification to the assessor of the county in which the land is located. The land will be withdrawn from classification two assessment years after the request to withdraw is received.

If an owner of land classified as timber land under RCW 84.34.020(3) provides a notice of request to withdraw to the assessor and the county in which the land is located subsequently merges its timber land classification into its designated forest land program, as described in RCW 84.34.400, the land will be removed as designated forest land two assessment years after the request to withdraw was received. The notice of request to withdraw must be received by the assessor within two years prior to the merger date.

(a) A parcel of land may be withdrawn from classification in whole or in part. ~~((See))~~ RCW 84.34.070(1).

(b) The additional tax and interest imposed by RCW 84.34.108(4) are due when land is withdrawn from classification if the land has been classified under chapter 84.34 RCW for a minimum of ten assessment years. If a request to withdraw classification is received by the assessor's office and an intervening act causes the ~~((current use classification))~~ classified land to be removed before the two assessment years have elapsed, the penalty described in RCW 84.34.108 (4)(c) is also due. However, if the removal is a result of one of the cir-

cumstances listed in RCW 84.34.108(6) no additional tax, interest, or penalty will be imposed. ~~((See))~~ WAC 458-30-300.(3)

(c) Within seven working days of receiving a notice to withdraw classification, the assessor forwards a copy of this notice to the ~~((legislative body))~~ granting authority that approved the initial application for classification.

(d) A request to withdraw classification may be revoked by the owner at any time before the land is actually withdrawn from classification.

(3) **Procedure for partial withdrawal.** RCW 84.34.070 allows an owner to ~~((withdraw))~~ request withdrawal of all or ~~((only))~~ a portion of the land from classification as long as the owner submits a notice of request for withdrawal two assessment years in advance of the effective date of the withdrawal. If only a portion of the classified land is to be withdrawn from classification, the remaining ~~((parcel))~~ land must satisfy the same requirements that all of the ~~((entire parcel))~~ land was required to meet when ~~((the land))~~ it was originally granted classification unless different criteria are required by statute. For example, if the owner of ~~((a))~~ thirty acres ~~((parcel))~~ of classified farm and agricultural land wishes to withdraw fifteen acres, the remaining fifteen acres must meet the minimum gross income ~~((production))~~ or investment requirements listed in RCW 84.34.020 (2)(b)~~((i) or (ii))~~ or (d) to remain classified even though the thirty acres ~~((parcel was))~~ were not required to meet any minimum gross income ~~((production))~~ or investment requirements under RCW 84.34.020 (2)(a).

(a) The assessor may ask the owner of the ~~((parcel))~~ land that will remain classified to submit information relevant to its continuing eligibility under chapter 84.34 RCW. ~~((See))~~ Refer to WAC 458-30-270 for more details ~~((for))~~ on the types of information that may be requested.

(b) If the ~~((parcel))~~ land is classified farm and agricultural land, the assessor will verify that the remaining ~~((portion))~~ land meets the requirements of RCW 84.34.020(2).

(c) If the ~~((parcel))~~ land is classified as open space land or timber land, the assessor ~~((with))~~ may consult with the granting authority before determining whether the remaining ~~((portion))~~ land meets the requirements of RCW 84.34.020 (1) or (3). The granting authority and assessor may ask the owner to submit any data that it considers necessary to assist it in making this determination.

(d) The assessor may segregate the portion of land from which classification is being withdrawn for valuation and taxation purposes.

(4) **Date of withdrawal and notice to owner.** RCW 84.34.070(1) requires the assessor to withdraw land from classification when two assessment years have elapsed following receipt of the owner's request to withdraw. In other words, land is withdrawn from classification as of January 1st of the third assessment year after the request to withdraw classification is received by the assessor's office.

(a) Method for counting assessment years. The year in which the request to withdraw is received counts as the first assessment year; the second assessment year begins on January 1 of the year immediately following the year in which the request ~~((is))~~ was received; and the third assessment year begins on January 1 of the following year. ~~((For))~~ For example,

if a request to withdraw classification is received on November 1, ~~((1999))~~ 2012, the first assessment year is ~~((1999))~~ 2012, the second assessment year is ~~((2000))~~ 2013, and the third assessment year is ~~((2001))~~ 2014. The land is withdrawn from classification as of January 1, ~~((2001-))~~ 2014.

(b) Notice to owner. ~~((No later than))~~ Within thirty days ~~((after))~~ of withdrawing the land from classification, the assessor must notify the owner in writing that ~~((classification))~~ the land has been withdrawn.

(c) Valuation of land withdrawn from classification. When land has been withdrawn from classification, it ~~((shall))~~ must be placed on the assessment roll at its true and fair value ~~((determined in accordance with the county's approved revaluation plan))~~ as of January 1st of the year of withdrawal.

~~((d) Example-))~~ For example, an application for classification as open space land was submitted in April ~~((1990))~~ 2003 and approved effective assessment year ~~((1991))~~ 2004. In ~~((1999))~~ 2012, the owner submits a notice of request to withdraw all the land from classification. The assessor withdraws the land from classification as of January 1, ~~((2001))~~ 2014, which is the third assessment year after the request to withdraw was received. This land is placed on the assessment roll at its true and fair value as of January 1, ~~((2001, in accordance with the county's approved revaluation plan))~~ 2014.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-30-295 Removal of classification. (1) **Introduction.** This ~~((section))~~ rule discusses the circumstances that may cause land to be removed from classification and the actions an assessor takes to remove the land, in whole or in part, from classification under chapter 84.34 RCW.

(2) **General requirement - Removal process.** If land classified under chapter 84.34 RCW is applied to a use other than the one for which classification is granted, the owner must notify the assessor of the change in use within sixty days of the change. If the new use of the land does not qualify for classification under chapter 84.34 RCW, the land must be removed from classification and, in most cases, additional tax, interest, and a penalty are imposed. Land may be totally or partially removed from classification depending on the reason(s) for the removal. ~~((See))~~ Refer to WAC 458-30-300 for details about the additional tax, interest, and penalty imposed when land is removed.

(3) **Circumstances that cause removal of land from classification.** When any of the following actions occur, the assessor ~~((shall))~~ must remove all or a portion of the land from classification:

(a) Receipt of a written notice from the owner directing the assessor to remove the land from classification;

(b) Sale or transfer of the land to an owner that makes the land exempt from property taxes, except a transfer resulting from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the land for the same use as before;

(c) Any nonqualifying change in use that occurs after a request to withdraw classification is made under RCW

84.34.070 and before the actual withdrawal of the classification occurs;

(d) Sale or transfer of classified land to a new owner who is required to pay property tax and who does not sign the notice of classification continuance, except a transfer by a transfer on death deed or a transfer to an owner who is an heir or devisee of a deceased owner. Land may also be removed if a new owner signs the notice of continuance but the assessor determines the land does not qualify to continue in its classified status;

(e) Failure of an owner to respond to a request from the assessor for ~~((data))~~ information regarding the use of the land, productivity of typical crops, and similar information pertinent to continued classification and assessment of the land ~~((see))~~ RCW 84.34.121 and WAC 458-30-270((3));

(f) The ~~((assessor))~~ granting authority denies an owner's request for reclassification and the land no longer meets the criteria under which it was originally classified;

(g) The assessor determines, based on field inspections, analysis of income and expense data, or any other reasonable evidence, that the land no longer meets the criteria for classification under chapter 84.34 RCW; or

(h) The assessor discovers that the land was classified under chapter 84.34 RCW in error.

~~((i) Example 1-))~~ (4) Removal examples.

(a) During an on-site inspection, the assessor discovers that classified farm and agricultural land has been paved over and is used as a parking lot for school buses.

~~((ii) Example 2-))~~ (b) Based on information released at a public meeting of the county planning commission, the assessor learns that an owner of classified timber land has harvested all timber from the land, the land has been platted, public services such as roads, sewers, and domestic water supply have been made available to the platted land, and houses have been built on the land. This information has led the assessor to conclude that the use of the land ~~((has changed or that the land))~~ no longer meets the criteria for classification as timber land.

~~((4))~~ (5) Procedure when an assessor discovers a change in use. If the assessor determines that the land is not being used for a ~~((classified))~~ qualifying use, the assessor must ~~((provide))~~ send the owner, by certified mail, return receipt requested, a written notice regarding this determination; e.g., the Notice of Intent to Remove Current Use Classification form. ~~((The assessor may not remove the land from classification until the owner has had an opportunity to respond to the assessor's determination.))~~

(a) The owner must respond, in writing, to the assessor's inquiry about the use of the classified land ~~((no later than))~~ within thirty calendar days ~~((following the))~~ of the postmark date ~~((the assessor's inquiry was mailed to the owner))~~ of the notice.

(b) If the ~~((parcel))~~ land in question is classified open space land or timber land, the assessor may ask ~~((but is not required to ask,))~~ the granting authority to provide reasonable assistance in determining whether the classified land continues to meet the criteria for classification. The granting authority ~~((shall))~~ must provide this assistance within thirty days of receiving the assessor's request for assistance ~~((see))~~ RCW 84.34.108(1)((3)).

(c) Unless the owner demonstrates to the assessor that the classified use of the land has not changed, the assessor will remove the land from classification and impose additional tax, interest, and penalty ~~((from the date of the change in use (see)))~~, RCW 84.34.080 and 84.34.108(3).

~~((5))~~ **(6) Procedure for partial removal.** If ~~((the use of))~~ only a portion of the classified land ~~((has changed and it))~~ no longer qualifies for classification under chapter 84.34 RCW, the assessor will remove the nonqualifying portion of the classified land. The remaining ~~((parcel))~~ land must satisfy the same requirements ~~((the entire parcel was required to meet))~~ as when the land was originally granted classification unless different criteria are required by statute because of the reduced size of the land that remains classified.

(a) The assessor may ask the owner of the ~~((parcel))~~ land that will remain classified to submit information relevant to its continuing eligibility under chapter 84.34 RCW. ~~((See))~~ Refer to WAC 458-30-270 for more details.

(b) If the ~~((parcel))~~ land is classified as farm and agricultural land, the assessor will verify that the remaining portion meets the requirements of RCW 84.34.020(2).

(c) If the ~~((parcel))~~ land is classified as open space land or timber land, the assessor ~~((with))~~ may consult with the granting authority before determining whether the remaining portion meets the requirements of RCW 84.34.020 (1) or (3). The granting authority and assessor may ask the owner to submit pertinent data for this determination.

(d) The assessor may segregate the portion of land from which classification is being removed for valuation and taxation purposes.

~~((6))~~ **(7) Transactions that do not cause land to be removed from classification.** Land cannot be removed from classification solely because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement ~~((of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species))~~ for the riparian open space program under RCW 76.09.040.

~~((7))~~ **(8) Notice to owner.** Within thirty days of the removal of land from classification, the assessor must notify the owner in writing of the reason(s) for removal; e.g., the Notice of Removal of Current Use Classification and Additional Tax Calculation form. The removal notice must explain the steps an owner needs to follow if he or she wants to appeal the removal decision, including when a notice of appeal must be filed, where an appeal petition may be obtained, and how to contact the county board of equalization.

~~((8))~~ **(9) Right of appeal.** The seller, transferor, or owner of classified land may appeal the removal from classification to the board of equalization of the county in which the land is located. The appeal must be filed within thirty ~~((calendar))~~ days (or up to sixty days if such a time limit has been adopted by the county legislative authority) of the postmark date the notice of removal was mailed by the assessor, electronically transmitted by the assessor ~~((or given to the owner))~~, the assessor electronically notified the owner or person responsible for payment of taxes that the notice was

available to be accessed by the owner or other person, or on or before July 1st of the year of removal, whichever is later ~~((of))~~, RCW 84.40.038(3).

~~((9))~~ **(10) Assessor's duty after removal.** Unless the removal is reversed on appeal, the assessor revalues the affected land with reference to its true and fair value as of January 1st of the year of removal from classification and places the land on the assessment roll ~~((at its true and fair value determined in accordance with the county's approved revaluation plan. The value on the date of removal is the true and fair value as of January 1st of the year of removal))~~. The assessment roll lists both the assessed value of the land before and after the removal ~~((of))~~ from classification. Taxes for the current tax year are prorated according to the portion of the year to which each assessed value applies.

~~((10))~~ **(11) Possible segregation after removal.** If only a portion of the land is being removed from classification, the assessor ~~((must))~~ may segregate the affected portion for valuation and tax purposes.

~~((11))~~ **(12) Additional tax, interest, and penalty are due when land is removed.** The additional tax, interest, and penalty imposed by RCW 84.34.080 and 84.34.108 are due and payable to the treasurer thirty days after the owner is notified of the amount due, unless the removal is the result of one of the exempt circumstances or transactions listed in RCW 84.34.108(6). ~~((See))~~ WAC 458-30-300(3)

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-30-300 Additional tax—Withdrawal or removal from classification. (1) **Introduction.** This section outlines the withdrawal and removal procedures, events that trigger removal, and how to calculate the additional ~~((property))~~ tax ~~((("additional tax")))~~, interest, and penalty that may be imposed because land is withdrawn or removed from classification. When land is withdrawn or removed, additional tax and interest are due. A twenty percent penalty is also due when land is removed from classification ~~((see))~~, RCW 84.34.108 and 84.34.070(2)(3).

(2) **Duties of assessor and treasurer.** ~~((As soon as possible))~~ After determining ~~((that))~~ the land no longer qualifies for classification under chapter 84.34 RCW, ~~((the use of the land has changed, or the land was classified under chapter 84.34 RCW in error,))~~ the assessor must provide the owner a written notice regarding this determination and of his or her intent to remove the land from classification; e.g., the Notice of Intent to Remove Current Use Classification form. ~~((The assessor may not remove the land from classification until the owner has had an opportunity to be heard on the issue of removal.))~~

(a) The owner ~~((has thirty calendar days following the postmark date on the assessor's notice of intent to remove to))~~ must respond, in writing, to the assessor ~~((about the removal of))~~ within thirty days of the postmark date of the notice regarding his or her intention of removing the classified land ~~((from classification. After giving the owner an opportunity to be heard and))~~. Unless sufficient information or evidence is presented as to why the land should not be removed from classified status, the land will be removed from classification

~~((as of the date the land no longer qualified for classification or the use of the land changed)).~~

(b) Within thirty days of removing land from classification, the assessor notifies the owner, in writing, about the reason(s) for the removal ~~((The owner, seller, or transferor may appeal the removal to the county board of equalization))~~; e.g., the Notice of Removal of Current Use Classification and Additional Tax Calculation form. The assessor will compute the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection (5) of this rule. The removal notice must explain the steps the owner needs to follow if he or she wants to appeal the removal decision, including when a notice of appeal must be filed, where an appeal petition may be obtained, and how to contact the county board of equalization.

(c) Unless the removal is reversed on appeal, the assessor revalues the affected land with reference to its true and fair value ~~((on))~~ as of January 1st of the year of removal from classification and places the land on the assessment roll. The assessment roll ~~((will))~~ lists both the assessed value of the land before and after the removal from classification. Taxes for the current tax year will be allocated to the part of the year to which each assessed value applies; that is, the current use value and the true and fair value.

(d) The assessor computes the amount of additional tax, interest, and penalty, unless the removal is the result of one of the circumstances listed in subsection (5) of this ~~((section))~~ rule.

(e) The assessor notifies the treasurer of the amount of additional tax, interest, and penalty due.

(f) The treasurer mails ~~((or gives))~~ the owner written notice about the amount of the additional tax, interest, and ~~((if required,))~~ penalty due and the date on which the total amount must be paid.

(g) The total amount is due and payable to the treasurer thirty days after the owner is notified of the amount ~~((of additional tax, interest, and penalty))~~ due.

(3) Amount of additional tax, interest, and penalty. The amount of additional tax, interest, and penalty will be determined as follows:

(a) The amount of additional tax is equal to the difference between the property tax paid on the land because of its classified status and the property tax that would have been paid on the land based on its true and fair value for the seven tax years preceding the year of withdrawal or removal. And in the case of a removal, the taxes owed for the balance of the current tax year;

(b) The amount of interest, calculated at the same statutory rate charged on delinquent property taxes specified in RCW 84.56.020, is based upon the amount of additional tax determined under (a) of this subsection, starting from the date the additional tax could have been paid without interest until the date the tax is paid; and

(c) A penalty amounting to twenty percent of the sum of the additional tax and interest ~~((; that is, twenty percent of the total amount computed in (a) and (b) of this subsection)).~~ A penalty is not imposed when ~~((~~

~~((+)))~~ the land has been classified for at least ten years at the time it is withdrawn from classification and the owner submitted a request to withdraw classification to the assessor

at least two assessment years prior to the date the land is withdrawn ~~((from classification; or~~

~~((ii) The use of the land has changed and the change in use was the result of one of the circumstances listed in RCW 84.34.108(6). See subsection (5) of this section)).~~

(d) If additional tax, interest, and penalty are not imposed because the removal meets an exception in subsection (5) of this rule, the assessor still calculates the prorated taxes from the date of removal through December 31st of the removal year.

(e) When land is withdrawn or removed from classification under chapter 84.34 RCW, the assessor must forward the notice of withdrawal or removal to the county recording authority. The county recording authority must record all notices of withdrawal or removal, and the owner is required to pay all recording fees for the notice.

(4) Failure to sign notice of continuance. Land will be removed from current use classification if a new owner fails to sign the notice of continuance when the classified land is sold or transferred or if the new owner signs the notice of continuance and the assessor determines the land does not continue to qualify in its classification. Additional tax, interest, and penalty will be imposed in accordance with RCW 84.34.108(4) ~~((because of this removal))~~ and become due and payable by the seller or transferor at the time of sale or transfer.

A notice of continuance is not required when classified land is transferred by a transfer on death deed or transferred to a new owner who is the heir or devisee of a deceased owner and the new owner wishes to continue classified use ~~((see)),~~ RCW 84.34.108 (1)(c)(9)). If the ~~((heir or devisee))~~ new owner elects not to continue classified use, the land will be removed from classification and additional tax, interest, and penalty are due.

(5) Exceptions. No additional tax, interest, or penalty will be imposed if the withdrawal or removal from classification resulted solely from any of the following:

(a) Transfer to a governmental entity in exchange for other land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain or the sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of this power. This entity must have declared its intent to exercise the power of eminent domain in writing or by some other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than an act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city in which the land is located disallowing the current use of classified land. For the purposes of this ~~((section))~~ rule, "official action" includes: City ordinances, zoning restrictions, Growth Management Act, Shoreline Management Act, and Environmental Policy Act;

(e) Transfer of land to a church when the land would qualify for a property tax exemption under RCW 84.36.020. Only the land that would qualify for exemption under RCW 84.36.020 is included within this exception. Additional tax, interest, and ~~((if appropriate, the))~~ penalty will be assessed

upon the remainder of the land (~~(withdrawn or)~~) removed from classification;

(f) Acquisition of property interests by public agencies or private organizations qualified under RCW 84.34.210 or 64.04.130 for the conservation purposes specified therein. ~~(See)~~ Subsection (6) of this ~~(section for)~~ rule provides a listing of these agencies, organizations, and purposes. However, when the ~~(property interests are)~~ land is no longer used for one of the purposes ~~(enumerated)~~ described in RCW 84.34.210 or 64.04.130, additional tax, interest, and penalty will be imposed on the owner of the property at that time;

(g) Removal of land granted classification as farm and agricultural land under RCW 84.34.020 (2)(f) because the principal residence of the farm operator or owner and/or housing for farm and agricultural employees was situated on it. This exception applies only to the land upon which the residence or housing is located even if this portion of the ~~(agricultural enterprise has)~~ land does not ~~(been allocated)~~ have a separate parcel number for assessment and tax purposes;

(h) Removal of classification after a statutory exemption is enacted that would exempt the land from property tax and the landowner submits a written request to the assessor to remove the land from classification. This exception applies only to newly enacted exemptions that would cause classified land to go from taxable to exempt status. For example, in 1999 the legislature created a new property tax exemption for property used for agricultural research and education programs. If the owner of such land subsequently requests removal of the land from classification, no additional tax, interest or penalty are imposed because of this new property tax exemption authorized by RCW 84.36.570;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years of the death of an owner who held at least a fifty percent interest in the land if:

(i) The individual(s) or entity(ies) who received the land from the deceased owner is selling or transferring the land; and

(ii) The land has been continuously assessed and valued as designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer. For example, an owner who holds at least a fifty percent interest in classified farm and agricultural land dies on March 1, 2012. The land was initially classified on January 1, 1989, and is still classified on the date of death of the owner. The heir (new owner) does not want to continue commercially farming the land and sells the land on January 20, 2014. At the time of sale, the buyer does not sign the notice of continuance because they will not be using the land for commercial farming. The assessor will remove the land at the time of sale and the removal would not be subject to additional tax, interest, and penalty;

(l) The assessor discovers that the land was classified under chapter 84.34 RCW in error through no fault of the owner;

(i) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for classification or the failure of the assessor to remove the land from classification;

(ii) This exception does not apply if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification; or

(m) The result of one of the following changes in classification because of the owner's request for:

(i) Reclassification from farm and agricultural land under RCW 84.34.020(2) to: Timber land under RCW 84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(ii) Reclassification from timber land under RCW 84.34.020(3) to: Farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(iii) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; or

(iv) Reclassification from forest land under chapter 84.33 RCW to timber land under RCW 84.34.020(3), farm and agricultural land under RCW 84.34.020(2), or open space land under RCW 84.34.020(1).

(6) **Land acquired by agencies or organizations qualified under RCW 84.34.210 or 64.04.130.** If the purpose for acquiring classified land is to protect, preserve, maintain, improve, restore, limit the future use of, or conserve the land for public use or enjoyment and the classified land is acquired by any of the following entities, no additional tax, interest, or penalty will be imposed ~~(as long as the property is used for one of these purposes)~~:

(a) State agency;

(b) Federal agency;

(c) County;

(d) City;

(e) Town;

(f) Metropolitan park district (see RCW 35.61.010);

(g) Metropolitan municipal corporation (see RCW 35.58.020);

(h) Nonprofit historic preservation corporation as defined in RCW 64.04.130; ~~(or)~~

(i) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250; or

(j) Federally recognized Indian tribe.

(7) **Removal of classification from land that was previously designated forest land under chapter 84.33 RCW.** Land that was previously designated as forest land under chapter 84.33 RCW may be reclassified under chapter 84.34 RCW at the owner's request ~~(made no later than)~~ within thirty days after removal of the land from designation. If such land is subsequently removed from ~~(the current use program)~~ classification under chapter 84.34 RCW before (the

land)) it has been classified under chapter 84.34 RCW for at least ten assessment years, a combination of compensating tax imposed under chapter 84.33 RCW and additional tax, interest, and penalty imposed under chapter 84.34 RCW is due. RCW 84.33.145 explains the way in which these taxes are to be calculated.

(8) Termination of timber land classification. Designation of forest land under RCW 84.33.130(1) as a result of a merger pursuant to RCW 84.34.400 terminating a county's timber land classification is not considered a withdrawal or removal under this chapter and is not subject to additional tax, interest, and penalty.

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

WAC 458-30-325 Transfers between classifications—Application for reclassification. (1) **Introduction.** This rule discusses the process used when land is reclassified into a different classification under chapter 84.34 or 84.33 RCW.

(2) **General information - When reclassification is required.** ~~((In 1992, the legislature created an opportunity for owners of classified land to change the classification under which their land is classified under chapter 84.34 RCW or designated under chapter 84.33 RCW. The name given to this process is "reclassification." It is now possible to switch between the different classifications of chapter 84.34 RCW and forest land under chapter 84.33 RCW.))~~ The following circumstances may cause an owner of classified land to seek reclassification:

(a) The classified land is no longer being used for the purpose for which it was granted classification;

(b) The owner ~~((or new owner))~~ of classified land has decided to change the use of classified land;

(c) The classified land no longer meets the requirements of the classification under which it was originally classified~~((;))~~. For example, farm and agricultural land that no longer produces the minimum gross income ~~((required by))~~ or investment requirements in RCW 84.34.020 (2)(b) ~~((and))~~, (c), or (d) must either be reclassified or removed from ~~((the current use program))~~ classification; or

(d) ~~((The))~~ A new owner ~~((is an heir or devisee of))~~ who received classified land from a deceased owner ~~((who held classified land and the new owner either))~~ and the land does not ~~((choose to meet or cannot))~~ meet the requirements of the classification under which the land ~~((was originally))~~ is currently classified~~((; or~~

~~((e) The assessor has determined the classified land is no longer eligible under the existing classification and the land must either be reclassified or removed from the current use program)).~~

(3) **Reclassification process if land is subject to removal.** Within thirty days of receiving notice from the assessor that ~~((classified))~~ land ~~((is to be))~~ was removed from ~~((the current use program))~~ classification; e.g., Notice of Removal of Current Use Classification and Additional Tax Calculations form, the owner must submit an application for reclassification into another classification under chapter 84.34 or 84.33 RCW if the owner elects to have the land

remain classified. The removal notice must include a statement informing the owner of the classified land about the reclassification option. If an application for reclassification is submitted within thirty days, the land is not considered removed from classification until the application for reclassification is approved or denied.

(4) **Reclassification process if an owner seeks change of classification.** An owner of classified land may seek to have the land reclassified under a different ~~((current use))~~ classification under chapter 84.34 RCW or may seek designation as forest land under chapter 84.33 RCW.

(a) If an owner elects to have land reclassified, the owner must submit an application for reclassification to the assessor of the county in which the land is located. This application form will be prepared by the department and supplied to assessors ~~((or it may be obtained on the internet at <http://dor.wa.gov/index.asp> under property tax, "forms."))~~.

(b) Within seven days of receiving ~~((this request))~~ the application for reclassification, the assessor must forward a copy ~~((of the application for reclassification))~~ to the appropriate granting authority ~~((see the definition of "granting authority" in WAC 458-30-200 for more details))~~. The assessor retains a copy of all applications for reclassification.

(c) When an application for reclassification is submitted, the classified status of the land is not changed until the application is approved ~~((or denied))~~.

(5) **Application procedure.** An application for reclassification is processed in the same manner as an initial application for classification, which may include payment of an application fee if the county requires one. All classification requirements of RCW 84.34.035 for farm and agricultural land, RCW 84.34.037 for open space land, RCW 84.34.041 for timber land, and chapter 84.33 RCW for forest land must be satisfied in order to reclassify land. ~~((These requirements are also described in WAC 458-30-225, 458-30-230, 458-30-232, 458-30-242, and chapter 458-40 WAC.))~~ For example, if an owner of classified farm and agricultural land under RCW 84.34.020 (2)(a) submits a reclassification application into the timber land classification under RCW 84.34.020(3), some of the classified farm and agricultural land may not qualify for reclassification into the timber land classification because the timber land classification only allows up to ten percent of the land for compatible incidental uses and does not allow integral residential homesites to qualify.

(a) The granting authority must process an application for reclassification in the same manner as it processes an initial application for classification under chapter 84.34 RCW or for designation as forest land under chapter 84.33 RCW.

(b) A timber management plan must be filed with the county legislative authority within sixty days of the date the application for reclassification under ~~((this chapter or from designated forest land under chapter 84.33))~~ RCW 84.34.020(3) is received. The application for reclassification will be accepted, but may not be processed until this plan is received.

(i) If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(ii) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan

when an application for reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for this plan, the ~~((county legislative))~~ granting authority should delay processing the application until the plan is received. If the timber management plan is not received by the date set by the assessor, the application for reclassification will be automatically denied.

(c) An application for reclassification may be approved or denied, in whole or in part.

(i) The granting authority must notify the applicant in writing of the extent to which the application for reclassification is approved or denied.

(ii) The applicant has the same appeal rights in relation to a denial of an application for reclassification as the applicant has in regard to an initial application for classification.

(iii) If ~~((an))~~ land is subject to removal and the application for reclassification is denied, the assessor removes the land from classification and calculates additional tax, interest, and penalty in accordance with RCW 84.34.108.

(6) **Reclassifications exempt from additional tax, interest, and penalty.** No additional tax, interest, ~~((or))~~ and penalty are due when reclassification is a result of any of the following transfers between classifications:

(a) Reclassification from farm and agricultural land under RCW 84.34.020(2) to: Timber land under RCW 84.34.020(3), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(b) Reclassification from timber land under RCW 84.34.020(3) to: Farm and agricultural land under RCW 84.34.020(2), open space land under RCW 84.34.020(1), or forest land under chapter 84.33 RCW;

(c) Reclassification from open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) to farm and agricultural land under RCW 84.34.020(2) if the land was previously classified as farm and agricultural land; ~~((or))~~

(d) Reclassification from forest land under chapter 84.33 RCW to open space land under RCW 84.34.020(1), farm and agricultural land under RCW 84.34.020(2), or timber land under RCW 84.34.020(3); or

(e) If a county merges its timber land classification into its designated forest land program pursuant to RCW 84.34.400, a reclassification application as described in subsection (5) of this rule will not be required.

(7) **Gross income ~~((production))~~ requirements of land to be reclassified.** The minimum gross income ~~((production))~~ requirements relating to the following reclassifications may be deferred for a period of up to five years from the effective date of reclassification when:

(a) Land classified as open space/farm and agricultural conservation land under RCW 84.34.020 (1)(c) or timber land under RCW 84.34.020(3) is reclassified as farm and agricultural land under RCW 84.34.020 (2)(b) or (c); or

(b) Land designated as forest land under chapter 84.33 RCW is reclassified as farm and agricultural land under RCW 84.34.020 (2)(b) or (c).

(8) **Valuation of reclassified land.** If approved, the assessed value of reclassified land will be based on the new classification as of January 1 of the assessment year following ~~((approval of the request for reclassification))~~ the year of

application. For example, if an application for reclassification from farm and agricultural land to open space/farm and agricultural conservation land is submitted on February 15, ~~((1999))~~ 2014, and approved ~~((effective June 1, 1999))~~ on July 15, 2014, the land will be valued and assessed as open space/farm and agricultural conservation land on January 1, ~~((2000))~~ 2015, and the owner is required to pay taxes on this new assessed value in ~~((2001))~~ 2016.

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

WAC 458-30-500 Definitions of terms used in WAC 458-30-500 through 458-30-590. (1) **Introduction.** This rule sets forth the definitions to be used in administering and understanding the statutes and rules relating to special benefit assessments on classified farm and agricultural and timber land.

(2) **Definitions.** For the purposes of WAC 458-30-500 through 458-30-590, unless otherwise required by the context, the following definitions apply:

(a) "Average rate of inflation" means the annual rate of inflation adopted each year by the department of revenue in accordance with WAC ~~((458-30-580))~~ 458-30-590 averaged over the period of time provided in WAC 458-30-550 ~~((and 458-30-570)).~~

(b) "Connection charge" or "charge for connection" means the charge required to be paid to the district for connection to the service as opposed to the assessment based upon the benefits derived.

(c) "District" means any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to the districts.

(d) ~~((("Farm and agricultural land" means land classified under the provisions of RCW 84.34.020(2); in other words, one of the following:~~

~~((i) Any parcel of land twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size when the land is:~~

~~((A) Primarily used to produce livestock or agricultural products for commercial purposes;~~

~~((B) Enrolled in the federal Conservation Reserve Program or its successor administered by the United States Department of Agriculture; or~~

~~((C) Primarily used in similar commercial agricultural activities as may be established by rule.~~

~~((ii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres, in size that is primarily used for commercial agricultural purposes, and produces a gross income each year equal to:~~

~~((A) One hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or~~

~~((B) Two hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of~~

application for classification when the application is made on or after January 1, 1993.

(iii) Any parcel of land or contiguous parcels of land less than five acres in size that is primarily used for commercial agricultural purposes, and produces a gross income each year equal to:

(A) One thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; and

(B) One thousand five hundred dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

(iv) Any parcel of land that is twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size on which housing for farm and agricultural employees and the principal residence of the farm operator or the owner of land classified under RCW 84.34.020(2)(a) is situated if:

(A) The housing or residence is on or contiguous to the classified parcel; and

(B) The use of the housing or the residence is integral to the use of the classified parcel for agricultural purposes.

(e)) "Final assessment roll" means a final special benefit assessment roll approved or confirmed by a local government for the purpose of levying special benefit assessments against property specially benefited by a sanitary and/or storm sewerage system, domestic water supply and/or distribution system, or road construction and/or improvement.

((f)) (e) "Local government" means any city, town, county, water-sewer district, public utility district, port district, ((irrigation district,)) flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary and/or storm sewerage systems, domestic water supply and/or distribution systems, or road construction and/or improvement purposes. "Local government" does not include an irrigation district with respect to any local improvement district created or local improvement assessment levied by that irrigation district.

((g)) "Owner" means:

(i) Any person(s) having the fee interest in land; or

(ii) The contract vendee when the land is subject to a real estate contract.

(h) "Removal" or "removed" means land classified under chapter 84.34 RCW is removed from classification by the assessor because the owner requests removal, the new owner fails to sign notice of classification continuance, or the land is no longer being used for the purpose for which classification was granted.

((i)) (f) "Special benefits assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and that may be levied only for the special benefits to be realized by property because of the local improvement.

((j)) "Timber land" means land classified under the provisions of RCW 84.34.020(3); in other words, any parcel of

land five or more acres in size or multiple parcels of land that are contiguous and total five or more acres in size that is primarily used to commercially grow and harvest forest crops. "Timber land" refers only to the land.

(k) "Withdrawal" or "withdrawn" means action taken by the owner of land classified under chapter 84.34 RCW by filing a notice of request to withdraw the land from classification under the current use program in compliance with RCW 84.34.070. Once land has been classified under chapter 84.34 RCW, it must remain so classified for at least ten years from the date of classification. At any time after eight years of the initial ten-year classification period have elapsed, the owner may file a notice of request to withdraw all or a portion of the land from classification with the assessor of the county in which the land is located. Land is withdrawn from classification as a result of a voluntary act by the owner.)

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-520 Notification of district—Certification by assessor—Estimate by district. (1) Introduction. This ((section)) rule explains the procedures that follow the creation of a district.

(2) **Notice to assessor and legislative authority.** Upon creation of a district, the local government ((shall)) must immediately notify the assessor and legislative authority of the county where the district is located of its creation.

(3) **Assessor duties.** Upon receipt of notification that a district has been created, the assessor ((shall)) must certify in writing to the district whether or not classified farm and agricultural or timber land is within its boundaries.

(a) If there is any classified farm and agricultural or timber land within the district boundaries, the assessor ((shall)) must certify what land is within its boundaries by providing parcel numbers and legal descriptions of the property.

(b) If any owner of land within the created district has timely filed, as of ((January 1st)) December 31st, an application for ((current use)) classification or reclassification as farm and agricultural or timber land and no action has been taken, the assessor will report the status of the pending application(s) to the district. The assessor ((shall)) must:

(i) Take immediate action to render a decision for the approval or denial of ((this application. The assessor shall also)) any farm and agricultural land application and encourage the appropriate granting authority to render a decision for the approval or denial of any pending timber land application;

(ii) Inform the district that any decision regarding classification or reclassification as farm and agricultural land is appealable under RCW 84.34.035 ((and that the classification or reclassification as farm and agricultural or timber land would become)) and any decision regarding classification or reclassification as timber land is appealable under RCW 84.34.041; and

(iii) If approved, the assessment of farm and agricultural land and timber land in its classified status will be effective as of ((the initial filing date,)) January 1st of the year following application.

~~((c))~~ If the legislature extends the filing date for applying for classification or reclassification as farm and agricultural or timber land beyond December 31, those applications approved will receive their status as of January 1 of the filing year.)

(4) **District duties.** The district, upon receipt of the assessor's certification required by subsection (3) of this ~~(section, shall)~~ rule, must notify the assessor and the legislative authority of the extent to which classified lands may be subject to a partial assessment for connection to the service provided by the improvement(s). ~~((Said))~~ The estimate will be ~~((based upon))~~ determined by WAC 458-30-560.

(5) **If land is removed or withdrawn from classification.** The assessor ~~((shall))~~ must notify the district when any farm and agricultural land or timber land is removed or withdrawn from ~~((current use))~~ classification. Designation as forest land under RCW 84.33.130(1) as a result of a merger pursuant to RCW 84.34.400 terminating the timber land classification is not considered a removal or withdrawal of timber land under this rule.

AMENDATORY SECTION (Amending WSR 95-21-002, filed 10/4/95, effective 11/4/95)

WAC 458-30-550 Exemption—Removal or withdrawal. (1) **Introduction.** This ~~((section))~~ rule explains the process that must be followed when classified land subject to a special benefit assessment is withdrawn or removed from the farm and agricultural or timber land classifications.

(2) **General treatment of land.** After the creation of a district or the adoption and confirmation of a final assessment roll, an owner of classified farm and agricultural land or timber land who ~~((wishes it))~~ wants the land to be exempt from a special benefit assessment~~((s))~~ is not required to take any further action. The land will retain its classified status~~((it))~~ and will not be connected to the improvement(s) or be listed on the final assessment roll.

(3) **Subsequent withdrawal or removal.** If the owner initially chose for the farm and agricultural land or timber land to remain exempt, ~~((but))~~ and the land is subsequently ~~((is))~~ removed or withdrawn from ~~((the farm and agricultural or timber land))~~ classification, the owner ((shall become liable to pay for)) will be liable for paying the special benefit assessment in the following manner:

(a) If the bonds used to fund the improvement have not been completely retired when the land is withdrawn or removed from classification, the liability will be:

(i) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320; and~~((;))~~

(ii) Interest on that amount, compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed by the governmental entity creating the district to the time the land is withdrawn or removed from exempt status~~((; or))~~.

(b) If the bonds used to fund the improvement in the district have been completely retired when the land is withdrawn or removed from classification, immediate payment ~~((shall))~~ will be due for:

(i) The amount of the special benefit assessment listed in the notice provided for in RCW 84.34.320;

(ii) Interest on that amount compounded annually at a rate equal to the average rate of inflation from the time the initial notice is filed to the time the bonds used to fund the improvement were retired~~((;))~~ and~~((;))~~

(iii) Interest on the total amount of (i) and (ii) at a simple per annum rate equal to the average rate of inflation from the time the bonds used to fund the improvement were retired to the time the land is withdrawn or removed from exempt status.

(4) **Withdrawal or removal of land with partial assessment.** If land is withdrawn or removed from classification and a partial special benefit assessment has been paid because the classified land was connected to a domestic water system, sewerage facility, or road improvement, the amount of partial assessment paid ~~((shall))~~ will be credited against the total amount due for the special benefit assessment~~((s))~~.

(5) **Due date of special benefit assessment upon withdrawal or removal.** When land is to be withdrawn or removed from the farm and agricultural land or timber land classification and an amount ~~((of))~~ for a special benefit assessment~~((s))~~ is due, ~~((the))~~ this amount ~~((of special benefit assessments shall))~~ will be due on the date the land is withdrawn or removed from its classification. This amount ~~((shall))~~ will be a lien on the land prior and superior to any other lien whatsoever except for general taxes and ~~((shall))~~ will be enforceable in the same manner as special benefit assessments are collected by local governments.

Designation as forest land under RCW 84.33.130(1) as a result of a merger pursuant to RCW 84.34.400 that terminates the timber land classification is not considered a removal or withdrawal of timber land under this rule.

(6) **Notice of withdrawal or removal to local government and land owner.** When farm and agricultural land or timber land is withdrawn or removed from classification, the assessor of the county in which the land is located ~~((shall))~~ must send a written notice of the withdrawal or removal to the local government, or its successor, that filed the original notice regarding creation of a district with the assessor. After receiving this notice, the local government ~~((shall))~~ must mail a written statement ~~((setting forth))~~ to the owner indicating the amount of the special benefit assessment~~((s))~~ due ~~((to the owner of))~~ because the farm and agricultural land or timber land was withdrawn or removed from classification. This amount ~~((shall be))~~ is delinquent if ~~((it is))~~ not paid within one hundred eighty days of the date the statement is mailed and is subject to the same interest, penalties, lien, priority, and enforcement procedures that are applicable to delinquent assessments on the final assessment roll from which the land was exempted, except the rate of interest charged ~~((shall))~~ must not exceed the rate provided in RCW 84.34.330.

(7) **Partial withdrawal or removal of land exempt from special benefit assessments.** If a portion of classified farm and agricultural land or timber land ~~((exempt))~~ exempted from a special benefit assessment~~((s))~~ is withdrawn or removed from classification, the previously exempt special benefit assessment~~((s shall))~~ will be due only on the portion of the land being withdrawn or removed.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-30-700 Designated forest land—Removal—Change in status—Compensating tax. (1) **Introduction.** This ~~((section))~~ rule describes what events ~~((trigger the))~~ cause removal of land from designated forest land status under chapter 84.33 RCW, the procedures followed for removal, and the resulting compensating tax.

(2) **Events ~~((triggering))~~ causing the removal of designated forest land status.** The assessor must remove forest land from its designated forest land status when:

(a) The owner submits a written request to remove the ~~((owner's))~~ land from designated forest land status;

(b) The owner sells or transfers the land to an individual or entity exempt from property tax because of that individual's or entity's ownership;

(c) The assessor determines that the land is no longer primarily devoted to and used for growing and harvesting timber;

(d) The owner has failed to comply with a final administrative or judicial order made because of the violation of the restocking, forest management, fire protection, insect and disease control and forest debris provisions of Title 76 RCW or the rules that implement Title 76 RCW;

(e) Restocking has not occurred to the extent or within the time specified in the application for designation of the land;

(f) The owner sells or transfers forest land to a new owner who has not signed a notice of continuance, except ~~((when the))~~ for a transfer by a transfer on death deed or a transfer to a new owner who is the heir or devisee of a deceased owner. RCW 84.33.140(5). Land may also be removed if a new owner signs the notice of continuance but the assessor determines the land does not continue to qualify in its designated status; ~~((or))~~

(g) The assessor discovers that the land was designated under chapter 84.33 RCW in error; or

(h) The owner submitted a two-year withdrawal notice pursuant to RCW 84.34.070(1) and the county merges its timber land classification, pursuant to RCW 84.34.400, with its designated forest land program. Once two assessment years have elapsed following the receipt of this notice, the assessor will remove the land under the provisions of chapter 84.33 RCW.

(3) **How to retain designated forest land status when the land is sold or transferred.** When designated forest land is sold or transferred, the new owner may retain designated forest land status by filing a signed notice of continuance with the deed. The notice of continuance may be signed as part of the real estate excise tax (REET) affidavit or as a separate form if the county has decided it will require owners to submit both the REET affidavit and ~~((an attached))~~ attach a separate notice of continuance. If multiple owners own the land, all owners or their agent(s) must sign the notice of continuance. A notice of continuance is not required for a transfer to a new owner who is an heir or devisee of a deceased owner or for a transfer by a transfer on death deed to retain designated forest land status ~~((when the new owner inherits the property)).~~

(a) The owner may obtain the notice of continuance form and a real estate excise tax (REET) affidavit from the county. The county assessor's office has the notice of continuance form and the county treasurer's office has the REET affidavit.

~~((The notice of continuance may also be obtained on the internet at <http://dor.wa.gov> under property tax, "forms.")~~

(b) After the new owner signs the notice of continuance as part of the REET affidavit and, if required, the separate notice, the REET affidavit and notice must be submitted to the assessor for approval. The assessor may also require the owner to submit a timber management plan before approving the notice of continuance.

(i) The assessor signs the REET affidavit and indicates whether the land will or will not qualify to continue as designated forest land.

(ii) An assessor signs the REET affidavit and approves the land for continued ~~((classification))~~ designation if:

(A) ~~((owner provides))~~ assessor is provided with a complete and accurate notice of continuance signed by the new owner demonstrating that the forest land will continue to qualify as designated forest land; and

(B) At the assessor's option, the new owner provides a timber management plan for the property.

(iii) The assessor is allowed up to fifteen days to confirm that the information upon the notice is complete and accurate. The assessor may use this time to confirm that the timber management plan provides:

(A) The correct legal description for the forest land;

(B) The new owner's statement that the forest land is ~~((owned by the same person,))~~ a parcel of land that consists of ~~((twenty))~~ five or more acres or multiple parcels that are contiguous and total five or more acres; ~~((;))~~ and is primarily devoted to and used to grow and harvest timber;

(C) A statement about whether the land is used to graze livestock;

(D) A brief description of the timber stands located on the land;

(E) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(F) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years.

A timber management plan may contain, but is not required to contain, any other information that the harvester needs for its own business purposes (i.e., a statement of goals for managing the land or identifying resource protection areas on the land ~~((;))~~, like riparian buffer areas along a stream or an unstable slope ~~((;))~~, that limit harvesting activities).

(iv) If the assessor determines that the notice of continuance or the timber management plan is not accurate or complete, the owner may resubmit the corrected information to the assessor.

(v) If the assessor determines that the land does not qualify to continue as designated forest land, the assessor removes the land upon the date of the conveyance and pro-

vides the owner with a notice of removal containing reason(s) for the removal and the amount of compensating taxes owed.

(c) Once the assessor signs the notice of continuance as part of the REET affidavit and the separate notice of continuance, if required, the notice(s) are then submitted to the treasurer. Before the treasurer can stamp the REET affidavit as approved for recording, the treasurer collects any REET due because of the sale or transfer, and collects all compensating tax if the land does not qualify for continuance as designated forest land because it was denied continuance by the assessor. The county recording clerk must not accept any deeds or other transfer documents unless the treasurer has stamped the REET affidavit.

(d) A notice of continuance is not required when the transfer of the forest land is to a new owner who is an heir or devisee of a deceased owner or is a transfer by a transfer on death deed, however, the ~~((new owner))~~ land must continue to meet the requirements of designated forest land to avoid removal from designation. The treasurer determines that a transfer is by inheritance because the claim for the inheritance exemption is filled out on the REET affidavit with supporting documentation. The treasurer should notify the assessor when forest land has been transferred by inheritance without a notice of continuance.

(4) **Assessor decisions and procedures.** Before removing the land from its designated forest land status, the assessor follows certain procedures and takes into account circumstances that may delay or prevent removal.

(a) The assessor must determine:

(i) The actual area of land to be removed from forest land status;

(ii) Whether the land has been exempted from ~~((an unretired))~~ a special benefit assessment;

(iii) The true and fair value of the area being removed as of January 1st of the year of removal from designation;

(iv) Forest land value ~~((for))~~ of the area to be removed as of January 1st of the year of removal from designation;

(v) The last levy rate that applied for that area; and

(vi) The amount of time the land has been designated as forest land, including the number of days up to the date of removal for the current year of removal.

(b) The assessor may require the owner to provide a legal description of the land area intended for removal when the landowner requests removal of owner's land from designated forest land status.

(c) The remaining land outside of the affected removal area continues to be designated as forest land if the owner retains ~~((twenty or more contiguous acres))~~ a parcel of land that consists of five or more acres or multiple parcels that are contiguous and total five or more acres, primarily devoted to and used for growing and harvesting timber. If the remaining land fails to meet ~~((the forest land definition because there are less than twenty contiguous acres primarily devoted to and used for growing and harvesting timber, the owner may request reclassification as timber land under the open space program in chapter 84.34 RCW))~~ this requirement, it will be subject to removal.

(d) The assessor must provide the owner with a written notice and an opportunity to be heard by the assessor, or the assessor's deputy, when the assessor intends to remove the

land because it is no longer primarily devoted to and used for growing and harvesting timber. RCW 84.33.140 (5)~~((d))~~ (e). Each county assessor may set his or her own procedure for giving a landowner this notice and opportunity to be heard so long as it is done in a reasonable and consistent manner that ensures due process for each owner.

(e) An assessor may not remove forest land merely because an owner subdivides the land into separate parcels, if the contiguous parcels of the subdivided land still ~~((add up to))~~ consist of at least ~~((twenty contiguous))~~ five acres ~~((; remain in the same ownership.))~~ and continues to be primarily devoted to and used for growing and harvesting timber. An assessor may ask an owner of designated forest land if the use of the land has changed when the owner subdivides a tract of designated forest land into separate parcels.

(f) If the assessor determines the land is no longer primarily devoted to and used for growing and harvesting timber, but there is a pending acquisition by an entity that would qualify for exemption from compensating tax under subsection (6)(e) of this ~~((section))~~ rule, the assessor must not remove the land from its designated forest land status. RCW 84.33.140 (5)~~((d))~~ (e)(i). ~~((In order))~~ To prevent removal, the governmental entity or other qualified recipient must provide written proof to the assessor of its intent to acquire the land or documentation that demonstrates the transaction will qualify for an exemption from compensating tax under subsection (6)(e) of this ~~((section))~~ rule. The entity acquiring the land must provide this written proof within sixty days of a request by the assessor. Thereafter, once a year, the governmental entity or other recipient must provide the assessor of the county in which the land is located written evidence of its intent to acquire the land. This written evidence must be provided on or before December 31st of each year or at an earlier date if the assessor makes a written request for such information. ~~((RCW 84.33.140 (5)(d)(i).))~~ Upon the assessor's written request, the information must be provided within sixty days from the postmark date the assessor mails ~~((or hands))~~ the request to the owner ~~((or the postmark date of the request, if later))~~.

(g) The assessor must not remove forest land from its designation if a governmental restriction is imposed on the land that prohibits, in whole or in part, the harvesting of timber.

(i) If only a portion of the forest land is impacted by the governmental restriction, the assessor cannot use the restriction as a basis to remove the remainder of the land from its designated forest land status.

(ii) A governmental restriction includes:

(A) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or

(B) The land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(h) If the assessor has reason to believe that forest land less than twenty acres is no longer primarily used for the growing and harvesting of timber, the assessor may require a timber management plan to assist with determining continuing eligibility.

(5) **Removal proceedings.** ~~((After determining that a triggering event causing removal has occurred))~~ If the forest

land no longer qualifies for designation, the assessor must provide timely written notice(s) to the ~~((taxpayer))~~ owner. RCW 84.33.140 (5)~~((d))~~ (e) (written notice and opportunity to be heard), and RCW 84.33.140(9) (notice of removal). Upon receiving the notice that the land has been removed (notice of removal), the ~~((landowner))~~ owner may appeal the removal and/or apply for reclassification of the land ~~((to the open space program))~~ under chapter 84.34 RCW. If the owner chooses to appeal the removal, the appeal must be filed within thirty days (or up to sixty days if such a time limit has been adopted by the county legislative authority) of the postmark date ~~((for))~~ the notice was mailed by the assessor, electronically transmitted by the assessor, the assessor electronically notified the owner or person responsible for payment of taxes that the notice was available to be accessed by the owner or other person, or ~~((by))~~ on or before July 1st of the year of removal, whichever is later. RCW 84.40.038. If the owner chooses to apply for reclassification, they must do so within thirty days of the postmark date of the notice.

(a) **When does the land get removed from ~~((the))~~ designated forest land status?** If the removal is a result of a sale or transfer, the assessor removes the land on the date of sale or transfer provided in the legal conveyance. If the removal is based upon a determination or discovery made about the land by the assessor or at the request of the owner, the assessor removes the land on the date shown on the notice of removal mailed to the owner.

(b) **Notice of removal.** The assessor uses the notice of removal to notify the owner that the land has been removed from designated forest land status. Within thirty days of removing land from designated forest land status, the assessor must mail ~~((a))~~ the notice of removal to the owner with the reasons for the removal. The owner, seller, or transferor may appeal the removal to the county board of equalization.

(i) If the property is being removed because the assessor has determined the land is no longer primarily devoted to and used for growing and harvesting timber, the assessor provides two notices. First, the assessor must notify the taxpayer of his or her intent to remove the property and give the owner an opportunity to be heard. The assessor may require the owner to provide pertinent information about the land and its use in the response to the assessor's first notice. When the assessor determines that the property still does not qualify as designated forest land after the first notice is sent, the assessor mails the owner the second notice, the notice of removal, but only after:

(A) The owner declines the opportunity to be heard;

(B) The owner fails to timely respond to the first notice;
or

(C) The assessor has received and considered the owner's timely response to the notice of intent to remove and nevertheless concludes that the property is no longer primarily devoted to growing and harvesting timber.

(ii) If the removal is based upon an owner's request for removal, upon receipt of a request for removal from an owner, the assessor sends the notice of removal to the owner showing the compensating tax and recording fee due.

(iii) The notice of removal provides the reason(s) for removing the land from designation and the date of the removal. ~~((RCW 84.33.140(9).))~~ The notice includes the

compensating tax calculated in subsection (6) of this ~~((section))~~ rule and the necessary recording fees to be paid. It also includes the due date for payment, along with the ~~((landowner's))~~ owner's rights to appeal the removal or appeal the true and fair value at the time of removal, and the owner's right to apply for the land to be reclassified under chapter 84.34 RCW. The county must use the notice of removal form ~~((prepared))~~ provided by the department.

(iv) The assessor must also provide written notice of the removal to any local government filing a notice regarding a special benefit assessment under RCW 84.33.210 within a reasonable time after the assessor's decision to remove the land. The assessor may provide a simple statement with the legal description of the land, the name of the landowner, and the date of removal, if he or she includes a copy of the notice sent to the landowner. RCW 84.33.230.

(c) **What happens when an owner chooses to appeal the removal?** Unless the removal is reversed ~~((upon))~~ on appeal, the assessor continues the process to remove the property from designated forest land status. The assessor may choose to delay collection of the compensating tax and recording fee until the appeal is decided. However, if the assessor postpones the collection of the compensating tax and recording fee, the assessor must notify the treasurer to temporarily delay collection. The assessor must also notify the owner that if the determination to remove is upheld, then interest will be due from the date the compensating tax and recording fee were due.

(i) If the removal is reversed ~~((upon))~~ on appeal, the assessor ~~((shall))~~ must reinstate the land as designated forest land, discharge any lien placed against the land, revise any assessments made against the property during the interim, refund the recording fee paid, and refund or cancel any compensating taxes and interest paid or owing.

(ii) If the removal is upheld ~~((upon))~~ on an appeal ~~((in which the assessor has delayed collection))~~ and the compensating tax and recording fee have not been paid, the compensating tax and recording fee are due immediately with interest accrued from the date ~~((the tax and fee))~~ they were originally due. Upon receiving notice of the decision upholding the removal, the assessor must immediately notify the treasurer to collect any unpaid compensating taxes, fees, and interest on the land.

(d) **What happens when an owner applies to have the land reclassified under chapter 84.34 RCW?** If an application for reclassification is submitted by the owner no later than thirty days after the postmark date the notice of removal was mailed, the forest land is not removed from ~~((classification))~~ designation until the application for reclassification under chapter 84.34 RCW is denied or later removed from classification under RCW 84.34.108. RCW 84.33.145(1).

(i) An application for reclassification is processed in the same manner as an initial application for classification under chapter 84.34 RCW.

(ii) If an owner is reclassifying forest land under chapter 84.33 RCW into the timber land classification under chapter 84.34 RCW, a timber management plan must be filed with the county legislative authority within sixty days of the date the application for reclassification ~~((under this chapter or from designated forest land under chapter 84.33 RCW))~~ is

received. The application for reclassification will be accepted, but may not be processed until this plan is received.

(A) If this plan is not received within sixty days of the date the application for reclassification is received, the application will be denied.

(B) If circumstances require it, the assessor may allow an extension of time for submitting a timber management plan when an application for reclassification is received. The applicant will be notified of this extension in writing. When the assessor extends the filing deadline for this plan, the ~~((county legislative))~~ granting authority may delay processing the application until the plan is received. If the timber management plan is not received by the date set by the assessor, the application for reclassification will be automatically denied.

(iii) When the owner sells or transfers forest land (or a portion of the forest land) while an application for reclassification under chapter 84.34 RCW is pending, ~~((and))~~ the assessor may accept a notice of continuation, and allow the owner to revise the application for reclassification to reflect the name of the new owner of the ~~((property))~~ forest land.

(iv) If the application for reclassification under chapter 84.34 RCW is approved, the assessor ~~((shall))~~ will transfer the property to its new classification. The assessed value of reclassified land will be based on the new classification as of January 1st of the assessment year following the year the reclassification application was submitted.

(v) If the application for reclassification under chapter 84.34 RCW is denied, the assessor must ~~((record the removal notice))~~ submit the notice of removal to the county recording authority and inform the treasurer's office to immediately begin collection of the compensating tax and the recording fee. When an application for reclassification is denied, the owner may appeal the denial in accordance with RCW 84.34.035, 84.34.037, or 84.34.041, depending on the classification applied for.

(6) **Compensating tax.** Compensating tax is imposed when land is removed from its designated forest land status. This tax recaptures taxes that would have been paid on the

land if it had been assessed and taxed at its true and fair value instead of the forest land value.

(a) **Calculating the compensating tax.** The assessor uses the ~~((current year's))~~ last levy rate extended against the land, the forest land value as of January 1st of the removal year, and the true and fair value as of January 1st of the removal year for the area to be removed from forest land status to calculate the compensating tax. The compensating tax consists of two parts: The recapture of taxes for previous years that the land was designated as forest land, up to a maximum of nine years; and the recapture of taxes ~~((for the portion of the current))~~ from January 1st of the removal year up to the date of removal ~~((in the year the land is removed))~~ from designation. RCW 84.33.140 (10) and (11).

(i) The compensating tax for the previous years is calculated by determining the difference between the amount of taxes assessed at the forest land value for the removal area and the amount of taxes that would have been paid if the land had been valued at its true and fair value as of January 1st in the year of removal. That difference is multiplied by the number of years the land was designated as forest land up to a maximum of nine years.

For the purpose of counting the number of years land was assessed as forest land under this chapter, if the forest land being removed was once classified as timber land under chapter 84.34 RCW but is designated under this chapter because of a merger pursuant to RCW 84.34.400, the date the land was classified as timber land is considered to be the date the property was designated as forest land.

(ii) The compensating tax for the portion of the year of removal from January 1st to the date of removal is calculated by determining the difference between the amount of taxes assessed at the forest land value as of January 1st of the year of removal and the taxes that would have been paid if the land had been valued at its true and fair value ~~((for the portion of the year up to the removal date))~~ as of January 1st of the year of removal.

(b) **Formulas for calculating taxes after removal:**

(i) Calculation of prior year's compensating tax:

True and Fair Value of Land (Jan 1st of year removed)	Less	Forest Land Value ((at time of removal)) (Jan 1st of year removed)	Multiplied by	Last levy Rate Extended Against Land	Multiplied by	Years (not to exceed 9)	Equals	Compensating Tax
\$ _____	-	\$ _____	x	\$ _____	x		=	\$ _____

(ii) Calculation of current year's taxes to date of removal:

$$\begin{array}{r}
 \frac{\text{No. of days designated as forest land in the year of removal}}{\text{No. of days in year}} = \text{Proration factor (To items (A) and (B))} \\
 \text{(A) } \$ \text{ _____} \times \text{Last Levy Rate Extended Against Land} \times \text{Proration factor} = \$ \text{ _____} \\
 \text{((Market)) True and Fair Value of Land (Jan 1st of year removed)}
 \end{array}$$

$$(B) \quad \$ \frac{\text{Forest Land Value (Jan 1st of year removed)}}{\text{Last Levy Rate Extended Against Land}} \times \text{Proration factor} = \$ \text{_____}$$

$$(C) \quad \text{Amount of compensating tax for current year ((A) minus (B))} = \$ \text{_____}$$

(c) **The assessor notifies the treasurer of the amount of compensating tax and the due date for the tax by providing the treasurer a copy of the removal notice.** Compensating tax is due and payable to the county treasurer thirty days after the ~~((assessor mails to the owner the notice of removal informing the owner of the reasons for removal and the amount of compensating tax due))~~ owner is notified of the amount due. The treasurer will mail a notice to the owner of the amount of compensating tax owed and the due date on which this amount must be paid. RCW 84.33.140(11). However, when property is sold or transferred, any compensating tax owed must be paid to the county treasurer before recording the conveyance. The county recording authority will not accept any instrument transferring the land, unless the compensating tax was paid or was not owed.

(d) **What happens if the compensating tax is not paid on the due date?** If the compensating tax is not paid by the due date, the tax is considered delinquent. Interest, set at the statutory rate for delinquent property taxes specified in RCW 84.56.020, will accrue against the amount of the ~~((outstanding taxes))~~ unpaid compensating tax from the due date until the entire amount owing is paid. Unpaid compensating tax and interest becomes a lien on the land. RCW 84.60.020.

(i) This lien attaches at the time the forest land is removed from designation.

(ii) The lien has priority over any recognizance, mortgage, judgment, debt, obligation, or responsibility against the land.

(iii) This lien must be fully paid before any other recognizance, mortgage, judgment, debt, obligation, or responsibility may be charged against the land.

(iv) The lien can be foreclosed upon expiration of the same period after delinquency and in the same manner as liens for delinquent real property taxes are foreclosed under RCW 84.64.050. RCW 84.33.140(12).

(e) **Compensating tax is not imposed on land removed from ~~((the))~~ forest land designation if the removal resulted solely from any of the following:**

(i) A transfer to a government entity in exchange for other forest land within Washington state;

(ii) A transfer under either the power of eminent domain or upon the threat of eminent domain by an entity with the power of eminent domain that intends to exercise this power. The entity must threaten to exercise eminent domain in writing or demonstrate this threat by some other official action;

(iii) A donation of fee title, development rights, or the right to harvest timber in order to protect, preserve, maintain, improve, restore, limit the future use, or conserve the property for public use or enjoyment ~~((see))~~ RCW 84.34.210 and 64.04.130~~((;-))~~, provided, this donation is made to a:

- (A) State agency;
- (B) Federal agency;
- (C) County;
- (D) City;

- (E) Town;
- (F) Metropolitan park district (see RCW 35.61.010);
- (G) Metropolitan municipal corporation (see RCW 35.58.020);
- (H) Nonprofit historic preservation corporation as defined in RCW 64.04.130; ~~((or))~~
- (I) Nonprofit nature conservancy corporation or association as defined in RCW 84.34.250; or
- (J) Federally recognized Indian tribe.

However, when the land is no longer being used for one of the purposes listed ~~((above))~~ in RCW 84.34.210 or 64.04.-130, compensating tax will be imposed on the owner of the land at that time;

(iv) The sale or transfer of fee title to a government entity (see the governmental entities listed in subsection (6)(e)(iii) of this ~~((section))~~ rule) or a nonprofit nature conservancy corporation as defined in RCW 64.04.130 exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage advisory council under its established natural heritage plan as defined in chapter 79.70 RCW (natural area preserves) or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. However, if the land is no longer used ~~((to protect and conserve the area for state natural area preserve))~~ for these purposes, ((or fails to comply with the terms of a natural heritage plan.)) compensating tax will be imposed on the owner of the land at that time;

(v) A sale or transfer of fee title to the state's parks and recreations commission for park and recreation purposes;

(vi) An official action of an agency of the state of Washington or the county or city in which the land is located disallowing the ~~((current))~~ present use of the land. "Official action" includes city ordinances, zoning restrictions, the Growth Management Act, the Shoreline Management Act, and the Environmental Policy Act;

(vii) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(viii) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(ix) The sale or transfer of forest land within two years after the death of an owner who held at least a fifty percent interest in the land if:

(A) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and

(B) The land has been continuously assessed and valued as classified forest land, designated as forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer. For example, an

owner who holds at least a fifty percent interest in designated forest land dies on March 1, 2012. The land was designated on January 1, 1989, and is still designated on the date of death of the owner. The heir (new owner) does not want to continue growing and harvesting timber and sells the land on January 20, 2014. At the time of sale, the buyer does not sign the notice of continuance because they will not be using the land for growing and harvesting timber. The assessor will remove the land at the time of sale and the removal would not be subject to compensating tax:

(x) The assessor discovers that the land was designated under chapter 84.33 RCW in error through no fault of the owner:

(A) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for designation or the failure of the assessor to remove the land from designation:

(B) This exception does not apply if an independent basis for removal exists. An example of an independent basis for removal includes the land is no longer devoted primarily to and used for the growing and harvesting of timber; or

(xi) In a county with a population of more than six hundred thousand(()) inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax will not be imposed if there is a transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation (as these corporations are defined in RCW 64.04.130) and the property interest being transferred is to:

(A) Protect or enhance public resources; or

(B) Preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve the land for public use or enjoyment. When the land is no longer being used for any of these purposes, the owner of the land at the time will be required to pay compensating tax. ((RCW 84.33.140(12) and (13));

~~(x) The sale or transfer of forest land within two years after the death of an owner who held at least a fifty percent interest in the land if:~~

~~(A) The individual(s) or entity(s) who received the land from the deceased owner is selling or transferring the land; and~~

~~(B) The land has been continuously assessed and valued as designated forest land under chapter 84.33 RCW or classified under chapter 84.34 RCW since 1993. The date of death shown on the death certificate begins the two-year period for sale or transfer; or~~

~~(xi) The assessor discovers that the land was designated under chapter 84.33 RCW in error through no fault of the owner;~~

~~(A) For purposes of this subsection, "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of the application for designation or the failure of the assessor to remove the land from designation;~~

~~(B) This exception does not apply if an independent basis for removal exists. An example of an independent basis for removal includes the land is no longer devoted to and used for the growing and harvesting of timber.)~~

(7) When will the land be assessed at its true and fair value and the taxes become payable? The land will be assessed at its true and fair value on the date it is removed from forest land status. The assessor revalues the land removed from designated forest land status with reference to its true and fair value on January 1st in the year of removal. RCW 84.33.140(10). The property tax for the remainder of the year following the date of removal is based on land's true and fair value as of January 1st of the removal year.

(a) To calculate the increase the assessor must determine the number of days remaining in the year from the date of removal. The increase in property tax is due on the same due dates as all other property taxes are due for the year (((generally)) April 30th and October ((4th)) 31st of the current year). ((See)) RCW 84.56.020((g)).

(b) Formula for calculating the increase in property taxes for the remainder of the year in which the land is being removed:

$$\begin{array}{rclcl}
\text{(i)} & \frac{\text{No. of days from date of removal to the end of the year}}{\text{No. of days in year}} & \div & \frac{365}{\text{No. of days in year}} & = & \text{Proration factor for true and fair land value} \\
\text{(ii)} & \$ \frac{\text{((Market value)) True and Fair Value of Land (Jan 1st of year removed)}}{\text{Last Levy Rate Extended Against Land}} & \times & \times & \text{Proration factor} & = \$ \text{_____} \\
\text{(iii)} & \$ \frac{\text{Forest Land Value (Jan 1st of year removed)}}{\text{Last Levy Rate Extended Against Land}} & \times & \times & \text{Proration factor} & = \$ \text{_____} \\
\text{(iv)} & \text{Total amount of increased taxes for current year ((ii) minus (iii))} & & & = & \$ \text{_____}
\end{array}$$

(c) If the taxes for the year of removal have not yet been billed, the tax should be recalculated based on the true and fair value of the land removed (~~for the portion of the year following the date of removal~~) as of January 1st of the removal year.

(d) An owner may appeal the true and fair value of the land which is used to calculate the compensating tax and the increase in the remaining current year's taxes (~~or the compensating taxes within thirty days of the notice (or up to sixty days if such time limit has been adopted by the county legislative authority) or on or before July 1st, whichever is later.~~) in accordance with RCW 84.40.038.

(8) What happens when forest land reclassified under chapter 84.34 RCW is later removed from that classification before ten years have passed? If reclassified forest land is later removed under chapter 84.34 RCW, a combination of compensating tax and additional tax will be imposed unless the basis for removal is one of the circumstances listed as exempt from additional tax under RCW 84.34.108(6).

(a) The amount of compensating tax is equal to the difference, if any, between the amount of property tax last levied on the land as designated forest land and an amount equal to the ~~(new)~~ true and fair value ~~(of)~~ as of January 1st of the year the land (when) is removed from classification under RCW 84.34.108, multiplied by the ~~(dollar rate of the)~~ last property tax levy rate extended against the land, multiplied by

(b) A number equal to:

(i) The number of years the land was designated as forest land under chapter 84.33 RCW, if the total number of years the land was designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is less than ten; or

(ii) Ten minus the number of years the land was classified under chapter 84.34 RCW, if the total number of years the land was designated under chapter 84.33 RCW and classified under chapter 84.34 RCW is at least ten.

WSR 15-03-019

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 8, 2015, 2:43 p.m., effective February 8, 2015]

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

Purpose: The department amends WAC 458-20-261 Commute trip reduction incentive[s], to recognize provisions of ESSB 6001 (chapter 222, Laws of 2014) and SSB 6333 (chapter 97, Laws of 2014). The proposed changes to this rule explain that:

- Vehicles must be "primarily" used for commuter ride sharing (subsection (3)(b));
- If the program is not extended after June 30, 2015, that commute trip reduction incentive payments paid by employers and property managers from January 1 through June 30, 2015, will not accrue commute trip reduction credits (subsection (4)(h));
- Deleting dated language relating to periods prior to a statutory change effective June 30, 2005; and

- Clarifying language in an example that there is a maximum credit limit of \$60 per employee (subsection (k)(iii)).

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-261.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.70.020, 82.70.040, 82.70.900, 82.44.015, 82.08.0287, and 82.12.0282.

Adopted under notice filed as WSR 14-22-068 on October 31, 2014.

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 1, Repealed 0.

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

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

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

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

Date Adopted: January 8, 2015.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-13-096, filed 6/17/14, effective 7/18/14)

WAC 458-20-261 Commute trip reduction incentives. (1) **Introduction.** This rule explains the various commute trip reduction incentives that are available. First, RCW 82.04.355 and 82.16.047 provide exemptions from business and occupation (B&O) tax and public utility tax on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs. RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as ride-sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or public utility tax credit, effective July 1, 2003, in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **B&O tax and public utility tax exemptions on providing commuter ride sharing or ride sharing for persons with special transportation needs.** Amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs are exempt from the business and occupation tax and from the public utility tax. RCW 82.04.355 and 82.16.047.

(a) **What is "commuter ride sharing"?** "Commuter ride sharing" means a car pool or van pool arrangement, whereby one or more fixed groups:

(i) Not exceeding fifteen persons each, including the drivers; and

(ii) Either:

(A) Not fewer than five persons, including the drivers; or

(B) Not fewer than four persons, including the drivers,

where at least two of those persons are confined to wheelchairs when riding;

Are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. Each group must be in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institutions.

(b) **What is "ride sharing for persons with special transportation needs"?** "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs.

(i) **What is a "private, nonprofit transportation provider"?** A "private, nonprofit transportation provider" is any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs.

(ii) **What is "persons with special transportation needs"?** "Persons with special transportation needs" are those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation.

(3) **Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ride-sharing vehicles.** RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles.

(a) **What are the requirements?** The requirements are that the passenger motor vehicles must be used:

(i) For commuter ride sharing or ride sharing for persons with special transportation needs; and

(ii) As ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ride-sharing vehicle for less than thirty-six consecutive months, the registered owner must pay the retail sales tax or use tax.

(b) **Additional requirements in certain cases.** Vehicles ((with five or six passengers, including the driver,)) used primarily for commuter ride sharing must be operated within a county, or a city or town within that county, which has a commute trip reduction plan under chapter 70.94 RCW in order to be exempt from retail sales tax or use tax. In addition, for the exemptions to apply, at least one of the following conditions must apply:

(i) The vehicle must be operated by a public transportation agency for the general public;

(ii) The vehicle must be used by a major employer, as defined in RCW 70.94.524, as an element of its commute trip reduction program for their employees; or

(iii) The vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work.

Individual-employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commute ride-sharing arrangement conforms to a car pool/van pool element contained within their commute trip reduction program.

(4) **B&O tax or public utility tax credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** Effective July 1, 2003, RCW 82.70.020 provides a credit against B&O tax or public utility tax liability for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) **What is "ride sharing"?** "Ride sharing" means a car pool or van pool arrangement, whereby a group of at least two but not exceeding fifteen persons, including the driver, is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. The driver must also be on the way to or from his or her place of employment or educational or other institution. "Ride sharing" includes ride sharing on Washington state ferries.

(c) **What is "public transportation"?** "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries.

(d) **What is "car sharing"?** "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(e) **What is "nonmotorized commuting"?** "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(f) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year.

(g) **What is a "fiscal year"?** A "fiscal year" begins at July 1st of one year and ends on June 30th of the following year.

(h) **When will the credit expire?** The credit program is scheduled to expire June 30, 2015. If the program is not extended after June 30, 2015, commute trip reduction incentive payments paid by employers and property managers from January 1, 2015 through June 30, 2015, will not accrue commute trip reduction credits.

(i) **What are the limitations of the credit?** ~~((For periods after June 30, 2005:))~~

(i) The credit may not exceed the amount of B&O tax or public utility tax that would otherwise be due for the same fiscal year.

(ii) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and public utility tax.

(iii) A person may not take a credit for amounts claimed for credit by other persons.

(iv) Total credit received by a person against both B&O tax and public utility tax may not exceed two hundred thousand dollars for a fiscal year. ~~((This limitation does not apply to credits deferred from prior fiscal years as described in (i)(vii) and (viii) of this subsection.))~~

(v) Total credit granted to all persons under both B&O tax and public utility tax, including any credits carried forward from prior fiscal years as described in (i)(vii) of this subsection, may not exceed:

(A) Two million seven hundred fifty thousand dollars in any fiscal year through the fiscal year ending June 30, 2013; and

(B) One million five hundred thousand dollars per fiscal year for the period beginning July 1, 2013, through June 30, 2016.

(vi) No credit or portion of a credit denied, because of exceeding the limitations in (i)(iv) or (v) of this subsection, may be used against tax liability for other fiscal years ~~((, subject to (i)(vii) and (viii) of this subsection.))~~

(vii) ~~A person, with B&O tax and public utility tax liability equal to or in excess of the credit for a fiscal year, may use all or part of the credit deferred prior to July 1, 2005, for a period of not more than three fiscal years after the fiscal year in which the credit accrued. No credit deferred under this paragraph (i)(vii) of this subsection may be used after June 30, 2008. The person must submit an application, as provided in (j)(i) of this subsection, in the fiscal year tax credit will be applied, and the credit must be approved by the department~~

~~before use. This application is subject to eligibility under (i)(v) of this subsection for the fiscal year tax credit will be applied. If a deferred credit is subject to proportional reduction under (j)(iv) of this subsection, the amount of deferred credit reduced may be carried forward as long as the period of deferral does not exceed three years after the year the credit was earned.~~

~~((viii) For deferred)),~~

~~((vii) Credit approved by the department ((after June 30, 2005, the approved credit)) may be carried forward to subsequent years until used((-The limitation described in (i)(v) of this subsection does not apply to such deferred credit approved after June 30, 2005.~~

~~((ix)), except that no person ((is eligible for)) may claim the tax credit((-including the deferred tax credit authorized under (i)(vii) and (viii) of this subsection,)) after June 30, ((2014)) 2015.~~

~~((x)) (viii) No person is eligible for tax credit if the additional revenues for the multimodal transportation account created under RCW 46.68.035(1), 82.08.020(3), 82.12.045(7), 46.16.233(2), and 46.16.690 ((created by the Engrossed Substitute House Bill No. 2231, chapter 361, Laws of 2003)) are terminated.~~

(j) **What are the credit procedures?** ~~((For periods after June 30, 2005:))~~

(i) Persons applying for the credit must complete an application. The application must be received by the department between January 1 and January 31, following the calendar year in which the applicants made incentive payments. The application must be made to the department in a form and manner prescribed by the department.

~~((ii) ((An application due by January 31, 2006, must not include incentive payments made from January 1, 2005, to June 30, 2005.~~

~~((iii)) The department must ((rule)) make a determination on an application within sixty days of the January 31 deadline. In addition, the department must disapprove an application not received by the January 31 deadline. Once the application is approved and tax credit is granted, the department is not allowed to increase the credit.~~

~~((iv)) (iii) If the total amount of credit applied for by all applicants in a fiscal year exceeds the limitation as provided in (i)(v) of this subsection, the amount of credit allowed for all applicants is proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years((-except as provided in (i)(vii) of this subsection)).~~

(k) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) An employer pays one hundred eighty dollars for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of fifty dollars. These are the total expenditures during a fiscal year of amounts paid to or on behalf of employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of sixty dollars for the amount spent for the

employee using the bus pass. Fifty percent of one hundred eighty dollars is ninety dollars, but the credit is limited to sixty dollars per employee. The employer may claim a credit of twenty-five dollars (fifty percent of fifty dollars) for the amount spent for the employee who bicycles to work. Even though fifty percent of two hundred thirty dollars, the amount spent on both employees, works out to be less than sixty dollars per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) An employer provides parking spaces for the exclusive use of ride-sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of ride-sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit (~~(-if it does not cause the sixty-dollar limitation to be exceeded, because it is an amount paid on behalf of a specific))~~ but there is a maximum credit limit of sixty dollars per employee.

(iv) An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

WSR 15-03-025

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 9, 2015, 1:29 p.m., effective February 9, 2015]

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

Purpose: Clarifies who and when a licensee is covered under the horse racing labor and industries account. Also amends the dates that invoices are generated and payment is due.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-250.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 11-24-085 [14-24-085] on December 1, 2014.

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: January 9, 2015.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-23-015, filed 11/9/12, effective 12/10/12)

WAC 260-36-250 Industrial insurance. (1) The horse racing industry labor and industries account only provides coverage for employees of a trainer licensed in the state of Washington and meets the criteria in this section. At the time of submitting a license application, or as provided in this section, all licensed trainers must provide the commission with the name of all licensed employees, including grooms, assistant trainers, exercise riders - farm, and pony riders - farm. Trainers will be required to maintain accurate payroll records and may be required to submit them to the commission or the department of labor and industries for premium verification and/or claims processing. In addition the trainer will inform the commission of the worksite for each employee. For the purpose of industrial insurance coverage a worksite may only be one of the following locations:

(a) A Washington race track - A race track in the state of Washington granted race dates by the commission. A site will be designated as a Washington race track for the purposes of industrial insurance for only the period of the track's licensed race meet and periods of training when horses are exercised in preparation for competition. This period of time is limited to only that period of time when the stewards have authority on the grounds (WAC 260-24-510(2));

(b) Farm or training center - A farm or training center is any location off the grounds of a licensed race meet. This will include any recognized race track located outside the state of Washington as well as any Washington race track during the period before its period of training or after its licensed race meet. For the purposes of industrial insurance all such locations will be considered a farm or training center.

(2) Grooms and assistant trainers.

(a) A licensed trainer must pay the industrial insurance premiums for all licensed grooms and licensed assistant trainers as established by labor and industries, unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to licensed grooms and licensed assistant trainers (~~((working for the))~~ while performing the duties of their license for and under the direction of a licensed trainer, and excludes all exercise riders, pony riders, and any other licensed employee of the trainer, whether working at a farm or training center. In addition, licensed spouse grooms are exempt from coverage requirements.

(b) A trainer is responsible for accurately reporting to the commission all grooms and assistant trainers in the trainer's employ. If a trainer releases any employee from employment, the trainer must notify the commission within forty-eight

hours. Failure to notify the commission within forty-eight hours may result in the trainer being responsible for the full industrial insurance premium until notification is made. It is the trainer's responsibility to ensure all grooms and assistant trainers in their employ are properly licensed by the commission.

(c) The industrial insurance premiums will be assessed based on each groom or assistant trainer employed in the coverage month, or a trainer may employ a "temporary groom" and be charged on a per day basis. The daily rate ((is ten percent of the monthly rate)) for a "temporary groom" will be prorated based on the number of days in the month. The use of a "temporary groom" for more than fourteen days in the calendar month will not be considered "temporary" and the trainer will be charged a full monthly premium. Premiums will be paid to the commission on a monthly basis. A trainer ~~((must pay))~~ will be invoiced for the assessed industrial insurance premium for each licensed groom and licensed assistant trainer at the end of each month, or before the trainer leaves the grounds taking his/her horses. Multiple trainers may employ the same groom, but each trainer is responsible for the entire applicable labor and industries premium. ((Payment of the full premium is normally due prior to the fifteenth of the following month. Failure to make the payment by the fifteenth will result in a fine and, if applicable, a suspension as outlined in WAC 260-84-135.))

(3) Track employees.

(a) A trainer must pay the industrial insurance premiums for all track employees employed by the trainer to work on the grounds of a race track unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to track employees, which will include licensed exercise riders - track, and licensed pony riders - track, and excludes all grooms, spouse grooms, assistant trainers, and all farm employees working off the grounds of a Washington race track at a farm or training center.

(b) It is the trainer's responsibility to ensure all track employees in their employ are properly licensed by the commission.

(c) The industrial insurance premiums to cover track employees will be assessed on the number of horses, per day, in a month a license trainer has horses on the grounds. The number of horses will include all horses on the grounds under the care of a licensed trainer, including pony horses. Premiums will be paid to the commission on a monthly basis. A trainer ~~((must pay))~~ will be invoiced for the assessed industrial insurance premium for each horse per day at the end of each month, or before the trainer leaves the grounds taking his/her horses.

(i) A trainer is responsible ~~((to))~~ for accurately ((report)) reporting the correct number and identity of any horse or horses in their care. If the trainer cannot provide documentation of the exact date of a horse's arrival or departure, the trainer will be invoiced for any unreported horse beginning on the first day horses were allowed on the track for arrivals, or a day supported by other evidence acceptable to the commission.

(ii) ~~((A trainer is responsible to report any transfer of a horse in their care to another trainer at the commission office.))~~ Trainers involved in the transfer of any horse into or

out of their care are jointly responsible to report the transfer to the commission. A transfer report supplied by the commission must be completed by both parties. Failure to report transfers ~~((will))~~ may result in the previous trainer being assessed the industrial insurance premium for unreported transfers until the commission receives the required notice.

(4) Farm employees.

(a) To be covered under the horse racing industry labor and industries account, a licensed trainer must pay the industrial insurance premiums for all licensed farm employees employed by the trainer to work at a farm or training center unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to licensed farm employees which will include licensed exercise riders - farm, and licensed pony riders - farm, and excludes grooms, spouse grooms, assistant trainers, and all track employees working on the grounds of a Washington race track.

(b) A trainer is responsible for accurately reporting all farm employees in the trainer's employ. A trainer must notify the commission prior to any employee beginning work. If a trainer releases any farm employee from employment, the trainer must notify the stewards within forty-eight hours. Failure to notify the commission within forty-eight hours may result in the trainer being responsible for the full industrial insurance premium until notification is made. It is the trainer's responsibility to ensure all farm employees in their employ are properly licensed by the commission.

(c) The industrial insurance premiums to cover farm employees will be assessed on the number of employees, per day, multiplied by the number of days in the month the trainer reports the employee working. Trainers must report the anticipated work days and hours of work each day at the start of the month. If the work schedule changes the trainer must immediately notify the commission.

(d) A farm employee may be required to produce to the commission payroll records for verification of work days and/or claims processing.

(5) Reciprocal agreements. The state of Washington has reciprocal agreements with other states. Trainers shipping in from these jurisdictions who have industrial insurance from a reciprocal state need not obtain industrial insurance coverage so long as they comply with the conditions of RCW 51.12.-120 and WAC 296-17-31009.

(6) Employees moving from one worksite to another.

(a) A licensed groom or licensed assistant trainer can move from the track to the farm or from the farm to the track. The trainer is not required to notify the commission whenever a licensed groom or licensed assistant trainer moves from the different worksites.

(b) A licensed exercise rider - track or licensed pony rider - track may not move from the track to the farm unless that person first obtains an exercise rider - farm or pony rider - farm license. On those days a track employee moves from the track to the farm, the trainer will be ~~((responsible))~~ invoiced for, at the end of the month, ((to pay)) an additional farm premium for each employee, for each day they worked at the farm as provided in subsection (4) of this section.

(c) A licensed exercise rider - farm or licensed pony rider - farm can move from the farm to the track. Before moving

any such employees, the employee must first also be licensed as an exercise rider - track or pony rider - track. On those days a farm exercise rider or pony rider moves to the track, the trainer will not be responsible to pay any additional premium, as long as the employee continues to have the farm premium assessed. The licensed exercise rider - farm or licensed pony rider - farm, are only covered while performing the duties of their license for and under the direction of a licensed trainer.

(d) A track employee is only covered under the per horse, per day premium, and then only when performing the duties of their license for and under the direction of a licensed trainer while on the grounds of a Washington race track during its licensed race meet and periods of training. Any time prior to or after the stewards have authority on the grounds granted in WAC 260-24-510(2), the Washington track will be considered, for the purposes of industrial insurance coverage a farm or training center.

(7) Major track versus nonprofit race track.

(a) There ~~((will no longer be a))~~ is no distinction, for industrial insurance purposes, except as provided in (b) of this subsection, between a major (Class A or B) race track and a nonprofit (Class C) race track. Premiums to cover licensed employees will be assessed the same.

(b) License owners at a major race track will be assessed a premium of one hundred fifty dollars per year for one hundred percent ownership of one or more horses. Owners, with partial ownership interest shall be assessed a prorated amount of the full ownership fee in increments of ten percent. Owners at a nonprofit or Class C race track will continue to pay a lesser premium as established annually by the department of labor and industries.

(c) Premiums paid by owners are a fee to subsidize workers compensation coverage for injured workers. The premiums paid by owners do not extend any coverage to owners or their employees.

(8) Coverage outside the state of Washington.

(a) Trainers with employees from Washington may continue coverage when they are at another recognized race track in another state if that other jurisdiction has a reciprocal agreement with the state of Washington, and if:

(i) The trainer pays the premium for grooms and assistant trainers, and as long as both the trainer and grooms/assistant trainers are licensed by the commission; and

(ii) The trainer pays the premium at the farm rate for exercise riders - farm and pony riders - farm, and as long as both the trainer and all farm employees are licensed by the commission.

(b) Trainers must continue to report Washington employees to the commission prior to the start of each month so an assessment can be made. Failure to report may result in the trainer being referred to the stewards or executive secretary for further action.

(c) Track employees hired in another state or jurisdiction are not Washington employees. They are to be covered in the state or jurisdiction they were hired in. It is the trainer's responsibility to obtain coverage in the other state or jurisdiction.

(9) Trainers will be provided an invoice monthly of premiums due. The invoices will be prepared and mailed or delivered on or before the fifth day of the following month.

Total monthly premiums will be rounded to the next whole dollar. Payment of the premium is due prior to fifteen days from the date listed on the invoice. Trainers are responsible for the accuracy of their invoices and must report any errors or omissions to the commission prior to payment. Failure to make the payment by the fifteenth day will result in a fine, and if applicable a suspension as outlined in WAC 260-84-135.

WSR 15-03-031

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Community Services Division)

[Filed January 12, 2015, 10:05 a.m., effective February 12, 2015]

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

Purpose: The department is amending WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?, 388-449-0035 How does the department assign severity ratings to my impairment?, 388-449-0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits?, and 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?

These changes are necessary to conform to SB 6573, Laws of 2014, which restores the more restrictive ABD disability standard previously in place until December 31, 2013, by increasing the minimum duration from nine to twelve months and consideration of an individual's ability to perform past work from ten to fifteen years.

These amendments are currently in effect via emergency rule making filed on October 28, 2014, as WSR 14-22-031.

Citation of Existing Rules Affected by this Order: Amending WAC 388-449-0001, 388-449-0035, 388-449-0060, and 388-449-0080.

Statutory Authority for Adoption: SB 6573, chapter 218, Laws of 2014; and RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030.

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011; SB 6573; and RCW 41.05.021, 74.04.050, 74.08.090, 74.09.035, 74.09.530.

Adopted under notice filed as WSR 14-21-129 (CR-102) filed October 20, 2014.

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 4, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 8, 2015.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?

(1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than ~~((nine))~~ twelve months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to alcohol or drug abuse or addiction.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for long-term care services from aging and long-term support administration for a medical condition that is expected to last ~~((nine))~~ twelve months or more or result in death; or

(e) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by alcohol or drug addiction and do not meet the other disability criteria in subsection (2)(a) through (d) above, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of alcoholism or drug addiction.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last twelve months unless:

(a) You file a timely appeal with SSA;

(b) SSA decides you have good cause for a late appeal; or

(c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

WAC 388-449-0035 How does the department assign severity ratings to my impairment?

(1) "Severity rating" is a rating of the extent of your impairment and how it impacts your ability to perform basic work activities. The following chart provides a description of limitations on work activities and the severity ratings assigned to each.

Effect on Work Activities	Degree of Impairment	Numerical Value
(a) There is no effect on your performance of one or more basic work-related activities.	None	1
(b) There is no significant limit on your performance of one or more basic work-related activities.	Mild	2
(c) There are significant limits on your performance of one or more basic work-related activities.	Moderate	3

Effect on Work Activities	Degree of Impairment	Numerical Value
(d) There are very significant limits on your performance of one or more basic work-related activities.	Marked	4
(e) You are unable to perform basic work-related activities.	Severe	5

(2) We use the description of how your condition impairs your ability to perform work activities given by the acceptable medical source or your treating provider, and review other evidence you provide, to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews your medical evidence and the ratings assigned to your impairment when:

(a) The medical evidence indicates functional limitations consistent with at least a moderate physical or mental health impairment;

(b) Your impairment has lasted or is expected to last, ~~((nine))~~ twelve months or more with available medical treatment; and

(c) You are not an active ABD recipient previously determined likely to be disabled as defined in WAC 388-449-0010 through 388-449-0100.

(4) The contracted doctor reviews your medical evidence, severity rating, and functional assessment to determine whether:

(a) The Medical evidence is objective and sufficient to support the findings of the provider;

(b) The description of the impairment(s) is supported by the medical evidence; and

(c) The severity rating, duration, and assessment of functional limitations assigned by DSHS are consistent with the medical evidence.

(5) If the medical provider's description of your impairment(s) is not consistent with the objective evidence, we will:

(a) Assign a severity rating, duration, and functional limitations consistent with the objective medical evidence; and

(b) Clearly describe why we rejected the medical evidence provider's opinion; and

(c) Identify the medical evidence used to make the determination.

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

WAC 388-449-0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits? When we receive your medical evidence, we review it to determine if it is sufficient to decide whether your circumstances meet disability requirements.

(1) We require written medical evidence to determine disability. The medical evidence must:

(a) Contain sufficient information as described under WAC 388-449-0015;

(b) Be written by an acceptable medical source or treating provider described in WAC 388-449-0010;

(c) Document the existence of a potentially disabling condition by an acceptable medical source described in WAC 388-449-0010; and

(d) Document the impairment has lasted or is expected to last ~~((nine))~~ twelve continuous months or more with available treatment, or result in death.

(2) If the information received isn't clear, we may require more information before we determine whether you meet ABD disability requirements. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny disability if:

(a) We don't have evidence that your impairment is of at least moderate severity as defined in WAC 388-449-0035, 388-449-0040, 388-449-0045, or 388-449-0050;

(b) Your impairment hasn't lasted or isn't expected to last ~~((nine))~~ twelve or more months with available treatment or result in death; or

(c) We have evidence drug or alcohol abuse or addiction is material to your impairment(s).

AMENDATORY SECTION (Amending WSR 13-24-040, filed 11/26/13, effective 1/1/14)

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? (1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past ~~((ten))~~ fifteen years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.

WSR 15-03-037
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 12, 2015, 1:47 p.m., effective February 12, 2015]

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

Purpose: The department amended these rules to comply with and be consistent with recently passed state laws: SHB 1629 Home care aides—Credentialing and continuing education; EHB 1677 Adult family homes—Multiple facility operators; SHB 1686 K-12 Schools—High school equivalency certificates; SSB 5077 Statutes—Gender-neutral terms; SB 5510 Vulnerable adults—Abuse; and SSB 5630 Vulnerable adults—Adult family homes. In addition, the department is amending rules to comply with SHB 2056 Assisted living facilities, passed (chapter 10, Laws of 2012) in the 2012 legislative session, which change the terminology of "boarding home" to "assisted living facility." In addition, new WAC 388-76-10532 was added on the standardized disclosure of services form.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10000, 388-76-10125, 388-76-10130, 388-76-10037, 388-76-10146, 388-76-10315, 388-76-10525, 388-76-10535, 388-76-10540, 388-76-10595, 388-76-10615, 388-76-10925, 388-76-10935, 388-76-10960, 388-76-10975, and 388-76-10980.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Adopted under notice filed as WSR 14-21-134 on October 20, 2014.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-76-10535 was changed to correct a contradiction in language caused by a typographical error. Also in WAC 388-76-10535, a grammatical error was corrected to clarify that notice must be provided to residents if a home voluntarily decreases services or if a decrease in services results in the discharge of at least one resident.

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 17, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 17, Repealed 0.

Date Adopted: January 12, 2015.

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 15-04 issue of the Register.

WSR 15-03-038
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 12, 2015, 1:52 p.m., effective February 12, 2015]

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

Purpose: The department is amending chapter 388-106 WAC to update references to health care authority WAC that have changed.

Changing references to other WAC without changing the effect of the rule is appropriate for expedited rule making under RCW 34.05.353 (1)(c).

Reasons supporting proposal: Updating the rule will help clients locate the appropriate WAC references related to long-term care services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0047, 388-106-0210, 388-106-0300, 388-106-0325, 388-106-0330, 388-106-0355, 388-106-0610, 388-106-0625, 388-106-0655, 388-106-0705, 388-106-0905, 388-106-0955, 388-106-1010, 388-106-1020, 388-106-1040, 388-106-1050, and 388-106-1105.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 14-21-132 on October 20, 2014.

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 17, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 17, Repealed 0.

Date Adopted: January 12, 2015.

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 15-04 issue of the Register.

WSR 15-03-041
PERMANENT RULES
HEALTH CARE AUTHORITY
 (Medicaid Program)

[Filed January 12, 2015, 4:37 p.m., effective February 12, 2015]

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

Purpose: These rules are necessary to:

- Add habilitative services under covered services.
- Remove bilateral cochlear implantation from noncovered list.
- Add vaccines recommended or required for the sole purpose of international travel to the noncovered list.
- Remove oral health care services for emergency conditions for clients twenty-one and older from the covered section as a result of adult dental benefit restoration in chapter 182-535 WAC.
- Remove routine or nonemergency medical and surgical dental services for clients twenty-one years of age and older from the noncovered section.
- Update who can bill for physician-related and health care professional services.
- Add naturopathic physicians to list of who can bill for osteopathic manipulative treatment.
- Remove limitations on the number of mental health visits for kids and adults and expands the list of qualified providers for adults.
- Add new sections for coverage of alcohol and substance misuse counseling through screening, brief intervention, and referral to treatment (SBIRT) and for tobacco cessation counseling for pregnant clients.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-531-1025; and amending WAC 182-531-0100, 182-531-0150, 182-531-0250, 182-531-0800, 182-531-0950, 182-531-1050, and 182-531-1400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 14-22-109 on November 5, 2014.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 7, Repealed 1.

Date Adopted: January 12, 2015.

Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-035, filed 8/28/13, effective 9/28/13)

WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative. (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter,

according to agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's (~~(medical assistance))~~ Washington apple health program. Refer to WAC 182-501-0060 and 182-501-0065; and

(b) Medically necessary as defined in WAC 182-500-0070.

(2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC (~~(182-501-0065))~~ 182-501-0165.

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

(a) Alcohol and substance misuse counseling (refer to WAC 182-531-1710);

(b) Allergen immunotherapy services;

~~((b))~~ (c) Anesthesia services;

~~((c))~~ (d) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);

~~((d))~~ (e) Emergency physician services;

~~((e))~~ (f) ENT (ear, nose, and throat) related services;

~~((f))~~ (g) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);

~~((g))~~ (h) Habilitative services (refer to WAC 182-545-400);

(i) Reproductive health services (refer to chapter 182-532 WAC);

~~((h))~~ (j) Hospital inpatient services (refer to chapter 182-550 WAC);

~~((i))~~ (k) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);

~~((j))~~ (l) Office visits;

~~((k))~~ (m) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients twenty years of age and younger);

~~((l))~~ (n) Osteopathic treatment services;

~~((m))~~ (o) Pathology and laboratory services;

~~((n))~~ (p) Physiatry and other rehabilitation services (refer to chapter 182-550 WAC);

~~((o))~~ (q) Foot care and podiatry services (refer to WAC 182-531-1300);

~~((p))~~ (r) Primary care services;

~~((q))~~ (s) Psychiatric services (~~(provided by a psychiatrist));~~)

~~((r))~~ (t) Psychotherapy services (~~(for children as provided in)) (refer to WAC 182-531-1400);~~

~~((s))~~ (u) Pulmonary and respiratory services;

~~((t))~~ (v) Radiology services;

~~((u))~~ (w) Surgical services;

~~((v))~~ Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post-cancer treatment;

~~((w))~~ Oral health care services for emergency conditions for clients twenty-one years of age and older, except for eli-

ents of the division of developmental disabilities (refer to WAC 182-531-1025); and

~~(x) Other outpatient physician services;~~ (x) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects (e.g., congenital or as a result of illness or physical trauma), or for mastectomy reconstruction for post cancer treatment;

(y) Telemedicine (refer to WAC 182-531-1730);

(z) Tobacco cessation counseling (refer to WAC 182-531-1720);

(aa) Vaccines;

(bb) Other outpatient physician services.

(5) The agency covers physical examinations for ~~((medical assistance))~~ Washington apple health clients only when the physical examination is for one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for ~~((a medical assistance program))~~ Washington apple health, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and ~~((agency issuances))~~ provider notices.

AMENDATORY SECTION (Amending WSR 13-16-008, filed 7/25/13, effective 9/1/13)

WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative. (1) Except as provided in WAC 182-531-0100 and subsection (2) of this section, the medicaid agency does not cover the following:

(a) Acupuncture, massage, or massage therapy;

(b) Any service specifically excluded by statute;

(c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;

(d) Hysterectomy performed solely for the purpose of sterilization;

(e) Cosmetic treatment or surgery, except ~~((for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness))~~ as provided in WAC 182-531-0100 (4)(x);

(f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;

(g) Hair transplantation;

(h) Marital counseling or sex therapy;

(i) More costly services when the medicaid agency determines that less costly, equally effective services are available;

(j) Vision-related services as follows:

(i) Services for cosmetic purposes only;

(ii) Group vision screening for eyeglasses; and

(ii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery.

(k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;

(l) Physician-supplied medication, except those drugs which the client cannot self-administer and therefore are administered by the physician in the physician's office;

(m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;

(n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:

(i) Routine foot care, such as but not limited to:

(A) Treatment of tinea pedis;

(B) Cutting or removing warts, corns and calluses; and

(C) Trimming, cutting, clipping, or debriding of nails.

(ii) Nonroutine foot care, such as, but not limited to treatment of:

(A) Flat feet;

(B) High arches (cavus foot);

(C) Onychomycosis;

(D) Bunions and tailor's bunion (hallux valgus);

(E) Hallux malleus;

(F) Equinus deformity of foot, acquired;

(G) Cavovarus deformity, acquired;

(H) Adult acquired flatfoot (metatarsus adductus or pes planus);

(I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

(o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services~~((-));~~

(p) Nonmedical equipment;

(q) Nonemergency admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas; and

(r) ~~((Bilateral cochlear implantation; and~~

~~(s) Routine or nonemergency medical and surgical dental services provided by a doctor of dental medicine or dental surgery for clients twenty-one years of age and older, except for clients of the developmental disabilities administration in the department of social and health services))~~ Vaccines recommended or required for the sole purpose of international travel. This does not include routine vaccines administered according to current centers for disease control (CDC) advisory committee on immunization practices (ACIP) immunization schedule for adults and children in the United States.

(2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

(a) The EPSDT program;

(b) A ~~((medicaid))~~ Washington apple health program for qualified **medicare** beneficiaries (QMBs); or

(c) A waiver program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0250 Who can provide and bill for physician-related and health care professional services.

~~((1) The following enrolled providers are eligible to provide and bill for physician-related and health care professional services which they provide to eligible clients:~~

- ~~(a) Advanced registered nurse practitioners (ARNP);~~
- ~~(b) Federally qualified health centers (FQHCs);~~
- ~~(c) Health departments;~~
- ~~(d) Hospitals currently licensed by the department of health;~~

~~(e) Independent (outside) laboratories ~~CLIA~~ certified to perform tests. See WAC 388-531-0800;~~

~~(f) Licensed marriage and family therapists, only as provided in WAC 388-531-1400;~~

~~(g) Licensed mental health counselors, only as provided in WAC 388-531-1400;~~

~~(h) Licensed radiology facilities;~~

~~(i) Licensed social workers, only as provided in WAC 388-531-1400 and 388-531-1600;~~

~~(j) Medicare-certified ambulatory surgery centers;~~

~~(k) Medicare-certified rural health clinics;~~

~~(l) Providers who have a signed agreement with the department to provide screening services to eligible persons in the EPSDT program;~~

~~(m) Registered nurse first assistants (RNFA); and~~

~~(n) Persons currently licensed by the state of Washington department of health to practice any of the following:~~

~~(i) Dentistry (refer to chapter 388-535 WAC);~~

~~(ii) Medicine and osteopathy;~~

~~(iii) Nursing;~~

~~(iv) Optometry; or~~

~~(v) Podiatry.)~~ (1) The health care professionals and health care entities listed in WAC 182-502-0002 and enrolled with the agency can bill for physician-related and health care professional services that are within their scope of practice.

(2) The ~~((department))~~ agency does not pay for services performed by any of the ~~((following practitioners:~~

~~(a) Acupuncturists;~~

~~(b) Christian Science practitioners or theological healers;~~

~~(c) Counselors, except as provided in WAC 388-531-1400;~~

~~(d) Herbalists;~~

~~(e) Homeopaths;~~

~~(f) Massage therapists as licensed by the Washington state department of health;~~

~~(g) Naturopaths;~~

~~(h) Sanipractors;~~

~~(i) Social workers, except those who have a master's degree in social work (MSW), and:~~

~~(i) Are employed by an FQHC;~~

~~(ii) Who have prior authorization to evaluate a client for bariatric surgery; or~~

~~(iii) As provided in WAC 388-531-1400.~~

~~(j) Any other licensed or unlicensed practitioners not otherwise specifically provided for in WAC 388-502-0002;~~

~~or~~

~~(k) Any other licensed practitioners providing services which the practitioner is not:~~

~~(i) Licensed to provide; and~~

~~(ii) Trained to provide))~~ health care professionals listed in WAC 182-502-0003.

(3) The ~~((department))~~ agency pays ~~((practitioners listed in subsection (2) of this section))~~ eligible providers for physician-related services if those services are mandated by, and provided to, clients who are eligible for one of the following:

(a) The EPSDT program;

(b) A ~~((medicaid))~~ Washington apple health program for qualified medicare beneficiaries (QMB); or

(c) A waiver program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0800 Laboratory and pathology physician-related services. (1) The ~~((department reimburses))~~ medicaid agency pays providers for laboratory services only when:

(a) The provider is certified according to Title XVII of the Social Security Act (medicare), if required; and

(b) The provider has a clinical laboratory improvement amendment (CLIA) certificate and identification number.

(2) The ~~((department))~~ agency includes a handling, packing, and mailing fee in the reimbursement for lab tests and does not reimburse these separately.

(3) The ~~((department reimburses only))~~ agency pays for one blood drawing fee per client, per day. The ~~((department))~~ agency allows additional reimbursement for an independent laboratory when it goes to a nursing facility or a private home to obtain a specimen.

(4) The ~~((department reimburses))~~ agency pays for only one catheterization for collection of a urine specimen per client, per day.

(5) The ~~((department reimburses))~~ agency pays for automated multichannel tests done alone or as a group, as follows:

(a) The provider must bill a panel if all individual tests are performed. If not all tests are performed, the provider must bill individual tests.

(b) If the provider bills one automated multichannel test, the ~~((department))~~ agency reimburses the test at the individual procedure code rate, or the internal code maximum allowable fee, whichever is lower.

(c) Tests may be performed in a facility that owns or leases automated multichannel testing equipment. The facility may be any of the following:

(i) A clinic;

(ii) A hospital laboratory;

(iii) An independent laboratory; or

(iv) A physician's office.

(6) The ~~((department))~~ agency allows a STAT fee in addition to the maximum allowable fee when a laboratory procedure is performed STAT.

(a) The ~~((department reimburses))~~ agency pays for STAT charges for only those procedures identified by the clinical laboratory advisory council as appropriate to be performed STAT.

(b) Tests generated in the emergency room do not automatically justify a STAT order, the physician must specifically order the tests as STAT.

(c) Refer to the fee schedule for a list of STAT procedures.

(7) The ~~((department reimburses))~~ agency pays for drug screen charges only when medically necessary and when ordered by a physician as part of a total medical evaluation.

(8) The ~~((department))~~ agency does not ~~((reimburse))~~ pay for drug screens for clients in the division of ~~((alcohol and substance abuse (DASA)-contracted))~~ behavioral health and recovery (DBHR) within the department of social and health services (DSHS)-contracted methadone treatment programs. These are reimbursed through a contract issued by ~~((DASA))~~ DBHR DSHS.

(9) The ~~((department))~~ agency does not ~~((cover))~~ pay for drug screens to monitor ~~((any of the following:~~

~~((a)))~~ for program compliance in either a residential or outpatient drug or alcohol treatment program((:

~~((b))~~ Drug or alcohol abuse by a client when the screen is performed by a provider in private practice setting; or

~~((c))~~ Suspected drug use by clients in a residential setting, such as a group home).

(10) The ~~((department))~~ agency may require a drug or alcohol screen in order to determine a client's suitability for a specific test.

(11) An independent laboratory must bill the ~~((department))~~ agency directly. The ~~((department))~~ agency does not ~~((reimburse))~~ pay a medical practitioner for services referred to or performed by an independent laboratory.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0950 Office and other outpatient physician-related services. (1) The ~~((department reimburses))~~ medicaid agency pays eligible providers for the following:

(a) Two calls per month for routine medical conditions for a client residing in a nursing facility; and(:

(b) One call per noninstitutionalized client, per day, for an individual physician, except for valid call-backs to the emergency room per WAC ~~((388-531-0500))~~ 182-531-0500.

(2) The provider must provide justification based on medical necessity at the time of billing for visits in excess of subsection (1) of this section and follow the requirements in WAC 182-501-0169.

(3) See ~~((physician))~~ the agency's physician-related services billing instructions for procedures that are included in the office call and that cannot be billed separately.

(4) Using selected diagnosis codes, the ~~((department))~~ agency reimburses the provider at the appropriate level of physician office call for history and physical procedures in conjunction with dental surgery services performed in an outpatient setting.

(5) The ~~((department))~~ agency may reimburse providers for injection procedures and/or injectable drug products only when:

(a) The injectable drug is administered during an office visit; and

(b) The injectable drug used is from office stock and which was purchased by the provider from a ~~((pharmacist or))~~ pharmacy, drug manufacturer ((as described in WAC 388-530-1200)), or drug wholesaler.

(6) The ~~((department))~~ agency does not reimburse a prescribing provider for a drug when a pharmacist dispenses the drug.

(7) The ~~((department))~~ agency does not reimburse the prescribing provider for an immunization when the immunization material is received from the department of health; the ~~((department))~~ agency does reimburse an administrative fee. If the immunization is given in a health department and is the only service provided, the ~~((department))~~ agency reimburses a minimum E&M service.

(8) The ~~((department))~~ agency reimburses immunizations at **estimated acquisition costs (EAC)** when the immunizations are not part of the vaccine for children program. The ~~((department))~~ agency reimburses a separate administration fee for these immunizations. Covered immunizations are listed in the fee schedule. Refer to WAC 182-531-0150 (1)(r) for vaccines recommended or required for the sole purpose of international travel.

(9) The ~~((department))~~ agency reimburses therapeutic and diagnostic injections subject to certain limitations as follows:

(a) The ~~((department))~~ agency does not pay separately for the administration of intra-arterial and intravenous therapeutic or diagnostic injections provided in conjunction with intravenous infusion therapy services. The ~~((department))~~ agency does pay separately for the administration of these injections when they are provided on the same day as an E&M service. The ~~((department))~~ agency does not pay separately an administrative fee for injectables when both E&M and infusion therapy services are provided on the same day. The ~~((department))~~ agency reimburses separately for the drug(s).

(b) The ~~((department))~~ agency does not pay separately for subcutaneous or intramuscular administration of antibiotic injections provided on the same day as an E&M service. If the injection is the only service provided, the ~~((department))~~ agency pays an administrative fee. The ~~((department))~~ agency reimburses separately for the drug.

(c) The ~~((department))~~ agency reimburses injectable drugs at **acquisition cost**. The provider must document the name, strength, and dosage of the drug and retain that information in the client's file. The provider must provide an invoice when requested by the ~~((department))~~ agency. This subsection does not apply to drugs used for chemotherapy; see subsection (11) in this section for chemotherapy drugs.

(d) The provider must submit a manufacturer's invoice to document the name, strength, and dosage on the claim form when billing the ~~((department))~~ agency for the following drugs:

(i) Classified drugs where the billed charge to the ~~((department))~~ agency is over one thousand, one hundred dollars; and

(ii) Unclassified drugs where the billed charge to the ~~((department))~~ agency is over one hundred dollars. This does not apply to unclassified antineoplastic drugs.

(10) The ~~((department))~~ agency reimburses allergen immunotherapy only as follows:

(a) Antigen/antigen preparation codes are reimbursed per dose.

(b) When a single client is expected to use all the doses in a multiple dose vial, the provider may bill the total number of doses in the vial at the time the first dose from the vial is used. When remaining doses of a multiple dose vial are injected at subsequent times, the ~~((department))~~ agency reimburses the injection service (administration fee) only.

(c) When a multiple dose vial is used for more than one client, the provider must bill the total number of doses provided to each client out of the multiple dose vial.

(d) The ~~((department))~~ agency covers the antigen, the antigen preparation, and an administration fee.

(e) The ~~((department))~~ agency reimburses a provider separately for an E&M service if there is a diagnosis for conditions unrelated to allergen immunotherapy.

(f) The ~~((department))~~ agency reimburses for RAST testing when the physician has written documentation in the client's record indicating that previous skin testing failed and was negative.

(11) The ~~((department))~~ agency reimburses for chemotherapy drugs:

(a) Administered in the physician's office only when:

(i) The physician personally supervises the E&M services furnished by office medical staff; and

(ii) The medical record reflects the physician's active participation in or management of course of treatment.

(b) At established maximum allowable fees that are based on the medicare pricing method for calculating the estimated acquisition cost (EAC), or maximum allowable cost (MAC) when generics are available;

(c) For unclassified antineoplastic drugs, the provider must submit the following information on the claim form:

(i) The name of the drug used;

(ii) The dosage and strength used; and

(iii) The national drug code ~~((NCD) [NDC])~~ (NDC).

(12) Notwithstanding the provisions of this section, the ~~((department))~~ agency reserves the option of determining drug pricing for any particular drug based on the best evidence available to the ~~((department))~~ agency, or other good and sufficient reasons (e.g., fairness/equity, budget), regarding the actual cost, after discounts and promotions, paid by typical providers nationally or in Washington state.

(13) The ~~((department))~~ agency may request an invoice as necessary.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1050 ((Osteopathic)) Manipulative ((treatment)) therapy. (1) The ~~((department reimburses osteopathic))~~ medicaid agency pays for manipulative therapy ~~((OMT))~~ only when ~~((OMT is))~~:

(a) Provided by an osteopathic physician licensed under chapter ~~((18.71 RCW~~

~~((2) The department reimburses OMT only when the provider bills))~~ 18.57 RCW or naturopathic physicians licensed under chapter 18.36A RCW; and

(b) Billed using the appropriate CPT codes that involve the number of body regions involved.

~~((3))~~ (2) The ~~((department))~~ agency allows an osteopathic physician or naturopathic physician to bill the ~~((department))~~ agency for an evaluation and management (E&M) service in addition to the ~~((OMT))~~ manipulative therapy when one of the following apply:

(a) The physician diagnoses the condition requiring manipulative therapy and provides it during the same visit;

(b) The existing related diagnosis or condition fails to respond to manipulative therapy or the condition significantly changes or intensifies, requiring E&M services beyond those included in the manipulation codes; or

(c) The physician treats the client during the same encounter for an unrelated condition that does not require manipulative therapy.

~~((4))~~ (3) The ~~((department limits reimbursement))~~ agency pays for ten manipulations ~~((to ten))~~ per client, per calendar year. ~~((Reimbursement))~~ The agency evaluates a request for manipulations that is in excess of the limitations or restrictions according to WAC 182-501-0169. Payment for each manipulation includes a brief evaluation as well as the manipulation.

~~((5))~~ (4) The ~~((department))~~ agency does not ~~((reimburse))~~ pay for physical therapy services performed by osteopathic physicians or naturopathic physicians.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services.

~~((1) The mental health services covered in the medical benefits described in this section are separate from the mental health services covered by the mental health managed care system administered under the authority of the mental health division pursuant to chapter 388-865 WAC. The department covers outpatient mental health services with the following limitations:~~

~~((a) For clients eighteen years of age and younger:~~

~~((i) The department pays for only one hour per day, per client, up to a total of twenty hours per calendar year, including the psychiatric diagnostic evaluation and family therapy visits that are medically necessary to the client's treatment;~~

~~((ii) The department limits medication management services to one per day, but this service may be billed by psychiatrists and psychiatric advanced registered nurse practitioners (ARNP) in conjunction with the diagnostic interview examination, or when a psychiatrist or psychiatric ARNP performs medication management services on the same day as a different licensed mental health practitioner renders another billable mental health service; and~~

~~((iii) The mental health services must be provided in an outpatient setting by a psychiatrist, psychologist, psychiatric ARNP, social worker, marriage and family therapist, or mental health counselor who must:~~

~~((A) Be licensed, in good standing and without restriction, by the department of health under their appropriate licensure; and~~

(B) Have a minimum of two years experience in the diagnosis and treatment of clients eighteen years of age and younger and their families, including a minimum one year under the supervision of a mental health professional trained in child and family mental health. A licensed psychiatrist may provide these services and bill the department without meeting this requirement.

(b) For clients nineteen years of age and older:

(i) The department pays for only one hour per day, per client, up to a total of twelve hours per calendar year, including family or group therapy visits;

(ii) The department limits medication management services to one per day, but this service may be billed by psychiatrists and psychiatric ARNPs in conjunction with the diagnostic interview examination, or when a psychiatrist or psychiatric ARNP performs medication management services on the same day as a different licensed mental health practitioner renders another billable mental health service; and

(iii) The mental health services must be provided by a psychiatrist in an outpatient setting.

(2) The department covers inpatient mental health services with the following limitations:

(a) Must be provided by a psychiatrist;

(b) Only the total time spent on direct psychiatric client care during each visit; and

(c) One hospital call per day for direct psychiatric client care, including making rounds. Making rounds is considered direct client care and includes any one of the following:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

(3) With the exception of medication management, the department covers other mental health services described in this section with the limitation of one per client, per day regardless of location or provider type.

(4) The department pays psychiatrists when the client receives a medical physical examination in the hospital in addition to a psychiatric diagnostic or evaluation interview examination.

(5) The department covers psychiatric diagnostic interview evaluations at the limit of one per provider, per calendar year unless a significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the department.

(6) The department does not cover psychiatric sleep therapy.

(7) The department covers electroconvulsive therapy and narcosis only when performed by a psychiatrist.

(8) The department pays psychiatric ARNPs only for mental health medication management and diagnostic interview evaluations provided to clients nineteen years of age and older.

(9) The department covers interactive, face-to-face visits at the limit of one per client, per day, in an outpatient setting. Interactive, face-to-face visits may be billed only for clients age twenty and younger.

(10) The client or licensed health care provider may request a limitation extension only when the client exceeds the total hour limit described in subsection (1) of this section, and for no other limitation of service in this section. The

department will evaluate these requests in accordance with WAC 388-501-0169.

(11) DSHS providers must comply with chapter 388-865 WAC for hospital inpatient psychiatric admissions, and must follow rules adopted by the mental health division or the appropriate regional support network (RSN).

(12) Accepting payment under more than one contract or agreement with the department for the same service for the same client constitutes duplication of payment. If a client is provided services under multiple contracts or agreements, each provider must maintain documentation identifying the type of service provided and the contract or agreement under which it is provided to ensure it is not a duplication of service.)

(1) The mental health services covered in this section are different from the mental health services covered under chapter 388-865 WAC, Community mental health and involuntary treatment programs, administered by the division of behavioral health and recovery within the department of social and health services.

(2) Inpatient and outpatient mental health services not covered under chapter 388-865 WAC, may be covered by the agency according to this section.

Inpatient mental health services

(3) For hospital inpatient psychiatric admissions, providers must comply with the rules of the department of social and health services in chapter 388-865 WAC, Community mental health and involuntary treatment programs.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), or psychiatric mental health nurse practitioner-board certified (PMHNP-BC):

(b) The agency pays only for the total time spent on direct psychiatric client care during each visit, including services rendered when making rounds. The agency considers services rendered during rounds to be direct client care services and may include, but are not limited to:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or narcosis per client, per day, and only when performed by a psychiatrist.

Outpatient mental health services

(5) The agency covers outpatient mental health services when provided by the following licensed health care professionals who are in good standing with the agency and who are without restriction by the department of health under their appropriate licensure:

(a) Psychiatrists;

(b) Psychologists;

(c) Psychiatric advanced registered nurse practitioners (ARNP) or psychiatric mental health nurse practitioners-board certified (PMHNP-BC);

(d) Mental health counselors;

(e) Independent clinical social workers;

(f) Advanced social workers; or

(g) Marriage and family therapists.

(6) With the exception of licensed psychiatrists and psychologists, qualified health care professionals who treat clients eighteen years of age and younger must have a minimum of two years' experience in the diagnosis and treatment of clients eighteen years of age and younger, including one year of supervision by a mental health professional trained in child and family mental health.

(7) The agency does not limit the total number of outpatient mental health visits a licensed health care professional can provide.

(8) The agency covers outpatient mental health services with the following limitations. The agency evaluates a request for outpatient mental health services that is in excess of the limitations or restrictions according to WAC 182-501-0169:

(a) One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency.

(b) One individual or family/group psychotherapy visit, with or without the client, per day, per client.

(c) One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

(ii) Psychiatric advanced registered nurse practitioner (ARNP); or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

(9) Clients enrolled in the alternative benefits plan (defined in WAC 182-500-0010) are eligible for outpatient mental health services when used as a habilitative service to treat a qualifying condition in accordance with WAC 182-545-400.

(10) The agency requires mental health services be provided in the appropriate place of service. The provider is responsible for referring the client to the regional support network (RSN) to assess whether the client meets the RSN access to care standards.

(11) If anytime during treatment the provider suspects the client meets the RSN access to care standards, an assessment must be conducted. This assessment may be completed by either a health care professional listed in subsection (5) of this section or a representative of the RSN.

(12) After the client completes fifteen outpatient mental health visits under this benefit, the agency may request a written attestation that the client has been assessed for meeting access to care standards. This written attestation assures the mental health services are being provided in the appropriate place of service. This provider must respond to this request.

(13) To support continuity of care, the client may continue under the care of the provider until an RSN can receive the client.

(14) To be paid for providing mental health services, providers must bill the agency using the agency's published billing instructions.

(15) The agency considers a provider's acceptance of multiple payments for the same client for the same service on the same date to be a duplication of payment. Duplicative

payments may be recouped by the agency under WAC 182-502-0230. Providers must keep documentation identifying the type of service provided and the contract or agreement under which it is provided.

NEW SECTION

WAC 182-531-1710 Alcohol and substance misuse counseling. (1) The medicaid agency covers alcohol and substance misuse counseling through screening, brief intervention, and referral to treatment (SBIRT) services when delivered by, or under the supervision of, a qualified licensed physician or other qualified licensed health care professional within the scope of their practice.

(2) SBIRT is a comprehensive, evidence-based public health practice designed to identify, reduce and prevent problematic use, abuse, and dependence on alcohol and illicit drugs. SBIRT can be used to identify people who are at risk for or have some level of substance use disorder which can lead to illness, injury, or other long-term morbidity or mortality. SBIRT services are provided in a wide variety of medical and community health care settings such as primary care centers, hospital emergency rooms, and trauma centers.

(3) The following health care professionals are eligible to become qualified SBIRT providers to deliver SBIRT services or supervise qualified staff to deliver SBIRT services:

(a) Advanced registered nurse practitioners, in accordance with chapters 18.79 RCW and 246-840 WAC;

(b) Chemical dependency professionals, in accordance with chapters 18.205 RCW and 246-811 WAC;

(c) Licensed practical nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(d) Mental health counselors, in accordance with chapters 18.225 RCW and 246-809 WAC;

(e) Marriage and family therapists, in accordance with chapters 18.225 RCW and 246-809 WAC;

(f) Independent and advanced social workers, in accordance with chapters 18.225 RCW and 246-809 WAC;

(g) Physicians, in accordance with chapters 18.71 RCW and 246-919 WAC;

(h) Physician assistants, in accordance with chapters 18.71A RCW and 246-918 WAC;

(i) Psychologists, in accordance with chapters 18.83 RCW and 246-924 WAC;

(j) Registered nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(k) Dentists, in accordance with chapters 18.260 and 246-817; and

(l) Dental hygienists, in accordance with chapters 18.29 and 246-815 WAC.

(4) To become a qualified SBIRT provider, eligible licensed health care professionals must:

(a) Complete a minimum of four hours of SBIRT training; and

(b) Mail or fax the SBIRT training certificate or other proof of training completion to the agency.

(5) The agency pays for SBIRT as follows:

(a) Screenings, which are included in the reimbursement for the evaluation and management code billed;

(b) Brief interventions, limited to four sessions per client, per provider, per calendar year; and

(c) When billed by one of the following qualified SBIRT health care professionals:

- (i) Advanced registered nurse practitioners;
- (ii) Mental health counselors;
- (iii) Marriage and family therapists;
- (iv) Independent and advanced social workers;
- (v) Physicians;
- (vi) Psychologists;
- (vii) Dentists; and
- (viii) Dental hygienists.

(6) The agency evaluates a request for additional sessions in excess of the limitations or restrictions according to WAC 182-501-0169.

(7) To be paid for providing alcohol and substance misuse counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

NEW SECTION

WAC 182-531-1720 Tobacco cessation counseling.

(1) The medicaid agency covers tobacco cessation counseling when delivered by qualified providers through the agency contracted quitline or during face-to-face office visits for tobacco cessation for pregnant clients.

(2) The agency pays for face-to-face office visits for tobacco cessation counseling for pregnant clients with the following limits:

(a) When provided by physicians, advanced registered nurse practitioners (ARNPs), physician assistants-certified (PA-Cs), naturopathic physicians, and dentists;

(b) Two cessation counseling attempts (or up to eight sessions) are allowed every twelve months. An attempt is defined as up to four cessation counseling sessions.

(3) To be paid for tobacco cessation counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-531-1025 Oral health care services provided by dentists for clients age twenty-one and older—General.

WSR 15-03-042

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed January 12, 2015, 4:38 p.m., effective February 12, 2015]

Effective Date of Rule: Thirty-one days after filing.
Purpose: Revisions to these sections are necessary to:

- Add bilateral cochlear implants as a covered benefit for clients twenty years of age and younger. The agency uses

health technology assessment in determining coverage for new or existing technology when coverage is not mandated by federal or state law. This policy decision complies with a recent health technology assessment decision made by the health technology clinical committee (HTCC).

- Change repair policy to state, "The agency pays for repairs of hearing aids that are less than five years old."
- Change requirement that repair warranty be for a minimum of six months rather than ninety days.
- Change payment for rental hearing aids from two months to thirty days.

Citation of Existing Rules Affected by this Order:
Amending WAC 182-547-0800 and 182-531-0375.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 14-24-075 on November 26, 2014.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 12, 2015.

Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0375 Audiology services. (1) The ((department)) agency covers, with prior authorization, ((the implantation of a unilateral)) cochlear devices for clients twenty years of age and younger with the following limitations:

- (a) The client meets one of the following:
 - (i) Has a diagnosis of profound to severe bilateral, sensorineural hearing loss;
 - (ii) Has stimutable auditory nerves but has limited benefit from appropriately fitted hearing aids (e.g., fail to meet age-appropriate auditory milestones in the best-aided condition for young children, or score of less than ten or equal to forty percent correct in the best-aided condition on recorded open-set sentence recognition tests);
 - (iii) Has the cognitive ability to use auditory clues;
 - (iv) Is willing to undergo an extensive rehabilitation program;

- (v) Has an accessible cochlear lumen that is structurally suitable for cochlear implantation;
- (vi) Does not have lesions in the auditory nerve and/or acoustic areas of the central nervous system; or
- (vii) Has no other contraindications to surgery; and
- (b) The procedure is performed in an inpatient hospital setting or outpatient hospital setting.
- (2) The ~~((department))~~ agency covers ~~((osseointegrated bone anchored hearing aids (BAHA)))~~ BAHAs for clients twenty years of age and younger with prior authorization.
- (3) The ~~((department))~~ agency covers replacement parts and batteries for BAHAs and cochlear devices for clients twenty years of age and younger only. See WAC ~~((388-547-0800))~~ 182-547-0800.
- (4) The ~~((department))~~ agency considers requests for removal or repair of previously implanted ~~((bone anchored hearing aids (BAHA)))~~ BAHAs and cochlear devices for clients twenty one years of age and older only when medically necessary. Prior authorization from the ~~((department))~~ agency is required.
- (5) For audiology, the ~~((department))~~ agency limits:
- (a) Caloric vestibular testing to four units for each ear; and
- (b) Sinusoidal vertical axis rotational testing to three units for each direction.

AMENDATORY SECTION (Amending WSR 13-20-013, filed 9/20/13, effective 10/21/13)

WAC 182-547-0800 Hearing aids—Coverage—Clients twenty years of age and younger. (1) The agency covers new, nonrefurbished, monaural or binaural hearing aid(s), which includes the ear molds, for eligible clients twenty years of age and younger. In order for the provider to receive payment, the hearing aid must meet the client's specific hearing needs and ~~((be under))~~ carry a manufacturer's warranty for a minimum of one year.

(2) The agency pays for the following replacements as long as the need for replacement is not due to the client's carelessness, negligence, recklessness, or misuse in accordance with WAC 182-501-0050(8):

- (a) Hearing aid(s), which includes the ear molds, when:
- (i) The client's hearing aid(s) are:
- (A) Lost;
- (B) Beyond repair; or
- (C) Not sufficient for the client's hearing loss; and
- (ii) All warranties are expired.
- (b) Ear mold(s) when the client's existing ear mold is damaged or no longer fits the client's ear.
- (3) The agency pays for repairs of hearing aids that are less than five years old as follows:
- (a) A maximum of two repairs, per hearing aid, per year, when the repair is less than fifty percent of the cost of a new hearing aid. To receive payment, all of the following must be met:
- (i) All warranties are expired; and
- (ii) The repair ~~((is under))~~ is for a minimum of ~~((ninety days))~~ six months.
- (b) A rental hearing aid(s) for up to ~~((two months))~~ thirty days while the client's own hearing aid is being repaired. In

the case of a rental hearing aid(s), the agency pays separately for an ear mold(s).

(4) The agency pays for ~~((unilateral))~~ cochlear implant and ~~((osseointegrated hearing aids ()))~~ BAHA(()) replacement parts when:

- (a) The manufacturer's warranty has expired;
- (b) The part is for immediate use, not a back-up part; and
- (c) The part needs to be replaced due to normal wear and tear and is not related to misuse or abuse of the item (see WAC 182-502-0160)~~((and~~
- ~~((d) The part is not an external speech processor))~~.
- (5) The agency covers ~~((one))~~ cochlear implant external speech processors, including maintenance and repair.
- (6) The agency covers ~~((one))~~ BAHA speech processors, including maintenance and repair.
- (7) The agency covers batteries for hearing aids, cochlear implant external speech processors, and BAHA speech processors.

WSR 15-03-044

PERMANENT RULES

ENVIRONMENTAL AND

LAND USE HEARINGS OFFICE

(Pollution Control Hearings Board)

(Shorelines Hearings Board)

[Filed January 14, 2015, 8:38 a.m., effective February 14, 2015]

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

Purpose: One purpose of the amendments to both chapters 371-08 and 461-08 WAC is to allow the boards to routinely accept electronic filing for both filings of the initial petition for review and other types of filings.

Another purpose specifically of the amendments to WAC 371-08-315 is to update the existing rule to reflect additional types of appeals over which the legislature has given the pollution control hearings board jurisdiction.

Additional amendments reflect general cleanup and modernization of the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 371-08-300, 371-08-305, 371-08-315, 371-08-320, 371-08-325, 371-08-330, 371-08-335, 371-08-340, 371-08-355, 371-08-365, 371-08-375, 371-08-395, 371-08-430, 371-08-435, 371-08-440, 371-08-445, 371-08-450, 371-08-465, 371-08-475, 371-08-485, 371-08-535, 371-08-560, 371-08-565, 461-08-300, 461-08-305, 461-08-315, 461-08-320, 461-08-325, 461-08-335, 461-08-350, 461-08-385, 461-08-395, 461-08-415, 461-08-435, 461-08-455, 461-08-460, 461-08-465, 461-08-470, 461-08-475, 461-08-485, 461-08-490, 461-08-495, 461-08-555, and 461-08-575.

Statutory Authority for Adoption: RCW 43.21B.170, 90.58.175.

Adopted under notice filed as WSR 14-24-044 on November 24, 2014.

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 5, 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 44, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 44, 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: January 13, 2015.

Kathleen D. Mix
Agency Director

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-300 Purpose of this chapter and applicability of the board's rules of practice and the civil rules of procedure and the rules of evidence. (1) The purpose of chapter 371-08 WAC is to provide rules of practice before the pollution control hearings board (hereinafter "board"). The interpretation of these rules of practice may be guided, where relevant, by the civil rules of superior court (hereinafter "civil rules") and the rules of evidence for the superior courts of the state of Washington, as those rules have been construed by Washington state courts.

(2) Except where in conflict with the board's rules, Washington statutes regarding administrative procedure, pre-trial procedures, civil rules and rules of evidence shall be followed in proceedings before the board unless the presiding officer determines that the evidence, although in conflict with the rules of evidence, is admissible pursuant to WAC 371-08-500.

(3) This chapter shall govern practice before the board. The rules in this chapter are consistent with the model rules of procedure issued by the office of administrative hearings, chapter 10-08 WAC, except where specifically noted.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in RCW 34.05.010. The term "adjudicative proceeding" is used interchangeably with the terms "case" and "appeal" in this chapter.

(2) "Agency" means any state governmental entity, air pollution control authority, local health department or other agency whose decisions are subject to the board's jurisdiction.

(3) "Board" means the pollution control hearings board, a quasi-judicial board created pursuant to chapter 43.21B RCW and described in WAC 371-08-315. Where appropriate, the term "board" also refers to the designated agents of the pollution control hearings board.

(4) "Business days" means Monday through Friday exclusive of any state or federal holidays.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board (~~(during regular office hours:)~~) between the hours of 8:00 a.m. and 5:00 p.m. on days other than Saturdays, Sundays, or legal holidays. The board's date stamp placed on the document shall be evidence of the date of filing.

(a) Electronic filing of documents and fax filing of documents ten pages or less are permitted, so long as the original document and any required copies are mailed or submitted to a commercial delivery service on the same day. The date and time of receipt will be the date of transmission as indicated by the board's computer or fax machine and will constitute the date of filing, unless the transmission is completed after 5:00 p.m. or on a Saturday, Sunday, or legal holiday, in which case the date of filing will be the next business day.

(b) Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency and parties. ((Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.))

(7) "Party" means:

(a) A person to whom any agency decision is specifically directed; or

(b) A person named as a party to the adjudicative proceeding, allowed to intervene or joined as a party by the board.

(8) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(9) "Presiding officer" means a member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or vice-chairperson.

(10) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) ~~((Facsimile))~~ Fax transmission with mailing or submission to commercial delivery service of copies on the same day. Service by ~~((facsimile))~~ fax is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to delivery service of the copies.

(d) Commercial parcel delivery service. Service by commercial parcel delivery service is regarded as complete upon delivery to the parcel delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 371-08-315 Membership, function and jurisdiction. (1) **Members.** The board is composed of three members appointed by the governor, with the advice and consent of the senate, for a term of six years. The members are to be qualified by experience or training in pertinent matters pertaining to the environment, and at least one member shall be a lawyer, and not more than two members shall be of the same political party.

(2) **Function and jurisdiction.** The function of this board is to provide an expeditious and efficient disposition of appeals ~~((from the decisions and orders of))~~. The board has jurisdiction to hear and decide appeals from the following ~~decisions of the department of agriculture ((pursuant to chapters 90.48 and 90.64 RCW)), the department of ecology, ((from the decisions of)) the director of ecology, local conservation districts, air pollution control authorities established pursuant to chapter 70.94 RCW, ((from the decisions of)) local health departments, ((when such orders and decisions concern matters within the jurisdiction of the board as provided in RCW 43.21B.110, the decisions of)) the department of natural resources, the department of fish and wildlife, ((and the department of ecology that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7); forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180; decisions of the department of fish and wildlife to issue, deny, condition or modify a hydraulic project approval permit under chapter 77.55 RCW; decisions of the department of natural resources that are reviewable under RCW 78.44.270 and 78.44.380; and decisions of a))~~ any state agency that is an authorized public entity under RCW 79.100.010 ((to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120-)), and the parks and recreation commission:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.95.315, 70.95M.080, 70.95N.260, 70.105.080, 70.105.095(2), 70.107.050, 70.240.050, 70.275.-100, 70.275.110, 76.09.170, ((section 10, chapter 130, Laws of 2010, section 11, chapter 130, Laws of 2010, RCW)) 77.55.291, 78.44.250, ((section 1, chapter 84, Laws of 2010, RCW)) 86.16.081, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, ((90.56.320,)) 90.56.330, ((90.58.560 and chapter 90.64 RCW)) 90.64.102, and 90.76.080.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.-060, ~~((18.104.065))~~ 18.104.130, 43.27A.190, 70.94.211, 70.94.332, 70.94.640, 70.94.715, 70.95.315, 70.95C.230, 70.105.095, 70.107.060, 86.16.110, 88.46.070, 90.14.130, 90.14.190, 90.46.250 90.48.120, 90.48.240, and ((chapter 90.64 RCW)) 90.64.040.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, termination or denial of any permit, certificate or license by the department of ecology or any air pollution control authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, a decision to approve or deny a solid waste

management plan under RCW 70.95.094, an application for a solid waste permit exemption under RCW 70.95.300, an application for a change under RCW 90.03.383, or a permit to distribute reclaimed water under RCW 90.46.220.

(d) The granting, denial, revocation, or suspension of a water right examiner certificate issued by the department under ~~((chapter 285, Laws of 2010))~~ RCW 90.03.665.

(e) ~~Decisions ((by the department disapproving a comprehensive solid waste management plan or any amendments to that plan that are appealed by the submitting entity pursuant to RCW 70.95.094)) of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW, including appeals by the department of ecology as provided in RCW 70.95.185.~~

(f) ~~Decisions of local health departments regarding the ((grant or denial of solid waste)) issuance and enforcement of permits ((or of)) to use biosolids ((permits pursuant to chapter 70.95 RCW)) under RCW 70.95J.080.~~

(g) Disputes between the department and the governing bodies of local governments regarding local planning requirements under RCW 70.105.220 and zone designation under RCW 70.105.225, pursuant to RCW 70.105.250.

(h) Decisions of the department of ecology regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department of ecology regarding waste-derived soil amendments under RCW 70.95.300.

(i) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026 as provided in RCW 90.64.028.

(j) Any other decision by the department of ecology ~~((; the administrator of marine safety))~~ or an air pollution control authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(k) Decisions of the department of natural resources, the department of fish and wildlife, and the department of ecology that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(l) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(m) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(n) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(o) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable under RCW 79.100.120.

(3) This section is intended to be general and informational only, and failure herein to list matters over which the board has jurisdiction at law shall not constitute any waiver or withdrawal whatsoever from such jurisdiction.

AMENDATORY SECTION (Amending WSR 12-05-110, filed 2/22/12, effective 3/24/12)

WAC 371-08-320 (~~Environmental and land use hearings~~) **Board office hours** (~~(, telephone number and address)~~) **and contact information.** (1) The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. The board holds meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The information included in this section is current at the time of rule adoption, but may change. Current information is available on the board's internet site at www.eluho.wa.gov.

(a) The board is housed at the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington 98501. The principal hearing room used by the board is located at the same address, although many hearings are held near the site of the dispute at issue.

~~((3))~~ (b) The mailing address of the board is:

Pollution Control Hearings Board
P.O. Box 40903
Olympia, WA 98504-0903

~~((4))~~ (c) The telephone number of the board is 360-664-9160. The ~~((telefacsimile))~~ fax number is 360-586-2253. The board's e-mail address is eluho@eluho.wa.gov.

~~((5))~~ (3) The office hours of the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

AMENDATORY SECTION (Amending WSR 12-05-110, filed 2/22/12, effective 3/24/12)

WAC 371-08-325 Public information about practice before the board and public records. (1) Questions about practicing before the board may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone, ~~((telefacsimile))~~ fax, or e-mail.

(2) ~~((Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental and land use hearings office. The form for requests for public records is set forth on the agency's web site at www.eluho.wa.gov.~~

~~((3))~~ The environmental and land use hearings office maintains a web site with information on the pollution control hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a handbook with helpful information for practice before the board, sample forms, and links to the board's rules of practice and other pertinent statutes and rules. This web site may be accessed via the internet at ~~((<http://www.eluho.wa.gov>))~~ www.eluho.wa.gov.

(3) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental and land use hearings office. The proce-

dures for obtaining public records from the board are set forth in chapter 198-14 WAC.

AMENDATORY SECTION (Amending WSR 08-03-045, filed 1/10/08, effective 2/10/08)

WAC 371-08-330 Board decision making on appeals. The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW 43.21B-305, an appeal that involves a penalty of fifteen thousand dollars or less imposed by the department of ecology, another state agency or an air pollution control authority or that involves a derelict or abandoned vessel under RCW 79.100-120 may be heard by a single member of the board. Such appeals are called short-board appeals. The decision of that single member shall be the final decision of the entire board. For appeals that involve a derelict or abandoned vessel under RCW 79.100.120 only, an administrative appeals judge employed by the board may be substituted for a board member.

(2) **Full-board appeals.** All other types of appeals are called full-board appeals. The chairperson may assign a single member to hold the hearing in a full-board appeal; however, at least two members shall review the record and issue a decision. Two members of the board shall constitute a quorum for making a decision and may act although one position on the board is vacant or one board member is unavailable.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental and land use hearings office to be the presiding officer.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 371-08-335 Filing a timely appeal with the board. (1) An appeal before the board is initiated by filing a notice of appeal with the board at the environmental and land use hearings office and by serving a copy of the appeal notice on the agency whose decision is being appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished.

(2) The notice of appeal shall be filed with the board within thirty days of the date of receipt of the order or decision unless otherwise provided by law. The board's rule governing the computation of time (WAC 371-08-310) shall determine how the thirty-day appeal period is calculated. The "date of receipt" of an order or decision means:

(a) Five business days after the date of mailing; or
(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(3) An appeal may be filed with the board by personal delivery, commercial delivery, ~~((facsimile))~~ fax, electronic mail, or first-class, registered or certified mail. An appeal is filed with the board on the date the board actually receives

the notice of the appeal, not the date that the notice is mailed. Upon receiving the notice of appeal, the board will acknowledge receipt. The date stamped on the appeal notice shall be prima facie evidence of the filing date. The board may thereafter require that additional copies be filed.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-340 Contents of notice of appeal. The notice of appeal shall contain:

(1) The name, mailing address, telephone number (~~and telefacsimile~~), fax number (if available), and e-mail address (if available) of the appealing party, and of the representative, if any;

(2) Identification of the parties, by listing in the caption or otherwise. In every case, the agency whose decision is being appealed and the person to whom the decision is directed shall be named as parties;

(3) A copy of the order or decision appealed from, and if the order or decision followed an application, a copy of the application;

(4) A short and plain statement showing the grounds upon which the appealing party considers such order or decision to be unjust or unlawful;

(5) A clear and concise statement of facts upon which an appealing party relies to sustain his or her grounds for appeal(-);

(6) The relief sought, including the specific nature and extent;

(7) The signature of the representative of the appealing party or the appealing party. The signature of the representative or the appealing party shall constitute a certificate by the signatory that the signatory has read the notice of appeal and that it is consistent with civil rule 11;

(8) All pleadings shall be so construed as to do substantial justice.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-355 Petitions for declaratory ruling. (1) As prescribed by RCW 34.05.240, any interested person may petition the board for a declaratory ruling. The board shall consider any petition for declaratory ruling in accordance with these rules and the Administrative Procedure Act.

(2) Two members of the board shall constitute a quorum when the board acts on a petition for a declaratory (judgment petition) order. Two members of the board may act although one position on the board is vacant.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-365 Persons who may appear before the board. (1) Any person has the right to represent himself or herself in a proceeding before the board.

(2) The only persons who are qualified to represent another person or entity before the board are the following:

(a) Attorneys at law duly qualified and entitled to practice before the highest court of record of any state.

(b) An authorized officer, partner, owner, employee or member of an association, partnership, corporation, organization, government subdivision or agency.

(c) Legal interns admitted to practice under the applicable admission to practice rules of the Washington state court rules as long as the conditions and limitations of the applicable rules are satisfied.

(d) Any other individual designated by an entity to serve as spokesperson in a case, with the approval of the board's presiding officer.

(3) No former employee of the department or member of the attorney general's staff may (~~(, at any time after leaving the employment of the department or the attorney general,))~~ appear (~~(, except when permitted by the applicable state conflict of interest laws,))~~ in a representative capacity on behalf of other parties in a (~~(formal))~~ board proceeding (~~(in which an active part as a representative of the department was taken in the same case or proceeding))~~ except when permitted by applicable rules of professional conduct or conflict of interest laws.

(4) No former member of the board shall, for a period of one year after the termination of his or her membership, represent a party before the board on any matter.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-375 Withdrawal or substitution of representatives. An attorney or other representative withdrawing from a case shall immediately so notify the board and all parties of record in writing, or shall state such withdrawal on the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record (~~(, together with the written consent of the prior attorney or representative, and if such consent cannot be obtained, a written statement of the reason therefor shall be supplied))~~ consistent with civil rule 71.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 371-08-395 Mediation. In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the (~~(environmental hearings))~~ board(~~(s))~~ must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-430 Scheduling letter. (1) Upon receipt of a notice of appeal which complies with the requirements of these regulations, the board shall mail written notice to each party of the primary and, if applicable, the secondary hearing dates. The notice or scheduling letter will identify the case to be heard, the identity of the parties and the time and location of the hearing. The letter shall also state that an interpreter can be made available upon reasonable notice to the board for any witness or party who is hearing impaired or who does not speak English.

(2) The letter may set out a filing schedule for motions and prehearing briefs. Where the presiding officer decides to hold a prehearing conference, the letter shall also state the date, time and location of the prehearing conference.

~~((3) The scheduling letter shall control the subsequent course of the appeal unless modified for good cause by subsequent order of the board or the presiding officer.))~~

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-435 Prehearing conferences. (1) The board may, upon written request by a party or on its own, schedule a prehearing conference on not less than seven days notice mailed to each party to the appeal, at a time and place fixed by the board. ~~((A+) The purpose of the prehearing conference (, parties may engage in settlement negotiations. Where settlement proves unavailing, the presiding officer may schedule all deadlines for motions and discovery and memorialize those dates in a prehearing order. The prehearing order may also identify the issues to be tried, stipulations, admissions, witnesses and exhibits for the hearing))~~ is to prepare the case for hearing by scheduling prehearing deadlines and by identifying the issues. At the prehearing conference, the presiding officer will encourage the parties to engage in settlement negotiations as the case proceeds.

(2) Following the prehearing conference the presiding officer shall enter a prehearing order. Normally, this will include a statement of issues, a schedule for filing motions and briefs, as well as other matters which may bear on the preparation for hearing. The issues which the prehearing order identifies for the hearing shall control the subsequent course of the appeal, and shall be the only issues to be tried at the hearing, unless modified for good cause by subsequent order of the board or the presiding officer.

(3) Appearance by a party or by the party's representative at the prehearing conference is mandatory. If a party fails to attend a prehearing conference, that is not justified by good cause, the presiding officer may issue an order of default against the absent party or take other appropriate action.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-440 Settlement and mediation agreements. (1) Where the parties settle an appeal before hearing, the parties shall prepare and submit to the board a written order of dismissal to which the written settlement agreement

is attached ~~((If the agreement is in accordance with the law)),~~ submit that order to the board, and the board shall enter ~~((the))~~ an order and dismiss the case.

(2) This section also pertains to settlement agreements reached during mediation.

AMENDATORY SECTION (Amending WSR 05-15-017, filed 7/7/05, effective 8/7/05)

WAC 371-08-445 Use of telephone conferences, motion hearings and hearings. Upon the motion of any party or independently, the presiding officer may decide to conduct any conference, motion hearing or hearing by telephone call or other electronic means to promote the fair, speedy and economical processing of a matter.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-450 Motions. (1) An application to the board for an order must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request, or the board may independently set, ~~((an))~~ oral argument on the motion. The presiding officer will decide whether or not oral argument will be held and notify the parties accordingly. At oral argument, the board will consider the arguments of the parties but will not take evidence or testimony from witnesses.

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the secondary hearing date, or, if no secondary date applies, the primary hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion must be filed and served fourteen days from the receipt of the motion by the nonmoving party. The moving party then has ten days from receipt of the response to file and serve a reply.

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-465 Dismissal, default or withdrawal of the appeal. (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or dismissal order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests ~~((before the appellant rests its case in chief during the hearing are mandatory and afterwards are permissive))~~ to withdraw an appeal shall be governed by civil rule 41.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-475 Procedures at hearings. (1) **Presiding officer.** All hearings are conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** All testimony to be considered by the board must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

(a) An official record of all evidentiary hearings must be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer, who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence, except that in case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall present its evidence after the party initially presenting evidence has rested.

(c) Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

(d) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) **Opening statements.** Unless the presiding officer rules otherwise, parties may present an oral opening statement setting out briefly a statement of the basic facts, disputes and issues of the case.

(6) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) **Former employee as an expert witness.** Except when permitted by applicable state conflict of interest law, no former employee of the department may appear as an expert witness on behalf of other parties in a ~~((formal))~~ board proceeding in which he or she took an active part in the matter giving rise to the appeal as an employee of the department.

(8) **Objections and motions to strike.** Objections to the admission or exclusion of evidence must be in short form stating the legal grounds of objection relied upon.

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence ~~((and))~~. All rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 371-08-480 through 371-08-515.

AMENDATORY SECTION (Amending WSR 02-06-013, filed 2/22/02, effective 3/25/02)

WAC 371-08-485 Standard and scope of review and burden of proof at hearings. (1) Hearings shall be ~~((formal and))~~ quasi-judicial in nature. The scope and standard of review shall be de novo unless otherwise provided by law.

(2) The board shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

(3) The issuing agency shall have the initial burden of proof in cases involving penalties or regulatory orders. In other cases, the appealing party shall have the initial burden of proof.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-535 Final decisions and orders. (1) When the hearing on the appeal has been concluded, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by a majority of the board may be adopted which shall contain findings and conclusions as to each contested issue of fact and law material to the disposition of the matter.

(2) The record before the board shall be considered by at least two of the members of the board~~((s))~~; provided, that if two members cannot agree on a decision, the third member must consider the record before the board~~((s))~~; and provided further, that if two members cannot agree on a decision in any case, the substantive decision of the agency (or authority) will control.

(3) The board shall mail copies of the final decision and order to each party to the appeal or to the attorney or representative of record, if any. Service upon the representative constitutes service upon the party.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 371-08-560 Direct review to the court of appeals upon certification by the board. (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review by the court of appeals with the superior court and must serve the board and all parties of record. The application for direct

review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request to file a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties have fifteen days from the date the certificate is served to file a notice of discretionary review in the superior court. The notice must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review of the board's decision shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-565 Certification of record. (1) Within thirty days of receipt of a copy of the petition for judicial review to the superior court or notice of acceptance of the certificate of appealability by the court of appeals, the board shall certify and transmit to the reviewing court the record made before the board. Additional time for certification and transmission of the record may be allowed by the reviewing court.

(2) Normally the record will not include a transcript of the testimony. Unless the board has caused a transcript to be printed, arrangements for and costs of the written transcript shall be the obligation of the party seeking judicial review.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-300 Purpose of this chapter and applicability of the board's rules of practice to the civil rules of procedure and the rules of evidence. (1) The purpose of chapter 461-08 WAC is to provide rules of practice before the shorelines hearings board (hereinafter "board"). The interpretation

of these rules may be guided, where relevant, by the civil rules of superior court (hereinafter "civil rules") and the rules of evidence for the superior courts of the state of Washington, as those rules have been construed by Washington state courts.

(2) Except where in conflict with the board's rules, Washington statutes regarding administrative procedure, pre-trial procedures, civil rules and rules of evidence shall be followed in proceedings before the board unless the presiding officer determines that the evidence, although in conflict with the rules, is admissible pursuant to WAC 461-08-515.

(3) This chapter shall govern practice before the board. The rules in this chapter are consistent with the model rules of procedure issued by the office of administrative hearings, chapter 10-08 WAC except where specifically noted.

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

WAC 461-08-305 Definitions. The following terms apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Agency" means any state governmental entity.

(2) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in chapter 34.05 RCW. The terms "appeal," "adjudicative proceeding" and "case" are used interchangeably in this chapter.

(3) "Board" means the shorelines hearings board, a quasi-judicial body created pursuant to chapter 90.58 RCW and described in WAC 461-08-315.

(4) "Date of filing" as used in this chapter and RCW 90.58.140(6) has different meanings depending upon the type of local government decision that is being appealed.

(a) "Date of filing" of a local government's approval or denial of a substantial development permit, or local government's denial of a variance or conditional use permit, is the date of actual receipt by the department of the local government's decision.

(b) "Date of filing" of a local government's approval of a conditional use permit or variance is the date that the department transmits its final decision or order to local government.

(c) For substantial development permits filed simultaneously with approvals of conditional use permits or variances, the "date of filing" is the date that the department transmits its final decision or order on the variance or conditional use permit to local government.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board (~~during regular office hours~~) between the hours of 8:00 a.m. and 5:00 p.m. on days other than Saturdays, Sundays, or legal holidays. The board's date stamp placed on the document shall be evidence of the filing date.

(a) Electronic filing of documents, and fax filing of documents ten pages or less, are permitted, so long as the original document and any required copies are mailed or submitted to a commercial delivery service on the same day. The date and time of receipt will be the date of transmission as indicated by the board's computer or fax machine, unless the transmission

is completed after 5:00 p.m. or on a Saturday, Sunday, or legal holiday, in which case filing will be the next business day.

(b) Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties. ~~((Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.))~~

(7) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or water subject to chapter 90.58 RCW.

(8) "Party" means:

(a) A person to whom any local government or agency decision is specifically directed; or

(b) A person named as a party to the appeal, or allowed to intervene or joined as a party by the board.

(9) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(10) "Petition for review" is a document that when properly filed with the board initiates an adjudicative proceeding before the board.

(11) "Presiding officer" means any member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or the vice-chairperson.

(12) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) ~~((Facsimile))~~ Fax transmission with mailing or submission to a commercial delivery service of copies on the same day. Service by ~~((facsimile))~~ fax is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to a delivery service of the copies.

(d) Commercial delivery service. Service by commercial delivery service is regarded as complete upon delivery to the delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

WAC 461-08-315 Board membership, function and jurisdiction. (1) **Members.** The board is made up of six members. Three members are also members of the pollution control hearings board and are appointed by the governor. A fourth member is appointed by the association of Washington

cities and a fifth member is appointed by the Washington state association of ((county commissioners)) counties. The sixth member is the commissioner of public lands or the commissioner's designee.

(2) **Function and jurisdiction.** This board is a quasi-judicial body with powers of de novo review authorized by chapter 90.58 RCW to adjudicate or determine the following matters:

(a) Appeals from any person aggrieved by the granting, denying or rescinding of a permit issued or penalties incurred pursuant to chapter 90.58 RCW;

(b) Appeals of department rules, regulations or guidelines; and

(c) Appeals from department decisions to approve or reject a proposed master program or program amendment of local governments which are not planning under RCW 36.70A.040.

(3) This section is intended to be general and informational only and failure herein to list matters over which the board has jurisdiction shall not constitute a waiver or withdrawal of that jurisdiction.

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

WAC 461-08-320 Board office hours~~((, telephone number, telefacsimile number and address of the board))~~ **and contact information.** (1) The administrative business of the board, except rule making, is performed by the environmental and land use hearings office. To the extent necessary for rule making, the ~~((appeals))~~ board holds regular meetings at 10:00 a.m. on the second Tuesday of each month at the address set forth below.

(2) The information included in this section is current at the time of rule adoption, but may change. Current information is available on the board's internet site at www.eluho.wa.gov.

(a) The board is organized within the Environmental and Land Use Hearings Office, 1111 Israel Road S.W., Tumwater, Washington. The mailing address is:

Shorelines Hearings Board
P.O. Box 40903
Olympia, WA 98504-0903

~~((3))~~ (b) The telephone number of the board is 360-664-9160. The ~~((telefacsimile))~~ fax number is 360-586-2253. The board's e-mail address is eluho@eluho.wa.gov.

~~((4))~~ (3) The office hours of the environmental and land use hearings office are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays.

AMENDATORY SECTION (Amending WSR 13-21-068, filed 10/16/13, effective 11/16/13)

WAC 461-08-325 Public information about practice before the board and public records. (1) Questions about board procedures may be directed to the environmental and land use hearings office by mail or, during regular office hours, by telephone ~~((or by telefacsimile))~~, by fax, or e-mail at eluho@eluho.wa.gov.

(2) ~~((Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental hearings office. The form for requests for public records is set forth in WAC 198-14-050. Any person seeking to make copies of such public records may copy the documents at the environmental and land use hearings office for a reasonable charge per page.~~

~~((3))~~ The environmental and land use hearings office maintains a web site with information on the shorelines hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a brief description of the appeal process with helpful information for practice before the board, a set of frequently asked questions, sample forms, and links to the board's rules of procedure and other pertinent statutes and rules. This web site may be accessed via the internet at (~~(http://www.eluho.wa.gov)~~) www.eluho.wa.gov.

(3) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-14 WAC are available for public inspection and copying during regular office hours at the environmental and land use hearings office. The procedures for obtaining public records from the board are set forth in chapter 198-14 WAC.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-335 Types of petitions before the board. The board is empowered to hear and decide the following:

- (1) Petitions for review of permitting decisions;
- (2) Petitions for review of penalties imposed under chapter 90.58 RCW;
- (3) Petitions for review of master programs adopted by jurisdictions that are not ~~((subject))~~ planning pursuant to the Growth Management Act;
- (4) Petitions for review of regulations adopted by the department pursuant to chapter 90.58 RCW;
- (5) Petitions for declaratory rulings;
- (6) Petitions for rule making by the board; and
- (7) Petitions by the department for rescission of permits issued by local government.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-350 Contents of the petition for review. Petitions for review to the board pursuant to RCW 90.58.180 (1) and (2) shall contain:

- (1) The name, mailing address, telephone number ~~((and telefacsimile))~~, fax number (if available), and e-mail address (if available) of the appealing party, and of the representative, if any;
- (2) Identification of the parties, by listing in the caption or otherwise. In every case, the agency and/or the local government whose decision is being appealed and the person to whom the decision is directed shall be named as parties;

~~((3))~~ ~~((A copy of the application for a shoreline permit which was filed with the local government pursuant to RCW 90.58.140;~~

~~((4))~~ A copy of the decision or permit appealed from;
~~((5))~~ (4) A short and plain statement showing the grounds upon which the appealing party considers such decision or permit to be unjust or unlawful;

~~((6))~~ (5) A clear and concise statement upon which the appealing party relies to sustain his or her grounds for appeal;
~~((7))~~ (6) The relief sought, including the specific nature and extent;

~~((8))~~ (7) The signature of the ~~((representative of the))~~ appealing party or ~~((of the appealing party))~~ its representative. The signature of the representative or the appealing party shall constitute a certificate by the signatory that the signatory has read the petition and that it is consistent with civil rule 11;

~~((9))~~ (8) All pleadings shall be so construed as to do substantial justice.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-385 Persons who may appear before the board. (1) Any person has the right to represent himself or herself in a proceeding before the board.

(2) The only persons who are qualified to represent another person or entity before the board are the following:

- (a) Attorneys at law duly qualified and entitled to practice before the highest court of record of any state.
- (b) An authorized officer, partner, owner, employee or member of an association, partnership, corporation, organization, government agency or local government.
- (c) Legal interns admitted to practice under the applicable admission to practice rules of the Washington state court rules as long as the conditions and limitations of the applicable rules are satisfied.

(d) Any other individual designated by an entity to serve as a spokesperson in a case with the approval of the board's presiding officer.

(3) No former employee of the department, or local jurisdiction, or member of the attorney general's staff may appear in a representative capacity on behalf of other parties in a ~~((formal))~~ board proceeding ((in which an active part as a representative of the department was taken in the same case or proceeding, at any time after leaving the employment of the department or the attorney general)), except when permitted by applicable ~~((state))~~ rules of professional conduct or conflict of interest laws.

(4) No former member of the board shall, for a period of one year after the termination of his or her membership, represent a party before the board on any matter.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-395 Withdrawal or substitution of representatives. An attorney or other representative withdrawing from a case shall immediately so notify the board and all parties of record in writing, or shall state such withdrawal for the record at a conference or hearing. Any substitution of an

attorney or representative shall be accomplished by written notification to the board and to all parties of record (~~(; together with the written consent of the prior attorney or representative, and if such consent cannot be obtained, a written statement of the reason therefor shall be supplied)~~) consistent with civil rule 71.

AMENDATORY SECTION (Amending WSR 10-18-021, filed 8/23/10, effective 9/23/10)

WAC 461-08-415 Mediation. In all appeals, upon request of one or more parties and with the consent of all parties, the board may assign a mediator. The mediator must be an administrative appeals judge or other duly authorized agent of the board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the board. A person who mediates in a particular appeal may not participate in a hearing on that appeal and may not write the decision and order in the appeal. The mediator may not communicate with board members regarding the mediation other than to inform them of the pendency of the mediation and whether the case settled. Mediation provided by the (~~(pollution control hearings board or shoreline hearings)~~) board must be conducted pursuant to the provisions of the Uniform Mediation Act, chapter 7.07 RCW.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-435 Intervention. (1) The department and the attorney general may intervene by right within fifteen days from the date of receipt of the petition for review by the department or the attorney general pursuant to RCW 90.58.180(1) in any matter set out therein (~~(; and if such intervention is sought it shall be granted)~~).

(2) The presiding officer may grant a petition for intervention by any person at any time, upon determining that the petitioner qualifies as an intervenor pursuant to civil rule 24, that the intervention will serve the interests of justice and that the prompt and orderly conduct of the appeal will not be impaired.

(3) The presiding officer may impose conditions upon the intervenor's participation in the proceedings.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-455 Prehearing conferences. (1) The purpose of a prehearing conference (~~(shall be:~~

~~(a) To determine the feasibility of a settlement of the appeal or, failing settlement;~~

~~(b)) is to prepare the case for hearing by scheduling prehearing deadlines and by identifying the issues (~~(; and if possible, witnesses, exhibits, stipulations, and admissions)~~). At the prehearing conference, the presiding officer will encourage the parties to engage in settlement negotiations as the case proceeds.~~

(2) Appearance by a party or by the party's representative at a prehearing conference is mandatory. If a party fails to attend a prehearing conference, that is not justified by good

cause, the presiding officer may issue an order of default against the absent party or other appropriate action.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-460 Prehearing orders. (~~(After a)~~) Fol-
lowing the prehearing conference (~~(which has not resulted in settlement)~~) the presiding officer shall enter a prehearing order. Normally, this will include a statement of issues, a schedule for filing motions and briefs, (~~(and lists of witnesses and exhibits or provide for filing such lists)~~), as well as other matters which may bear on the preparation for hearing. The issues stated in the prehearing order shall control the subsequent course of the proceedings, unless modified for good cause by subsequent order.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-465 Settlement and mediation agreements. (1) Where the parties settle an appeal before hearing, the parties shall prepare a written order of dismissal to which the settlement agreement is attached, (~~(and)~~) submit that order to the board (~~(-If the agreement is in accordance with the law)~~), and the board shall enter (~~(the)~~) an order and (~~(dis-~~
~~pose of)~~) dismiss the case.

(2) This section also pertains to settlement agreements reached after mediation.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-470 Use of telephone conferences, motion hearings and hearings. Upon the motion of any party or independently, the presiding officer may decide to conduct any conference, oral argument on a motion, or hearing by telephone conference call or other electronic means to promote the fair, speedy, and economical processing of a matter.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-475 Motions. (1) An application to the board for an order must be by motion which, unless made during a hearing, must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the (~~(stipulation)~~) agreement of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request, or the board may independently set, an oral argument on the motion. The presiding officer will decide whether or not an oral argument will be held and notify the parties accordingly. At oral argument, the board will consider the arguments of the parties but will not take evidence or testimony from witnesses.

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion must be filed and served fourteen days from the receipt of the motion by the nonmoving party. The moving party then has ten days from receipt of the response to file and serve a reply.

(c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-485 Dismissal, default or withdrawal of appeal. (1) If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default or dismissal order for failure to attend or participate, the party against whom it was entered may file a written motion requesting that the order be vacated and stating the grounds relied upon.

(2) An appellant may request to withdraw an appeal. Requests ~~((before the appellant rests its case in chief during the hearing are mandatory and afterwards are permissive))~~ to withdraw an appeal shall be governed by civil rule 41.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-490 Hearing briefs. Hearing briefs, if filed, must be submitted to the board at least seven days before the time of hearing or ~~((other))~~ such other time as directed by the presiding officer. The original brief must be filed with the board and a copy served on the other parties or their attorneys. Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order. The board may permit or require the filing of additional briefs.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-495 Procedures at hearings. (1) **Presiding officer.** All hearings are conducted by a presiding officer

who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** All testimony to be considered by the board must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

(a) An official recording of all evidentiary hearings must be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer, who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence except that in the case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall introduce its evidence after the party initially presenting evidence has rested.

(c) Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

~~((e))~~ (d) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) **Opening statements.** Unless the presiding officer rules otherwise, parties shall present an oral opening statement setting out briefly a statement of the basic facts, disputes and issues of the case.

(6) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) **Former employee as an expert witness.** Except when permitted by applicable state conflict of interest law, no former employee of the department or the board or the attorney general may appear as an expert witness on behalf of other parties in a ~~((formal))~~ board proceeding in which he or she took an active part in the matter giving rise to the appeal as an employee or representative of the department or board.

(8) **Objections and motions to strike.** Objections to the admission or exclusion of evidence must be in short form, stating the legal grounds of objection relied upon.

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence ~~((and))~~. All rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 461-08-515 through 461-08-535.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-555 Final decisions and orders. (1) **Full-board cases.** When the hearing on the petition for review has been heard by a majority of the board in a full-

board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law material to the disposition of the matter. Provided, That in the event that the full board considers the record and that four of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(2) **Short-board cases.** When the hearing on the petition for review has been heard by two or more board members in a short-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the three board members consider the record and ~~((two))~~ a majority of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(3) The board shall mail copies of the final decision and order to each party to the petition for review or to the attorney or representative of record, if any. Service upon the representative constitutes service upon the party.

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-575 Direct review to the court of appeals based upon an accepted certificate of appealability by the board. (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review by the court of appeals with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request for a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties have fifteen days from the date the certificate is

served to file a notice of discretionary review in the superior court. The notice must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

WSR 15-03-048

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 14, 2015, 11:23 a.m., effective February 14, 2015]

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

Purpose: Commercial driver's license third-party tester fee: Amends the method of payment of testing fees to third party testers. The current rule provides that the fee will be paid to the department, and the department will reimburse the third-party tester. The amendment allows the department to specify the method of payment in the agreements to provide tester services entered into with the third party testers.

Citation of Existing Rules Affected by this Order: Amending WAC 308-100-180.

Statutory Authority for Adoption: RCW 46.01.110, 46.25.060, and 46.25.140.

Adopted under notice filed as WSR 14-24-120 on December 3, 2014.

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

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

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

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

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

Date Adopted: January 14, 2015.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-025, filed 11/28/07, effective 12/29/07)

WAC 308-100-180 Third party testing fee. (1)(a) Except as provided in WAC 308-100-190 or subsection (1)(b) of this section, the base fee for each classified skill examination or combination of skill examinations conducted

by a third party tester shall not be more than one hundred dollars.

(b) If the applicant's primary use of a commercial driver's license is for any of the following, then the examination fee for each commercial driver's license skill examination conducted by a third party tester shall not be more than seventy-five dollars:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).

(2) An applicant who has failed the skill examination must retest and pay the full fee required under subsection (1) of this section.

(3) The base fee shall apply only to the conducting of the examination, and is separate from any additional fees, such as vehicle use fees, which may be charged by the third party tester. Any additional fees to be charged shall be reported to the department.

(4) Fees owed to a third party tester under this section must be paid by the applicant ~~((to the department. The department will reimburse the third party tester for the fees))~~ as provided in the third party tester agreement entered into under WAC 308-100-140.

(5) The fees in this section are in addition to the regular drivers' licensing fees.

WSR 15-03-050

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed January 14, 2015, 2:26 p.m., effective February 14, 2015]

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

Purpose: Revisions to these sections are necessary to:

- Update erroneous rule citations and change "MAA" or "the department" to "the agency" throughout.
- Clarify that a client's freedom of access to health care does not require the agency to cover transportation at unusual or exceptional cost in order to meet a client's personal choice of provider (*WAC 182-546-5000*).
- Add clarification that health care services must be authorized, when required within specific program rules (*WAC 182-546-5500*).
- Reorganize *WAC 182-546-5550* to keep service categories and programs together and remove outdated information about the transitional bridge waiver for clients covered by the disability lifeline program and ADATSA.
- Add complex rehabilitation technology (CRT) to the list of allowable exceptions for brokered transportation (*WAC 182-546-5550*). Transportation is provided through the brokers for CRT because CRT must be fitted to the client.
- Add clarification that transportation of a client to a pharmacy to obtain one or more prescriptions is allowable when in route to or from the covered service ... (*WAC 182-546-5600*).

- Add clarification that the agency does not pay for transportation of a client to a pharmacy to obtain medicare part D prescriptions (*WAC 182-546-5600*).
- Increase the time limit from sixty to ninety days after major surgery that a broker may authorize transportation of a client to a provider outside the client's local community for ongoing treatment of medical conditions (*WAC 182-546-5700*).
- Rewrite *WAC 182-546-5700(7)* to make clear the agency's payment policy for nonemergency transportation to a provider outside the client's local community if all local Washington apple health providers refuse to see a client due to the client's noncompliance.
- Changed requirement time frame for requesting prior authorization from the broker in advance of the client's travel from forty-eight hours to two business days (*WAC 182-546-6200*).

Citation of Existing Rules Affected by this Order:
Amending WAC 182-546-5000, 182-546-5100, 182-546-5200, 182-546-5400, 182-546-5500, 182-546-5550, 182-546-5600, 182-546-5700, 182-546-5800, 182-546-5900, 182-546-6000, 182-546-6100, and 182-546-6200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 14-24-074 on November 26, 2014.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 13, Repealed 0.

Date Adopted: January 14, 2015.

Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5000 Nonemergency transportation—General. (1) The ~~((department))~~ medicaid agency covers nonemergency nonambulance transportation to and from covered health care services, as provided by the Code of Federal Regulations (42 C.F.R. 431.53 and 42 C.F.R. 440.170) subject to the limitations and requirements under WAC ~~((388-546-5000))~~ 182-546-5000 through ~~((388-546-6200))~~ 182-546-6200. See WAC ~~((388-546-1000))~~ 182-546-1000 for nonemergency ground ambulance transportation.

(2) The ~~((department))~~ agency pays for nonemergency transportation for clients covered under state-funded medical programs subject to funding appropriated by the legislature.

(3) Clients may not select the transportation provider~~((s))~~ or the mode of transportation.

(4) A client's freedom of access to health care does not require the agency to cover transportation at unusual or exceptional cost in order to meet a client's personal choice of provider.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5100 Nonemergency transportation—

Definitions. The following definitions and those found in ~~((WAC 388-500-0005))~~ chapter 182-500 WAC apply to nonemergency medical brokered transportation. Unless otherwise defined in WAC ~~((388-546-5200))~~ 182-546-5200 through ~~((388-546-6000))~~ 182-546-6000, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

"Ambulance" - See WAC ~~((388-546-0001))~~ 182-546-0001.

"Broker" - An organization or entity contracted with the ~~((department))~~ medicaid agency to arrange nonemergency transportation services for ~~((department))~~ clients.

"Drop off point" - The location authorized by the transportation broker for the client's trip to end.

"Escort" - A person authorized by the transportation broker to accompany and be transported with a client to a health care service. An escort's transportation may be authorized depending on the client's age, mental state or capacity, safety requirements, mobility skills, communication skills, or cultural issues.

"Extended stay" - A period of time spanning seven consecutive days or longer for which a client receives health care services outside of his or her local community and for which he or she may request assistance with meals and/or lodging.

"Guardian" - A person who is legally responsible for a client and who may be required to be present when a client is receiving health care services.

"Local community" - The client's city or town of residence or nearest location to residence.

"Local provider" - A provider, as defined in WAC ~~((388-500-0005))~~ 182-500-0085, who delivers covered health care service within the client's local community, and the treatment facility where the services are delivered are also within the client's local community.

"Lodging and meals" - Temporary housing and meals in support of a client's out-of-area medical stay.

"Mode" - A method of transportation assistance used by the general public that an individual client can use in a specific situation. Methods that may be considered include:

- Air transport;
- Bus fares;
- Ferries/water taxis;
- Gas vouchers;
- Grouped or shared-ride vehicles;
- Mileage reimbursement;

- Parking;
- Stretcher vans or cars;
- Taxi;
- Tickets;
- Tolls;
- Volunteer drivers;
- Walking or other personal conveyance; and
- Wheelchair vans.

"Noncompliance or noncompliant" - When a client:

- Fails to appear at the ~~((pick-up))~~ pickup point of the trip at the scheduled ~~((pick-up))~~ pickup time;
- Misuses or abuses ~~((department-paid))~~ agency-paid medical, transportation, or other services;
- Fails to comply with the rules, procedures, ~~((and/or))~~ or policies of the ~~((department and/or))~~ agency or those of the ~~((department's))~~ agency's transportation brokers, the brokers' subcontracted transportation providers, ~~((and))~~ or health care service providers;
- Poses a direct threat to the health ~~((and/or))~~ or safety of self or others; or
- Engages in violent, seriously disruptive, or illegal conduct.

"Pickup point" - The location authorized by the ~~((department's))~~ agency's transportation broker for the client's trip to begin.

"Return trip" - The return of the client to the client's residence, or another authorized drop-off point, from the location where a covered health care service has occurred.

"Short stay" - A period of time spanning one to six days for which a client receives health care services outside of his or her local community and for which he or she may request assistance with meals and/or lodging.

"Stretcher car or van" - A vehicle that can legally transport a client in a prone or supine position when the client does not require medical attention en route.

"Stretcher trip" - A transportation service that requires a client to be transported in a prone or supine position without medical attention during the trip. This may be by stretcher, board, gurney, or other appropriate device. Medical or safety requirements must be the basis for transporting a client in the prone or supine position.

~~((**"Trip"** - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.))~~

"Transportation provider" - An individual or company under contract with a broker, for the provision of trips.

"Trip" - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.

"Urgent care" - An unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5200 Nonemergency transportation broker and provider requirements. (1) The ~~((department))~~ medicaid agency requires:

(a) Brokers and subcontracted transportation providers to be licensed, equipped, and operated in accordance with applicable federal, state, and local laws, and the terms specified in their contracts;

(b) Brokers to:

(i) Screen their employees and subcontracted transportation providers and employees prior to hiring or contracting, and on an ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5; and

(ii) Report immediately to the ~~((department))~~ agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5.

(c) Drivers and passengers to comply with all applicable federal, state, and local laws and regulations during transport.

(2) Brokers:

(a) Must determine the level of assistance needed by the client (e.g., curb-to-curb, door-to-door, door-through-door, hand-to-hand) and the mode of transportation to be used for each authorized trip;

(b) Must select the lowest cost available mode or alternative that is both accessible to the client and appropriate to the client's medical condition and personal capabilities;

(c) Must have subcontracts with transportation providers in order for the providers to be paid by the broker;

(d) Must provide transportation services comparable to those available to the general public in the local community;

(e) May subcontract with licensed ambulance providers for nonemergency trips in licensed ground ambulance vehicles; and

(f) May contract with a federally recognized tribe within the broker's service region to provide transportation services when requested by that tribe. When the ~~((department))~~ agency approves the request of a tribe or a tribal agency to administer or provide transportation services under WAC ~~((388-546-5100))~~ 182-546-5100 through ~~((388-546-6200))~~ 182-546-6200, tribal members may obtain their transportation services from the tribe or tribal agency with coordination from and payment through the transportation broker.

(3) If the broker is not open for business and is unavailable to give advance approval for transportation to an urgent care appointment or after a hospital discharge, the subcontracted transportation provider must either:

(a) Provide the transportation in accordance with the broker's instructions and request a retroactive authorization from the broker within two business days of the transport; or

(b) Deny the transportation, if the requirements of this section cannot be met.

(4) If the subcontracted transportation provider provides transportation as described in subsection (3)(a) of this section, the broker may ~~((agree to))~~ grant retroactive authorization and must document the reason in the client's trip record.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5400 Nonemergency transportation—Client responsibility. (1) Clients must comply with applicable state, local, and federal laws during transport.

(2) Clients must comply with the rules, procedures ~~((and/or))~~ and policies of the ~~((department))~~ medicaid agency, brokers, the brokers' subcontracted transportation providers, and health care service providers.

(3) A client who is noncompliant may have limited transportation mode options available.

(4) Clients must request, arrange, and obtain authorization for transportation at least two business days before a health care appointment, except when the request is for an urgent care appointment or a hospital discharge.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5500 Nonemergency transportation—Covered trips. (1) The ~~((department))~~ medicaid agency covers nonemergency transportation for medical assistance clients to and from health care services when all of the following apply:

(a) The health care services are:

(i) Within the scope of coverage of the eligible client's benefit services package; ~~((and))~~

(ii) Covered as defined in WAC ~~((388-501-0050))~~ 182-501-0050 through ~~((388-501-0065))~~ 182-501-0065 and the specific program rules; and

(iii) Authorized, when required within specific program rules.

(b) The health care service is medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(c) The health care service is being provided as follows (see subsection (3) of this section for exceptions):

(i) Under fee-for-service, by ~~((a department contracted))~~ an agency-contracted provider;

(ii) Through ~~((a department contract))~~ an agency-contracted managed care organization (MCO), by an MCO provider; ~~((or))~~

(iii) Through a regional support network (RSN), by an RSN contractor; or

(iv) Through one of the following providers, as long as the provider is eligible for enrollment as a medicaid provider (see WAC 182-502-0012):

(A) A medicare enrolled provider;

(B) A provider in the network covered by the client's primary insurance where there is third-party insurance;

(C) A provider performing services paid for by the Veteran's Administration, charitable program, or other voluntary program (Shriners, etc.).

(d) The trip is to a local provider as defined in WAC ~~((388-546-5100))~~ 182-546-5100 (see WAC ~~((388-546-5700))~~ 182-546-5700(3) for local provider exceptions);

(e) The transportation is the lowest cost available mode or alternative that is both accessible to the client and appropriate to the client's medical condition and personal capabilities;

(f) The trip is authorized by the broker ~~((in advance of))~~ before a client's travel; and

(g) The trip is a minimum of three-quarters of a mile from pick-up point to the drop-off point (see WAC ~~((388-546-6200))~~ 182-546-6200(7) for exceptions to the minimum distance requirement).

(2) Coverage for nonemergency medical transportation is limited to one roundtrip per day, with the exception of multiple medical appointments which cannot be accessed in one roundtrip.

~~((3) Subsection (1)(c) of this section does not apply if the covered health care services is paid for or provided by medicare, a third party insurance, Veteran's Administration, charitable or other voluntary program (Shriners, etc.-))~~

AMENDATORY SECTION (Amending WSR 11-17-059, filed 8/15/11, effective 8/15/11)

WAC 182-546-5550 Nonemergency transportation— Exclusions and limitations. (1) The following service categories ~~((edited))~~ listed in WAC ~~((388-501-0060))~~ 182-501-0060 are subject to the following exclusions and limitations:

(a) Adult day health (ADH) - Nonemergency transportation for ADH services is not provided through the brokers. ADH providers are responsible for arranging or providing transportation to ADH services.

(b) Ambulance - Nonemergency ambulance transportation is not provided through the brokers except as specified in WAC ~~((388-546-5200(1)(d)))~~ 182-546-5200(2)(e).

~~((c) ((Family planning services— Nonemergency transportation is not provided through the brokers for clients that are enrolled only in TAKE CHARGE or family planning only services.~~

~~((d))~~ Hospice services - Nonemergency transportation is not provided through the brokers when the health care service is related to a client's hospice diagnosis. See WAC ~~((388-551-1210))~~ 182-551-1210.

~~((e))~~ (d) Medical equipment, durable (DME) - Nonemergency transportation is not provided through the brokers for DME services, ~~((with the exception of))~~ except for complex rehabilitation technology (CRT) and DME equipment that needs to be fitted to the client.

~~((f))~~ (e) Medical nutrition services - Nonemergency transportation is not provided through the brokers to pick up medical nutrition products.

~~((g))~~ (f) Medical supplies/equipment, nondurable (MSE) - Nonemergency transportation is not provided through the brokers for MSE services.

~~((h))~~ (g) Mental health services:

(i) Nonemergency transportation brokers generally provide one round trip per day to or from a mental health service. Additional trips for off-site activities, such as a visit to a recreational park, are the responsibility of the provider/facility.

(ii) Nonemergency transportation of an involuntarily detained person ~~((s))~~ under the Involuntary Treatment Act (ITA) is not a service provided or authorized by transportation brokers. Involuntary transportation is a service provided by an ambulance or a designated ITA transportation provider. See WAC ~~((388-546-4000))~~ 182-546-4000.

~~((i) Substance abuse services— Nonemergency transportation is not provided through the brokers for substance abuse services for clients under the state-funded medical programs (medical care services program (MCS)). See WAC 388-546-5200(2).~~

~~((j))~~ (h) Chemical dependency services - Nonemergency transportation is not provided through the brokers to or from the following:

(i) Residential treatment, intensive inpatient, or long-term treatment at certified facilities which are institutes for mental diseases (IMDs). Transportation may be provided to these services which are identified by the agency as non-IMDs, and therefore eligible to receive medicaid funds (refer to the catalog of federal domestic assistance (CFDA) program number 93.778);

(ii) ~~((Intensive inpatient;))~~ Recovery house; and

(iii) ~~((Recovery house;~~

~~(iv) Long-term treatment;~~

~~(v) Information and assistance services, which include:~~

~~(A) Alcohol and drug information school;~~

~~(B) Information and crisis services; and~~

~~(C) Emergency service patrol.)~~ Information and assistance services which include:

(A) Alcohol and drug information school;

(B) Information and crisis services; and

(C) Emergency service patrol.

(2) The ~~((following medical assistance programs have limitations on trips:~~

~~((a))~~ state-funded medical care services (MCS) program ~~((for clients covered by the disability lifeline program and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)—))~~ has a limitation on trips. Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The ~~((department))~~ medicaid agency does pay for nonemergency transportation to and from medical services ~~((as specified))~~ listed in WAC ~~((388-501-0060))~~ 182-501-0060, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules.

~~((b) Transitional bridge waiver for clients covered by the disability lifeline program and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA)— Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The department does pay for nonemergency transportation to and from medical services as covered in the transitional bridge waiver approved by the Centers for Medicare and Medicaid Services, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules.)~~ (3) The following programs do not have a benefit for brokered nonemergency transportation through the agency:

(a) Federal medicare savings and state-funded medicare buy-in programs (see chapter 182-517 WAC);

(b) Family planning services— Nonemergency transportation is not provided for clients that are enrolled only in TAKE CHARGE or family planning only services; and

(c) Alien emergency medical (AEM) — See WAC 182-507-0115.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5600 Nonemergency transportation— Intermediate stops or delays. (1) The ~~((department))~~ medic-

aid agency does not pay for any costs related to intermediate stops or delays that are not directly related to the original approved trip, including trips that would, or did, result in additional transportation costs due to client convenience.

(2) Brokers may authorize intermediate stops or delays for clients if the broker determines that the intermediate stop is:

(a) Directly related to the original approved trip; or
 (b) Likely to limit or eliminate the need for supplemental covered trips.

(3) The ~~((department))~~ agency considers the following reasons to be related to the original trip:

(a) Transportation of the client to and from an immediate subsequent medical referral/appointment; or

(b) Transportation of the client to a pharmacy to obtain one or more prescriptions when in route to or from the covered service and the pharmacy is within a reasonable distance of the usual route to the medical appointment. The agency does not pay for transportation of the client to a pharmacy to obtain medicare Part D prescriptions.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5700 Nonemergency transportation—Local provider and trips outside client's local community.

(1) Clients receiving services provided under fee-for-service and/or through a ~~((department))~~ medicaid agency-contracted managed care organization (MCO) are transported to a local provider only.

(a) A local provider's medical specialty may vary as long as the provider is capable of providing medically necessary care that is the subject of the appointment or treatment;

(b) A provider's acceptance of the ~~((departments'))~~ agency's clients may determine if the provider may be considered as an available local provider, along with whether ~~((managed care))~~ MCO, primary care case management, or third party participation is involved.

(2) Brokers are responsible for considering and authorizing exceptions. See subsection (3) of this section for exceptions.

(3) A broker may transport a client to a provider outside the client's local community for covered health care services when any of the following apply:

(a) The health care service is not available within the client's local community.

(i) If requested by the broker, the client or the client's provider must provide documentation from the client's primary care provider (PCP), specialist, or other appropriate provider verifying the medical necessity for the client to be served by a health care provider outside of the client's local community.

(ii) If the service is not available in the client's local community, the broker may authorize transportation ~~((may be authorized))~~ to the nearest provider where the service may be obtained~~((-))~~;

(b) The transportation to a provider outside the client's local community is required for continuity of care.

(i) If requested by the broker, the client or ~~((their))~~ the client's provider must submit documentation from the client's

PCP, specialist, or other appropriate provider verifying the existence of ongoing treatment for medically necessary care by the provider and the medical necessity for the client to continue to be served by the health care provider.

(ii) If the broker authorizes transportation to a provider outside the client's local community based on continuity of care, this authorization is for a limited period of time for completion of ongoing care for a specific medical condition. Each transport must be related to the ongoing treatment of the specific condition that requires continuity of care.

(iii) Ongoing treatment of medical conditions that may qualify for transportation based on continuity of care, include but are not limited to:

(A) Active cancer treatment;

(B) Recent transplant (within the last twelve months);

(C) Scheduled surgery (within the next sixty days);

(D) Major surgery (within the previous ~~((sixty))~~ ninety days); or

(E) Third trimester of pregnancy~~((-))~~;

(c) The health care service is paid by a third payer who requires or refers the client to a specific provider within their network;

(d) The total cost to the ~~((department))~~ agency, including transportation costs, is lower when the health care service is obtained outside of the client's local community; and

(e) A provider outside the client's local community has been issued a global payment by the ~~((department))~~ agency for services the client will receive and the broker determines it to be cost effective to provide transportation for the client to complete treatment with this provider.

(4) Brokers determine whether an exception should be granted based on documentation from the client's health care providers and program rules. Brokers may refer requests to transport a client to a provider outside the client's local community for health care services to the ~~((department's))~~ agency's medical director or the medical director's designee for review and/or authorization.

(5) When a client or a provider moves to a new community, the existence of a provider-client relationship, independent of other factors, does not constitute a medical need for the broker to authorize and pay for transportation to the previous provider.

(6) The health care service must be provided in the state of Washington or a designated border city, unless the ~~((department))~~ agency specifically authorizes transportation to an out-of-state provider in accordance with WAC ~~((388-546-5800))~~ 182-546-5800.

~~((The department does not authorize and pay for nonemergency transportation to providers outside the client's local community if the client's noncompliance is the reason a local health care provider or service is not available.))~~ If local Washington apple health providers refuse to see a client due to the client's noncompliance, the agency does not authorize or pay more for nonemergency transportation to a provider outside the client's local community.

(a) In this circumstance, the agency pays for the least costly, most appropriate, mode of transportation from one of the following options:

(i) Transit bus fare;

(ii) Commercial bus or train fare;

(iii) Gas voucher; or

(iv) Mileage reimbursement.

(b) The agency's payment, whether fare, tickets, voucher, or mileage reimbursement, is determined using the number of miles from the client's authorized pickup point (e.g., client residence) to the location of the local health care provider who otherwise would have been available if not for the client's noncompliance.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5800 Nonemergency transportation—Trips out-of-state/out-of-country. (1) The ~~((department))~~ medicaid agency reviews requests for out-of-state nonemergency transportation in accordance with regulations for covered health care services, including WAC ~~((388-501-0180, 388-501-0182 and 388-501-0184))~~ 182-501-0180, 182-501-0182 and 182-501-0184.

(2) The agency does not pay for nonemergency transportation ((is not provided)) to or from locations outside of the United States and U.S. territories, except ((for the limitations)) as allowed under WAC 182-501-0184 for British Columbia, Canada((, identified in WAC 388-501-0184)).

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-5900 Nonemergency transportation—Meals, lodging, escort/guardian. (1) The ~~((department))~~ medicaid agency may pay for meals and lodging for clients who must be transported to health care services outside of the client's local community. The ~~((department's))~~ agency's transportation brokers determine when meals and lodging are necessary based on a client's individual need.

(2) Brokers may authorize payment for meals and lodging for up to one calendar month. Extensions beyond the initial calendar month must be prior authorized by the broker on a month-to-month, week-to-week, or as-needed basis.

(3) Brokers follow the ~~((department's))~~ agency's guidelines in determining the reasonable costs of meals and lodging. The ~~((department's))~~ agency's guidelines are:

(a) The reasonable cost of lodging for short and extended stays is measured against state per diem rates.

(b) For short stays, the cost of meals is measured against the state per diem rate.

(c) For extended stays, the reasonable cost of meals is measured against the state's basic food program. The maximum monthly allowable meal cost for extended stays is not to exceed the client's calculated monthly food benefit or state per diem rates.

(4) The ~~((department))~~ agency pays for the transportation of an authorized escort, including meals and lodging, when all of the following apply:

(a) The client is present, ~~((with the exception of))~~ except as stated in subsection (5) of this section; and

(b) The broker determines the transportation costs of an ~~((s-are))~~ escort is necessary based upon the client's age, mental state or capacity, safety requirements, mobility requirements, communication or translation requirements, or cultural issues.

(5) The ~~((department))~~ agency may authorize and pay for the transportation of an authorized escort or guardian, with or without the presence of the client, if the broker determines, and documents, that the presence of the authorized escort or guardian is necessary to ensure that the client has access to medically necessary care.

(6) Lodging and meals for all out-of-state nonemergency transportation must be prior authorized by the ~~((department))~~ agency. Border areas as defined by WAC ~~((388-501-0175))~~ 182-501-0175 are considered in-state under this section and subsequent sections.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-6000 Nonemergency transportation—Authorization. (1) The ~~((department))~~ medicaid agency contracts with brokers to authorize or deny requests for transportation services.

(2) Brokers may refer requests to transport a client to a provider to the ~~((department's))~~ agency's medical director or designee for a review ~~((and/or))~~ or authorization.

(3) Nonemergency medical transportation, other than ambulance, must be prior authorized by the broker. See WAC ~~((388-546-5200))~~ 182-546-5200 (3) and (4) and ~~((388-546-6200))~~ 182-546-6200(4) for granting retroactive authorization.

(4) The broker mails a written notice of denial to each client who is denied authorization of transportation.

(5) A client who is denied nonemergency transportation under this chapter may request an administrative hearing, if one is available under state and federal law.

(6) If the ~~((department))~~ agency approves a medical service under exception to rule (ETR), the authorization requirements of this section apply to transportation services related to the ETR service.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-6100 Nonemergency transportation—Noncovered. (1) The ~~((department))~~ medicaid agency does not cover ~~((any))~~ nonemergency transportation that is not specifically addressed in WAC ~~((388-546-5000))~~ 182-546-5000 through ~~((388-546-6200))~~ 182-546-6200.

(2) Brokers do not provide nonemergency transportation for admissions under the Involuntary Treatment Act (ITA), as defined in WAC ~~((388-546-4000))~~ 182-546-4000.

(3) The ~~((department))~~ agency does not provide escorts or cover the cost of wages of escorts.

(4) The ~~((department))~~ agency does not cover the purchase or repair of equipment for privately owned vehicles or modifications of privately owned vehicles under the non-emergency transportation program. The purchase or repair of equipment for a privately owned vehicle or modification of a privately owned vehicle is not a health care service. Exception to rule (ETR) as described in WAC ~~((388-501-0160))~~ 182-501-0160 is not available for ~~((this nonhealth))~~ equipment that is not a health care service.

AMENDATORY SECTION (Amending WSR 11-17-032, filed 8/9/11, effective 8/9/11)

WAC 182-546-6200 Nonemergency transportation—Reimbursement. (1) To be reimbursed for trips, meals, ~~((and))~~ or lodging, the requestor must receive prior authorization from the broker at least ~~((forty-eight hours))~~ two business days in advance of the client's travel.

(2) A client must request reimbursement of preauthorized expenditures for trips, meals, ~~((and))~~ or lodging within thirty days after his or her medical appointment~~((s))~~. The broker may consider reimbursement requests beyond thirty days if a client shows good cause as defined in WAC 388-02-0020 for having not requested reimbursement within thirty days.

(3) To be reimbursed for mileage, ~~((fuel/gas))~~ fuel, parking, bridge tolls, ~~((and))~~ or ferry fees, the requestor must provide the broker with legible copies of:

- (a) Receipt(s);
- (b) The operator's ~~((driver))~~ valid driver's license;
- (c) ~~((Current))~~ Valid vehicle registration; and
- (d) Proof of insurance for the vehicle/operator at the time of the trip.

(4) The ~~((department))~~ medicaid agency or the broker may retroactively authorize and reimburse for transportation costs, including meals and lodging when:

(a) A client is approved for a delayed certification period as defined in WAC 182-500-0025, or for a retroactive eligibility period as defined in WAC 182-500-0095, or is ~~((approved for a delayed certification period))~~ retroactively eligible for a medically needy program which requires a spenddown as defined in WAC ~~((388-500-0005))~~ 182-500-0100;

(b) The transportation costs were not used to meet a client spenddown liability in accordance with WAC ~~((388-519-0110))~~ 182-519-0110;

(c) The transportation costs for which retroactive reimbursement is requested falls within the period of retroactive eligibility or delayed certification;

(d) The client received medically necessary services that were covered by ~~((their))~~ the client's medical program for the date(s) of service for which retroactive reimbursement is requested; and

(e) The request for retroactive reimbursement is made within sixty days from the date of eligibility notification (award letter), not to exceed eight months from the date(s) of service for which reimbursement is requested.

(5) When transportation cost(s) are retroactively authorized, the reimbursement amount must not exceed the reimbursement amount that would have been authorized prior to the date(s) of service.

(6) To be paid by the broker for nonemergency transportation services:

(a) Ambulance providers must be subcontracted with the broker in accordance with WAC ~~((388-546-5200-1)(d))~~ 182-546-5200.

(b) Nonambulance providers must be subcontracted with the broker in accordance with WAC ~~((388-546-5200-1)(e))~~ 182-546-5200.

(7) The ~~((department))~~ agency, through its contracted brokers, does not pay for nonemergency transportation when:

(a) The health care service the client is requesting transportation to or from is not a service covered by the client's medical program~~((s))~~;

(b) The covered health care service is within three-quarters of a mile from the pick-up point, except when:

(i) The client's documented and verifiable medical condition and personal capabilities demonstrates that the client is not able to walk three-quarters mile distance;

(ii) The trip involves an area that the broker determines is not physically accessible to the client; or

(iii) The trip involves an area that the ~~((department's))~~ agency's broker considers to be unsafe for the client, other riders, or the driver.

(c) The client has personal or informal transportation resources that are available and appropriate to the clients' needs;

(d) Fixed-route public transportation service is available to the client within three-quarters of a mile walking distance. Exceptions to this rule may be granted by the transportation broker when the need for more specialized transportation is documented. Examples of such a need may be the client's use of a portable ventilator, a walker, or a quad cane; or

(e) The mode of transport that the client requests is not necessary, suitable, or appropriate to the client's medical condition.

WSR 15-03-056

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 14, 2015, 5:11 p.m., effective February 14, 2015]

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

Purpose: WAC 392-121-182 requires updating to clarify school district responsibilities for nonresident students.

The 2013 legislature, in ESSB 5946, directed the office of superintendent of public instruction (OSPI) to create a standard form for school districts to use when releasing a student from their resident district to a nonresident district for the purpose of enrolling in an online school program. With the implementation of this new standardized transfer system, OSPI updated the expectations for districts around the responsibility for nonresident students who leave the nonresident district prior to the expiration of the transfer. The proposed rule change aligns the alternative learning experience rules with the updated policy as outlined in OSPI Bulletin B008-14.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 14-22-104 on November 4, 2014.

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

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

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

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

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

Date Adopted: December 10, 2014.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 13-22-076, filed 11/5/13, effective 12/6/13)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's policy and this chapter.

(ii) The categories of alternative learning experience courses are:

(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work((-);

(c) "Certificated teacher" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session;

(j) "School-based support staff" means an employee of a school district, or of a school district contractor pursuant to WAC 392-121-188, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(l) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(m) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan(-);

(n) "Written student learning plan" means a written plan for learning that includes at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(i) Direct personal contact; or

- (ii) In-person instructional contact; or
- (iii) Synchronous digital instructional contact.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not

required if the evaluation is delivered within the last five school days of the school year.

(viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district.

(5) Required school district board policies for alternative learning experiences: The board of directors of a school district claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) responsible for overseeing the district's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for

the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience courses or course work must be consistent in quality with those available to the district's overall student population.

(g) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion.

(i) School districts are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's regular instructional program. This prohibition extends to a district's contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts from contracting with school district employees to provide services or experiences to students; or

(ii) Prohibit school districts from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts that contract with school district employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district that provides alternative learning experience courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district and made available for audit.

(ii) In the event a school district cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district may enroll the student for a conditional period of no longer than

thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district or the school district contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences. ~~((School districts enrolling such students in alternative learning experiences are subject to all school district duties and liabilities pertaining to such students for the full school year, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW, until such time as the student has actually enrolled in another school district, or has otherwise met the mandatory attendance requirements specified by RCW 28A.225.010.))~~

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's alternative learning experience courses by the office of the state auditor.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students

enrolled in an alternative learning experience must be determined as follows:

(a) The school district must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district in the subsequent month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) Assessment requirements:

(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident alternative learning experience courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and

reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(9) Reporting requirements:

(a) Each school district offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences as well as information about the resident and serving districts of such students.

(b) Each school district offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's regular instructional program.

(c) Each school district offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(d) Each school district offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. Beginning with the 2013-14 school year, school districts must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(10) Documentation and record retention requirements: School districts claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section.

WSR 15-03-070

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Operations Support and Services Division)

(Background Check Central Unit)

[Filed January 15, 2015, 2:51 p.m., effective February 15, 2015]

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

Purpose: The purpose of this coordinated rule making is to move children's administration (CA) background check requirements from chapter 388-06 WAC, WAC 388-06-0010 through 388-06-0260, to chapter 388-06A WAC. Under a separate CR-103, CA will create chapter 388-06A WAC and permanently adopt CA's background check rules. This rule making is intended to resolve confusion and misapplication of program-specific background check requirements that exist because CA programmatic background check requirements are contained in the rule chapter for department-wide background check requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-06-0010, 388-06-0020, 388-06-0100, 388-06-0110, 388-06-0120, 388-06-0130, 388-06-0140, 388-06-0150, 388-06-0160, 388-06-0170, 388-06-0180, 388-06-0190, 388-06-0200, 388-06-0210, 388-06-0220, 388-06-0230, 388-06-240, 388-06-0250, and 388-06-0260.

Statutory Authority for Adoption: RCW 43.43.832.

Other Authority: RCW 74.15.030, 43.43.832, 43.43.837.

Adopted under notice filed as WSR 14-23-074 on November 18, 2014.

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 19.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 19.

Date Adopted: January 14, 2015.

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-06-0010 What is the purpose of this chapter?
- WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter?
- WAC 388-06-0100 Why are background checks done?
- WAC 388-06-0110 Who must have background checks?
- WAC 388-06-0120 Who is not affected by this chapter?
- WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children?
- WAC 388-06-0140 What happens if I don't comply with the background check requirement?
- WAC 388-06-0150 What does the background check cover?
- WAC 388-06-0160 Who pays for the background check?
- WAC 388-06-0170 Will a criminal conviction permanently prohibit me from being licensed, contracted, or authorized to have unsupervised access to children or to individuals with developmental disability?
- WAC 388-06-0180 Are there other criminal convictions that will prohibit me from working with children or individuals with a developmental disability?
- WAC 388-06-0190 If I have a conviction, may I ever have unsupervised access to children?
- WAC 388-06-0200 Will I be disqualified if there are pending criminal charges on my background check?

- WAC 388-06-0210 Will you license, contract, or authorize me to have unsupervised access to children if my conviction has been expunged, or vacated from my record or I have been pardoned for a crime?
- WAC 388-06-0220 How will I know if I have not been disqualified by the background check?
- WAC 388-06-0230 How will I know if I have been disqualified by the background check?
- WAC 388-06-0240 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check?
- WAC 388-06-0250 Is the background check information released to my employer or prospective employer?
- WAC 388-06-0260 May I receive a copy of my criminal background check results?

WSR 15-03-071
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed January 15, 2015, 2:51 p.m., effective February 15, 2015]

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

Purpose: The children's administration (CA) and background check central unit are making joint rule making to rescind the background check WAC related to CA in chapter 388-06 WAC, WAC 388-06-0010 through 388-06-0260, and establish a new chapter for CA's background check requirements, chapter 388-06A WAC. These changes also reflect the changes made in SSB 6095 that were passed in the 2014 legislation and will align with existing state laws. Emergency rules are currently in place for WAC 388-06-0170 and 388-06-0180 until the rules are final.

Statutory Authority for Adoption: RCW 43.43.832.

Adopted under notice filed as WSR 14-23-075 on November 18, 2014.

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 18, 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 18, Amended 0, Repealed 0.

Date Adopted: January 14, 2015.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-06A-0010 What is the purpose of this chapter? This chapter establishes rules for background checks conducted by children's administration (CA) at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

NEW SECTION

WAC 388-06A-0020 What definitions apply to WAC 388-06A-0100 through 388-06A-0260 of this chapter? The following definitions apply to WAC 388-06A-0100 through 388-06A-0260 of this chapter:

"Authorized" or **"authorization"** means not disqualified by the department to have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"CA" means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

"Children" means a person who is one of the following:

(1) Under eighteen years old;

(2) Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;

(3) Up to twenty-one years of age and participating in the extended foster care program;

(4) Up to twenty-one years of age and under the custody of the Washington state juvenile rehabilitation administration.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but

not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Department or DSHS" means the department of social and health services (DSHS).

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies and licensed group care facilities.

"I" and **"you"** refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"Unsupervised" means will not or may not be in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

(2) Another individual who has been previously approved by children's administration.

"We" refers to the department, including licensors and social workers.

"WSP" refers to the Washington state patrol.

NEW SECTION

WAC 388-06A-0100 Why are background checks done? The children's administration does background checks to help safeguard the health, safety and well-being of children in out of home care. By doing background checks, the department reduces the risk of harm to children from individuals that have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, or authorized to have unsupervised access to children.

NEW SECTION

WAC 388-06A-0110 Who must have background checks? (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or con-

tracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, per RCW 74.13.710;

(c) A relative other than a parent who may be caring for a child; and

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(3) Per RCW 13.34.138, prior to returning a dependent child home the department requires a background check on all adults residing in the home.

NEW SECTION

WAC 388-06A-0120 Who is not affected by this chapter? This chapter does not apply to schools, hospitals, or other facilities where the primary focus is not custodial.

NEW SECTION

WAC 388-06A-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children? For children's administration, these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children that are processed by the children's administration after the effective date of this chapter.

NEW SECTION

WAC 388-06A-0140 What happens if I don't comply with the background check requirement? The department will deny, suspend or revoke your license, contract, certification, or disqualify you to care for children if you or someone on the premises of your home or facility having unsupervised access does not comply with the department's requirement for a background check.

NEW SECTION

WAC 388-06A-0150 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) through (2) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(4) Except as required in WAC 388-06A-0150 (4)(b), children's administration will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

NEW SECTION

WAC 388-06A-0160 Who pays for the background check? (1) Children's administration (CA) pays the DSHS general administrative costs for background checks for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays the WSP and FBI fingerprint processing fees for foster home applicants, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults associated with the home requiring background clearances under chapter 13.34 RCW.

(3) Children's administration does not pay WSP and FBI fingerprint processing fees or expenses for employees, contractors, or volunteers associated with facilities other than foster homes, adoptive homes proposed by the children's administration, or relative or other suitable caregiver homes.

NEW SECTION

WAC 388-06A-0170 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, or authorized to have unsupervised access to children? (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, certified or authorized to have unsupervised access to children. Those felony convictions are as follows:

- (a) Child abuse and/or neglect;
- (b) Spousal abuse;
- (c) A crime against a child (including child pornography);
- (d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault or battery); or

(e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children in any home or facility.

(2) If you are convicted of one of the crimes listed in WAC 388-06A-0170 (1)(a) through (e) you will not be able to:

- (a) Receive a license to provide care to children;
- (b) Be approved for adoption of a child;
- (c) Be a contractor;
- (d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children;
- (e) Volunteer or participate as an intern in a home or facility that offers care to children; or
- (f) Provide any type of care to children, if the care is funded by the state.

NEW SECTION

WAC 388-06A-0180 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, or authorized to have unsupervised access to children or from working with children? The department must disqualify you from licensing, contracting, certification, or from having unsupervised access to children if it has been less than five years from a conviction for the following crimes:

- (1) Any felony physical assault or battery offense not included in WAC 388-06A-0170;
- (2) Any felony violation of the following drug-related crimes:
 - (a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW));
 - (b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);
 - (c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);
 - (d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or
 - (e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.
- (5) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from having unsupervised access to children.

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

NEW SECTION

WAC 388-06A-0190 If I have a conviction, may I ever have unsupervised access to children? (1) In two situations, DSHS may find a person with convictions able to have unsupervised access to children:

- (a) If the conviction for any crime listed in WAC 388-06A-0180 occurred more than five years ago; or
 - (b) If the conviction was for a crime other than those listed in WAC 388-06A-0170 or 388-06A-0180.
- (2) In both of these situations, DSHS must review your background to determine your character, suitability, and

competence to have unsupervised access to children. In this review, DSHS must consider the following factors:

- (a) The amount of time that has passed since you were convicted;
- (b) The seriousness of the crime that led to the conviction;
- (c) The number and types of other convictions in your background;
- (d) Your age at the time of conviction;
- (e) Documentation indicating you have successfully completed all court-ordered programs and restitution;
- (f) Your behavior since the conviction; and
- (g) The vulnerability of those that would be under your care.

NEW SECTION

WAC 388-06A-0200 Will I be disqualified if there are pending criminal charges on my background check?

- (1) The department will not license, contract, certify, or authorize a person to have unsupervised access to children who have a criminal charge pending for a disqualifying crime described in the adoption and safe families act of 1997, or a criminal charge pending for a disqualifying crime that relates directly to child safety, permanence, or well-being.
- (2) You may reapply for a license, contract, certification, or approval to have unsupervised access to children by providing proof to the department that the charge against you has been dropped or that you were acquitted.

NEW SECTION

WAC 388-06A-0210 Will you license, contract or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime? If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, or authorization for unsupervised access to children.

NEW SECTION

WAC 388-06A-0220 How will I know the status of the background check? (1) If you have been approved by the background check:

- (a) The department will notify you, and your prospective employer, or your supervisor, if you have requested a contract or approval for unsupervised access to children.
 - (b) The department will not directly notify you, and will instead continue the process for approving your application if you have requested a license or certification to care for children.
- (2) If you have been disqualified by the background check:
- (a) The department will notify you in writing and include any laws and rules that require disqualification;
 - (b) The department will also notify the care provider, the prospective employer, or the licensor; and
 - (c) You will not receive a license, contract, certification, or be authorized to have unsupervised access to children.

NEW SECTION

WAC 388-06A-0230 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check? (1) If you are seeking a license, or employment with a home or facility licensed by the children's administration, you may request an administrative hearing to dispute a denial of authorization for unsupervised access to children (chapter 34.05 RCW). You cannot contest the conviction or negative action in the administrative hearing.

(2) Prospective volunteers or interns, contractors or their employees, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children.

(3) The employer or prospective employer cannot contest the department's decision on your behalf.

(4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW).

NEW SECTION

WAC 388-06A-0240 Is the background check information released to my employer or prospective employer? (1) Children's administration will share with employers or approved care providers only that:

(a) You are disqualified; or

(b) You have not been disqualified by the background check.

(2) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter 42.17 RCW) when releasing any information.

NEW SECTION

WAC 388-06A-0250 May I request a copy of my criminal background check results? (1) The department will provide you a copy of your criminal background check results if you:

(a) Make the request in writing to the department; and

(b) Offer proof of identity, such as picture identification.

(2) A copy of your WSP criminal background check results may also be obtained from the Washington state patrol (chapter 10.97 RCW).

WSR 15-03-078**PERMANENT RULES****OLYMPIC COLLEGE**

[Filed January 16, 2015, 3:37 p.m., effective February 16, 2015]

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

Purpose: This is an update of existing policy to bring it into alignment with the federal Violence Against Women Act (VAWA) and to bring language into alignment with current practice. Existing student disciplinary procedures will be repealed and replaced with procedures in compliance with VAWA and state law. Substantive provisions in the student

conduct code will be updated, including but not limited to new prohibitions regarding sexual harassment, sexual violence, harassment, retaliation, academic dishonesty, weapons, and use of marijuana, tobacco, electronic cigarettes and related products.

Citation of Existing Rules Affected by this Order: Amending chapter 132C-120 WAC.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 14-17-103 on August 19, 2014.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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: November 18, 2014.

Thomas Oliver
Rules Coordinator

NEW SECTION**WAC 132C-120-022 Statement of student rights.** (1)

As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

(2) The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(a) Academic freedom.

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate conduct, and harassment, including sexual harassment.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-050 Authority to prohibit trespass.

The president or designee, acting through the vice-president ~~((of))~~ for the student services area or such other designated person shall have authority and power to:

(1) Prohibit the entry of, or withdraw the license or privilege of a person or persons or any group of persons to enter onto or remain upon any portion of a college facility; or

(2) Give notice against trespass to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of a college facility; or

(3) Order any person, persons, or group of persons to leave or vacate all or any portion of a college facility.

Such authority and power may be exercised to halt any event that is deemed to be unreasonably disruptive of order or threatens to disrupt the movement of persons from facilities owned and/or operated by the college. Any student or person who shall disobey a lawful order given by the college president or designee pursuant to the requirements of this rule shall be subject to disciplinary and/or legal action.

AMENDATORY SECTION (Amending WSR 85-13-067, filed 6/18/85)

WAC 132C-120-055 Emergency procedures. In the event of activities or situations which interfere with the orderly operation of the college, the ~~((dean of students))~~ vice-president for the student services area or college president or their designees shall determine the course of action which appears to offer the best possibility for resolution of the problem. The emergency procedures outlined below will be followed if deemed essential:

(1) Inform those involved in such activities that they are in violation of college and/or civil regulations.

(2) Inform them that they should cease and desist.

(3) If they do not respond within a reasonable time, call the civil authorities.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-060 Right to demand identification. Olympic College identification is required for the purpose of

determining the identity of a person as a student, where identification as a student is a prerequisite to admission or the charge for admission to any college activity, or where identification as a student is required in a case of alleged violation of this code, any college employee may demand that any person on college property or at a college activity produce evidence of student enrollment at the college. Failure of the student to produce identification as required shall subject the student to disciplinary action.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-065 ~~((Violations))~~ Prohibited student conduct. ~~((Any student shall be subject to immediate disciplinary action provided for in this student conduct code who, either as a principal actor or aider or abettor:~~

~~(1) Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;~~

~~(2) Violates any provision of the student conduct code;~~

~~(3) Commits any of the following acts which are hereby prohibited:~~

~~(a) Assault, reckless endangerment, intimidation, harassment, or interference upon another person.~~

~~(b) Disorderly, abusive, or bothersome conduct. Disorderly or abusive behavior that interferes with the rights of others or obstructs or disrupts teaching, research, or administrative functions.~~

~~(c) Failure to follow instructions. Inattentiveness, inability, or failure of student to follow the instructions of a college official, thereby infringing upon the rights and privileges of others.~~

~~(d) Providing false information to the college, forgery, or alteration of records.~~

~~(e) Illegal assembly, disruption, obstruction or other act which materially and substantially interferes with vehicular or pedestrian traffic, classes, hearings, meetings, the educational and administrative functions of the college, or the private rights and privileges of others.~~

~~(f) Inciting others. Intentionally encouraging, preparing, or compelling others to engage in any prohibited conduct.~~

~~(g) Hazing. Hazing means any method of initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical, mental or emotional harm to any student or other person.~~

~~(h) False complaint. Knowingly or recklessly filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.~~

~~(i) False alarms. Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.~~

~~(j) Sexual harassment. Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such behavior offends the recipient, causes discomfort or humiliation, or interferes with job or school performance.~~

~~(k) Malicious harassment. Malicious harassment involves intimidation or bothersome behavior directed toward another person because of, or related to that person's race, color, religion, gender, sexual orientation, ancestry, national origin, or mental, physical, or sensory disability.~~

~~(l) Theft and robbery. Theft of the property of the district or of another as defined in RCW 9A.56.010 through 9A.56.050 and RCW 9A.56.100 as now law or hereafter amended. Includes theft of the property of the district or of another; actual or attempted theft of property or services belonging to the college, any member of its community or any campus visitor; or knowingly possessing stolen property.~~

~~(m) Damage to any college facility or equipment. Intentional or negligent damage to or destruction of any college facility, equipment, or other public or private real or personal property.~~

~~(n) Unauthorized use of college or associated students' equipment or supplies. Converting of college equipment, supplies, or computer systems for personal gain or use without proper authority.~~

~~(o) Illegal entry. Entering, or remaining in any administrative office or otherwise closed college facility or entering after the closing time of college facilities without permission of an employee in charge.~~

~~(p) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons, instruments, or substances that can be used to inflict bodily harm or to damage real or personal property, except for authorized college purposes or law enforcement officers.~~

~~(q) Refusal to provide identification (e.g., valid driver's license, student identification, passport, or state identification card) in appropriate circumstances to any college employee in the lawful discharge of the employee's duties.~~

~~(r) Smoking. Smoking in any classroom or laboratory, the library, or in any college facility, office, or any other smoking not in compliance with college policy or chapter 70.160 RCW.~~

~~(s) Controlled substances. Using, possessing, being demonstrably under the influence of, or selling any narcotic or controlled substance as defined in chapter 69.50 RCW as now law or hereafter amended, except when the use or possession of a drug is specifically prescribed as medication by an authorized medical doctor or dentist. For the purpose of this regulation, "sale" shall include the statutory meaning defined in RCW 69.50.410 as now law or hereafter amended.~~

~~(t) Alcoholic beverages. Being demonstrably under the influence of any form of alcoholic beverage. Possessing or consuming any form of alcoholic beverage on college property, with the exception of sanctioned events, approved by the president or his or her designee and in compliance with state law.~~

~~(u) Computer, telephone, or electronic technology violation. Conduct that violates the college published acceptable use rules on computer, telephone, or electronic technology use, including electronic mail and the internet.~~

~~(v) Computer trespass. Gaining or denying others access, without authorization, to a computer system or network, or electronic data owned, used by, or affiliated with Olympic College.~~

~~(w) Ethics violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking courses or is pursuing as an educational goal or major. These ethics codes must be distributed to students as part of an educational program, course, or sequence of courses and the student must be informed that a violation of such ethics codes may subject the student to disciplinary action by the college.~~

~~(x) Criminal law violation, illegal behavior, other violations. Students may be accountable to the civil or criminal authorities and the college for acts which constitute violations of federal, state, or local law as well as college rules where the students' behavior is determined to threaten the health, safety, and/or property of the college and its members. The college may refer any such violations to civilian or criminal authorities for disposition.) The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:~~

~~(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.~~

~~(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.~~

~~(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.~~

~~(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.~~

~~(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:~~

~~(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;~~

~~(b) Tampering with an election conducted by or for college students; or~~

~~(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.~~

~~(3) **Obstruction or disruption.** Obstruction or disruption of:~~

~~(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or~~

~~(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.~~

~~(4) **Assault, abuse, threats, intimidation, harassment and stalking.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct which harms, threatens, or is reasonably per-~~

ceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is severe, persistent, or pervasive physical or verbal abuse and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications, including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or his delegee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or

amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, or sale of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, or sale of any legend drug (any drug that requires a prescription including both controlled substances and nonnarcotic drugs), including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Use of tobacco, electronic cigarettes, and related products is prohibited in all buildings owned or controlled by the college, in all college vehicles, and on all college property, except in designated areas. All smoking materials are to be lit, smoked and extinguished in designated areas only. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his: Race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy/family status; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes, but is not limited to, sexual harassment, sexual intimidation, and sexual violence. Use of alcohol or other drugs will not function as a defense to a violation of college policies regarding sexual misconduct. Cases involving allegations of sexual misconduct are subject to special discipline procedures; see WAC 132C-120-300 through 132C-120-315.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a person to participate in or benefit from the college's educational programs/activities or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, or gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliation is considered a separate offense, regardless of the outcome of the original complaint.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-076 Classroom conduct. Faculty have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

An instructor has the authority to exclude a student from ~~((any single))~~ up to three class ~~((session during which))~~ sessions if the student is disruptive to the learning environment pending a meeting with the vice-president for the student services area or a designee. The instructor shall report any such exclusion from the class to the vice-president ~~((of))~~ for the student services area or designee who may ~~((summarily suspend the student or))~~ at his or her discretion initiate ~~((conduct))~~ disciplinary proceedings as provided in this procedure. The vice-president ~~((of))~~ for the student services area may impose a disciplinary probation that restricts the student from the classroom until the student has met with the vice-president ~~((of))~~ for the student services area and the student agrees to comply with the specific conditions outlined by the vice-president ~~((of))~~ for the student services area for conduct in the classroom. The student may appeal the disciplinary sanction according to the disciplinary appeal procedures.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-100 Statement of jurisdiction. ~~((Admission to the college carries with it the expectation that the student will obey the law, comply with rules and regulations of the college, and is accountable for his/her conduct.~~

All rules herein adopted shall apply to every student on any college property or engaged in any college related activity or function. Sanctions for violation of the rules of student conduct herein adopted will be administered by the college in the manner provided by said rules. When violations of the laws of the state of Washington and/or the United States are involved, the college may in addition refer such matters to civil authorities. In the case of minors such conduct may be referred to parents or guardians.

This code is applicable in all matters of discipline, and any disciplinary action imposed upon a student shall be taken in accordance with this code, unless the disciplinary action was imposed according to separate college policy which the student contractually accepted as a condition to participation in a particular course of study.

Disciplinary action, including dismissal from the college, may be imposed on a student for failure to abide by rules of conduct contained herein. The form of disciplinary action imposed will determine whether and under what conditions a violator may continue as a student at the college. Practices in disciplinary cases may vary in formality according to the severity of the case.

College administrative officers may deny admission to a prospective student or reregistration to a current student if, in their judgment, the student would not be competent to profit from the curricular offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college inconsistent with the purpose of the institution.

When reference in this document is made to a college official, that reference shall be read to include the specified college official or designee.)) The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, campus housing, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

NEW SECTION

WAC 132C-120-101 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disci-

plinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of the student services area or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132C-120-102 Brief adjudicative proceeding authorized. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

- (1) Parking violations.
- (2) Outstanding debts owed by students.
- (3) Use of college facilities.
- (4) Residency determinations.
- (5) Use of library - Fines.
- (6) Challenges to contents of education records.
- (7) Loss of eligibility for participation in institution sponsored athletic events.
- (8) Student conduct appeals involving the following disciplinary actions:
 - (a) Suspensions of ten instructional days or less;
 - (b) Disciplinary probation;
 - (c) Written reprimands;
 - (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
 - (e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:
 - (i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or
 - (ii) Issues a verbal warning to respondent.
 - (9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

NEW SECTION

WAC 132C-120-103 Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

WAC 132C-120-104 Definitions. The following definitions shall apply for the purposes of this student conduct code:

- (1) "Student conduct officer" is a college administrator designated by the president or vice-president for the student services area to be responsible for implementing and enforcing the student conduct code. The president or vice-president

for the student services area is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(2) "Conduct review officer" is the vice-president for the student services area or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(3) "President" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Respondent" is the student against whom disciplinary action is initiated.

(7) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is deposited in the mail.

(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) "College premises" includes all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(10) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(11) "Business day" means a weekday, excluding weekends and college holidays.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-110 Initiation of disciplinary ((proceedings)) action. ~~((Any person shall have the right to request sanctions for violations of the student conduct code.~~

~~All disciplinary proceedings will be initiated by the vice-president of student services who may also establish advisory panels to advise or act for the office in disciplinary proceedings.~~

~~Any student accused of violating any provision of the rules of student conduct will be called for an initial conference with the vice-president of student services and will be informed of what provision or provisions of the code of student conduct he/she is charged with violating and what appears to be the range of penalties which might result from consideration of the disciplinary proceeding.~~

~~After considering the evidence in the case and interviewing the accused, the vice-president of student services may take any of the following actions:~~

~~(1) Terminate the proceeding, exonerating the accused;~~

~~(2) Dismiss the case after whatever counseling and advice may be appropriate;~~

~~(3) Impose sanctions directly such as warning, reprimand, restitution, disciplinary probation, suspension, and/or expulsion;~~

~~(4) Refer the matter to the student conduct board for a recommendation to the vice-president of student services as to appropriate action.~~

~~A student accused of violating any provision of the code of student conduct shall be given written notification of the vice-president of student services' action.~~

~~Disciplinary action recommended by the vice-president of student services is final unless the accused exercises his/her right of appeal as provided in WAC 132C-120-115.)~~ (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or

her decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132C-120-145.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-115 Appeal(s) from disciplinary action. ~~((Any disciplinary action may be appealed as provided. Action by the vice president of student services may be appealed to the student conduct board. Action taken by the student conduct board may be appealed to the president. Action taken by the president shall be final. All appeals by a student must be made in writing and presented to the college president within five instructional days of the disciplinary action/recommendation or the right to appeal is waived and the disciplinary action/recommendation is automatically imposed. Decisions on appeals will be rendered in writing within three instructional days following conclusion of the appeal process.~~

~~Time periods referenced in the code may be altered or waived on written agreement of the accused and vice president of student services.~~

~~An appeal of a disciplinary action stays enforcement of the action until the appeal process is exhausted or a final decision reached.)~~ (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the student conduct officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary sanction for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended. Protective measures which have been imposed to protect the health, safety and welfare of an individual or the campus community, such as no contact orders, will not be stayed.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the disciplinary actions listed in (8)(a) through (c) of this subsection.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final and are not subject to appeal.

NEW SECTION

WAC 132C-120-116 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132C-120-117 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they

have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty-one days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty-one days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-120 (~~Composition of the~~) **Student conduct (board) committee.** (~~The student conduct board shall be composed of seven members on an ad hoc basis as needed. Members shall be selected as follows:~~

~~(1) The college president shall appoint three members and an alternate from the faculty.~~

~~(2) The president shall appoint one member from the college administration and an alternate.~~

~~(3) The college president shall appoint two members from the student body. The president may consult the president of the associate students of Olympic College for a recommendation of student members.~~

~~(4) The president of the college shall designate a chair from the membership who shall preside at all meetings and hearings. The chair shall not vote except to break a tie vote.)~~

(1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president; and

(c) One administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrator shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132C-120-122 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may

elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by an appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-125 ((~~Procedures for~~) Student conduct ((~~board~~) committee hearings—Presentations of evidence.)) ((The student conduct board will hear and make recommendations to the president of the college on all disciplinary cases referred/appealed to it.

The accused has a right to a fair and impartial hearing before the student conduct board on any charge of violating rules of student conduct. The accused's failure to cooperate with hearing procedures shall not prevent the student conduct board from making its findings of fact, conclusions, and recommendations. Failure by the accused to cooperate may be taken into consideration by the student conduct board in recommending appropriate disciplinary action to the president.

The accused shall be given written notice of the time and place of the hearing before the student conduct board and afforded not less than five instructional days notice thereof. Said notice shall contain:

(1) A statement of the time, place, and nature of the disciplinary hearing.

(2) A statement of allegations and reference to relevant sections of the student conduct code involved.

The accused shall be entitled to hear and examine evidence against him/her and be informed of the identity of its source, shall be entitled to present evidence or witnesses in his/her own behalf and cross-examine adverse witnesses as to relevant factual matters.

Only those matters presented at the hearing in the presence of the accused will be considered by the student conduct board in determining whether there is sufficient evidence to cause it to believe the accused violated the student conduct code.

The student may be represented by counsel of choice at the disciplinary hearing. If the student elects to choose a duly licensed attorney admitted to practice in any state as counsel, he/she may do so provided that not less than three instructional days notice of the same is given the vice president of student services.

In all disciplinary proceedings, the college may be represented by the vice president of student services, designee, and/or assistant attorney general who shall present the college's case against the student accused of violating rules of the student conduct code.

The chair of the student conduct board shall preside at the disciplinary hearing and may establish organizational or operational procedures necessary to the conduct of the hearing. The chair may rule on all questions before the student conduct board and may limit repetitious testimony and

exclude immaterial or irrelevant evidence. Strict rules of evidence shall not be applied.

The proceedings of the hearing shall be recorded and copies of presented materials retained. Such shall be kept in the vice president of student services office after use by the student conduct board.)) (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-135 ((~~Decision by the~~) Student conduct ((~~board~~) committee—Initial decision.)) ((Upon conclusion of the disciplinary hearing, the student conduct board shall in closed session consider the evidence therein presented. By majority the board shall reach its conclusions and recommended disciplinary action. The board shall issue in written form its conclusions and recommended disciplinary action within three instructional days of the conclusion of the hearing to the student, the vice president of student services, and the president. The disciplinary recommendations of the board shall be limited to the following:

(1) That the student or students be exonerated and the proceedings terminated.

(2) That any disciplinary action provided in WAC 132C-120-145 be imposed on the student or students.

Disciplinary action recommended by the student conduct board shall be automatically imposed unless the accused exercises his/her right of appeal to the president as provided in WAC 132C-120-115.)) (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to

receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty-one days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 132C-120-139 Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty-one days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

WAC 132C-120-145 Disciplinary ((actions)) sanctions and terms and conditions. ((The following disciplinary actions are hereby established and shall be usual sanctions imposed upon violators of the code of student conduct:

Disciplinary warnings: Notice to a student either verbally or in writing that he/she has been in violation of the rules of student conduct or has otherwise failed to satisfy the college's expectations regarding conduct. Such warnings imply that continuation or repetition of the specific conduct involved or other misconduct will result in one of the more serious disciplinary actions described below.

Reprimand: Formal action censuring a student for violation of the rules of student conduct. Reprimands are always made in writing. A reprimand indicates to the student that continuation or repetition of the specific conduct involved or other misconduct will result in one of the more serious disciplinary actions described below.

Disciplinary probation: Formal action placing conditions upon the student's continued attendance for violation of the code of student conduct. The action will specify, in writing, the period of probation and any conditions such as limiting the student's participation in extracurricular activities. Disciplinary probation may be for a specified term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.

Dismissal: Termination of student status for violation of the code of student conduct. Dismissal may be for a stated or for an indefinite period. The notification dismissing a student will indicate, in writing, the term of the dismissal and any special conditions which must be met before readmission. There is no refund of tuition and fees for the quarter in which action is taken but tuition and fees paid in advance for a subsequent quarter are to be refunded.

Restitution: The college may demand restitution from individual students for destruction or damage of property. Failure to make arrangements for restitution promptly will result in the cancellation of the student's registration and will prevent the student from reregistration.)) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

Disciplinary warning: A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

Written reprimand: Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

Disciplinary probation: Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation. Probation may be for a limited time or may be for the duration of the student's attendance at the college.

Disciplinary suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

Dismissal: The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed alone or in conjunction with a disciplinary sanction include, but are not limited to, the following:

Restitution: Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

Professional evaluation: Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

Not in good standing: A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(1) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(2) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

Other terms and conditions: The vice-president for the student services area may impose other terms and conditions, such as a no-contact order, as necessary to protect the health, safety and welfare of the campus community.

AMENDATORY SECTION (Amending WSR 85-13-067, filed 6/18/85)

WAC 132C-120-200 Summary suspension ((~~rules~~)).
 ((The board of trustees of Olympic College recognizes the need to provide the administration with a summary system of student discipline which can swiftly and fairly respond to immediate disorder. Summary suspension rules are not to be construed to supplant provisions of the student conduct code or usual disciplinary procedures, but rather to supplement the student conduct code by providing an emergency method of suspension during the pendency of investigation and prosecution of student violations that will subsequently be heard on their merits consistent with student conduct code procedures.)) (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might other-

wise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

NEW SECTION

WAC 132C-120-300 Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

The college reserves the right to take whatever protective measures it deems necessary in response to an allegation of sexual misconduct in order to protect the rights and personal safety of our campus community members. Such measures include, but are not limited to, reasonable changes to academic/housing arrangements, no-contact orders, counseling, interim suspension from campus pending a proceeding, and reporting the matter to local police. The college will consider the concerns and rights of both the recipient of and the person accused of the sexual misconduct. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the college reserves the right to impose different sanctions, from warning to dismissal, depending on the severity of the offense.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132C-120-010 through 132C-120-200. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132C-120-305 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) "Complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking;

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132C-120-310 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX compliance officer or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the vice-president for the student services area for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

(3) In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(4) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(5) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions (if any) that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(6) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132C-120-315 Supplemental appeal rights. (1) The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or
 (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132C-120-310(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal

constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132C-120-071 Academic dishonesty.
- WAC 132C-120-105 Procedural standards in disciplinary proceedings.
- WAC 132C-120-130 Conduct of disciplinary hearings.
- WAC 132C-120-140 Final decision on disciplinary appeals.
- WAC 132C-120-150 Readmission after dismissal.
- WAC 132C-120-205 Initiation of summary suspension proceedings.
- WAC 132C-120-210 Notice of summary suspension.
- WAC 132C-120-215 Permission to enter or remain on campus.
- WAC 132C-120-220 Procedures for summary suspension hearing.
- WAC 132C-120-225 Decision by vice-president of student services.
- WAC 132C-120-230 Failure to appear for summary suspension hearing.
- WAC 132C-120-235 Summary suspension proceedings not duplicious.

WSR 15-03-087

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 21, 2015, 9:22 a.m., effective February 21, 2015]

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

Purpose: The department of revenue is proposing to amend these rules to incorporate current and past legislation:

WAC 458-14-056 incorporates SSB 6333 (2014), which added language to RCW 84.40.038 regarding electronic transmission of value change notices or other notices; and updated an example.

WAC 458-19-005 incorporates SSB 6333 (2014), which clarifies the date in September that the implicit price deflator is published by the federal Department of Commerce; SHB 1634 (2014), which allows a taxing district's levy limit to be

increased due to solar, biomass, and geothermal facilities producing electricity; EHB 1969 (2011), which allows a flood control zone district in certain counties to protect a portion of its levy rate outside of the \$5.90 limitation; 2SSB 5433 (2009), which protects the levy rate for county transit-related purposes from prorationing under the \$5.90 limitation; SSB 6141 (2006), which allows a taxing district's levy limit to be increased due to wind turbines that generate electricity; clarifies which levy rate to use in the levy limit calculation if the rate is reduced due to prorating or if the rate reflects an error; and incorporates statutory language to various definitions.

WAC 458-19-020, 458-19-025, 458-19-030, 458-19-060, 458-19-085, and 458-19-550, incorporates SHB 1634 (2014), which allows a taxing district's levy limit to be increased due to solar, biomass, and geothermal facilities producing electricity; and SSB 6141 (2006), which allows a taxing district's levy limit to be increased due to wind turbines that generate electricity.

WAC 458-19-035 incorporates SHB 1634 (2014), which allows a taxing district's levy limit to be increased due to solar, biomass, and geothermal facilities producing electricity; SSB 6141 (2006), which allows a taxing district's levy limit to be increased due to wind turbines that generate electricity; clarifies how to calculate the levy rate when an annexation occurs; updated established boundary date; and updated an example.

WAC 458-19-065 incorporates SHB 1634 (2014), which allows a taxing district's levy limit to be increased due to solar, biomass, and geothermal facilities producing electricity; SSB 6141 (2006), which allows a taxing district's levy limit to be increased due to wind turbines that generate electricity; and updated an example.

Citation of Existing Rules Affected by this Order: Amending WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause, 458-19-005 Definitions, 458-19-020 Levy limit—Method of calculation, 458-19-025 Restoration of regular levy, 458-19-030 Levy limit—Consolidation of districts, 458-19-035 Levy limit—Annexation, 458-19-060 Emergency medical services levy, 458-19-065 Levy limit—Protection of future levy capacity, 458-19-085 Refunds—Procedures—Applicable limits, and 458-19-550 State levy—Apportionment between counties.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.08.080, 84.48.200, 84.52.0502, 84.55.060.

Adopted under notice filed as WSR 14-23-079 on November 18, 2014.

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 10, 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 10, 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: January 20, 2015.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-023, filed 6/23/14, effective 7/24/14)

WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause. (1) The ~~((sole))~~ only method for appealing ~~((an))~~ a county assessor's determination to the county board of equalization, as to valuation of property, or as to any other types of county assessor determinations is by ~~((means of))~~ a properly completed and timely filed taxpayer petition.

(2) A taxpayer's petition for review of the assessed valuation ~~((placed upon))~~ of property by the assessor or for review of any of the types of appeals listed in WAC 458-14-015 must be filed in duplicate with the board. The deadline for filing ~~((such))~~ the petition with the board ~~((shall))~~ must be the later of:

(a) July 1st of the year of assessment or determination;

(b) Thirty days, or up to sixty days if a longer time period was established by the county legislative authority, from the date ~~((that an))~~ the assessment, value change notice, or other notice ~~((has been))~~ was mailed; or

(c) ~~((Sixty days from the date that an assessment, value change notice, or other notice has been mailed, if a longer time period was established by the county legislative authority.))~~ Thirty days, or up to sixty days if a longer time period was established by the county legislative authority, from the date the assessor electronically:

(i) Transmitted the assessment, value change notice, or other notice; or

(ii) Notified the owner or person responsible for payment of taxes that the assessment, value change notice, or other notice was available to be accessed by the owner or other person. RCW 84.40.038(~~3~~).

(3) No late filing of a petition ~~((shall))~~ will be allowed except as specifically provided in this subsection. The board may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. However, the board must waive the filing deadline for the circumstance described under (g) of this subsection if the petition is filed within a reasonable time after the deadline. A petition that is filed after the deadline without a showing of good cause, as described in this subsection, must be dismissed unless, after the taxpayer is notified by the board that the petition will be dismissed because of the late filing, the taxpayer promptly shows good cause for the late filing. The board must decide a taxpayer's claim of good cause without holding a public hearing on the claim and must promptly notify the taxpayer of the decision, in writing. The board's decision regarding a waiver of the filing deadline is final and not appealable to the state board of tax appeals. Good cause

may be shown by documentation of one or more of the following events or circumstances:

(a) The taxpayer was unable to file the petition by the filing deadline because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the time for filing. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, domestic partner, child, grandchild, or domestic partner's child or grandchild.

(b) The taxpayer was unable to file the petition by the filing deadline because of the occurrence of all of the following:

(i) The taxpayer was absent from his or her home or from the address where the assessment notice or value change notice is normally received by the taxpayer. If the notice is normally mailed by the assessor to a mortgagee or other agent of the taxpayer, the taxpayer must show that the mortgagee or other agent was required, pursuant to written instructions from the taxpayer, to promptly transmit the notice and failed to do so; and

(ii) The taxpayer was absent (as described in (b)(i) of this subsection) for more than fifteen of the days allowed in subsection (2) of this section prior to the filing deadline; and

(iii) The filing deadline is after July 1st of the assessment year.

(c) The taxpayer was unable to file the petition by the filing deadline because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper filing requirements by either a board member or board staff, the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(d) The taxpayer was unable to file the petition by the filing deadline because of a natural disaster such as a flood or earthquake occurring at or shortly before the time for filing.

(e) The taxpayer was unable to file the petition by the filing deadline because of a delay or loss related to the delivery of the petition by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(f) The taxpayer is a business and was unable to file the petition by the filing deadline because the person employed by the business, responsible for dealing with property taxes, was unavailable due to illness or unavoidable absence.

(g) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:

(i) The taxpayer's property value did not change from the previous year; and

(ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year.

(4) If a petition is filed by mail it must be postmarked no later than the filing deadline. If the filing deadline falls upon a Saturday, Sunday or holiday, the petition must be filed on or postmarked no later than the next business day.

(5) A petition is properly completed when all relevant questions on the form provided or approved by the department have been answered and the answers contain sufficient information or statements to apprise the board and the assessor of the reasons for the appeal. A petition which merely states that the assessor's valuation is too high or that property

taxes are excessive, or similar (~~such~~) types of statements, is not properly completed and must not be considered by the board. If, at the time of filing the petition, the taxpayer does not have all the documentary evidence available which he or she intends to present at the hearing, the petition will be deemed to be properly completed for purposes of preserving the taxpayer's right of appeal, if it is otherwise fully and properly filled out. However, any comparable sales, valuation evidence, or other documentary evidence not submitted at the time the petition is filed must be provided by the taxpayer to the assessor and the board at least seven business days, excluding legal holidays, prior to the board hearing. A copy of the completed petition must be provided to the assessor by the clerk of the board. Any petition not fully and properly completed (~~must not~~) cannot be considered by the board (RCW 84.40.038) and a notice of the board's rejection of the petition must be promptly mailed to the taxpayer. See: WAC 458-14-066 Requests for valuation information—Duty to exchange documentary information—Time limits, for an explanation of the availability, use and exchange of valuation and other documentary information prior to the hearing before the board.

(6) Whenever the taxpayer has an appeal pending with the board, the state board of tax appeals or with a court of law, and the assessor notifies the taxpayer of a change in property valuation, the taxpayer is required to file a timely petition with the board in order to preserve the right to appeal the change in valuation. For example, if a taxpayer has appealed a decision of the board to the board of tax appeals regarding an assessed value for the year (~~(2005)~~) 2013, and that appeal is pending when the assessor issues a value change notice for the (~~(2006)~~) 2014 assessment year, the taxpayer must still file a timely petition appealing the valuation for the (~~(2006)~~) 2014 assessment year in order to preserve his or her right to appeal (~~(from that 2006)~~) the 2014 assessed value.

(7) Petition forms shall be available from the clerk of the board and from the assessor's office.

AMENDATORY SECTION (Amending WSR 06-02-008, filed 12/22/05, effective 1/22/06)

WAC 458-19-005 Definitions. (1) **Introduction.** This rule contains definitions of the terms used throughout chapters 84.52 and 84.55 RCW and chapter 458-19 WAC in the administration of the system used to levy property taxes on taxable property within the state of Washington.

(2) Unless the context clearly requires otherwise, the following definitions apply:

(a) "Annexation" means one taxing district is adding territory or another dissimilar taxing district from outside the annexing taxing district's boundary and includes a merger of a portion of a fire protection district under chapter 52.06 RCW with another fire protection district.

(b) "Assessed value" means the value of taxable property placed on the assessment rolls. The term is often abbreviated with the initials "A.V."

(c) "Certified property tax levy rate" means the tax rate calculated by the county assessor in accordance with law to produce the lawful amount of the certified property tax levy.

(d) "Consolidated levy rate" means:

(i) For purposes of the statutory aggregate dollar rate levy limit, the sum of all regular levy rates set for collection exclusive of rates set for the state levy, port ~~((and))~~, public utility districts, financing affordable housing for very low-income households under RCW 84.52.105, acquiring conservation futures under RCW 84.34.230, criminal justice purposes under RCW 84.52.135, emergency medical care or emergency medical services under RCW 84.52.069, county ferry districts under RCW 36.54.130, the portion of the fire protection levies protected under RCW 84.52.125, ~~((and))~~ the portion of metropolitan park district levies protected under RCW 84.52.120, transit-related purposes under RCW 84.52.140, and the protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county; and

(ii) For purposes of the constitutional one percent limit, the sum of all regular levy rates set for collection exclusive of rates set for port and public utility districts.

(e) "Consolidation" means the act of combining two or more similar taxing districts into one taxing district; for example, the combination of two fire protection districts into one fire protection district.

(f) "Constitutional one percent limit" means the levy limit established by Article VII, section 2 of the state Constitution, which prohibits the aggregate of all tax levies on real and personal property from exceeding one percent (\$10 per \$1,000) of the true and fair value of property. This limit does not apply to excess levies, levies by port districts, and levies by public utility districts. This limit is also set forth in RCW 84.52.050.

(g) "Department" means the department of revenue of the state of Washington.

(h) "Excess property tax levy" or "excess levy" means a voter-approved property tax levy by or for a taxing district, other than a port or public utility district, that is subject to neither the statutory aggregate dollar rate limit set forth in RCW 84.52.043 nor the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and in RCW 84.52.050. It does not include regular levies allowed to exceed the levy limit with voter approval.

(i) "Improvement" means any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property.

(j) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce ~~((#))~~ by September 25th of the year before the taxes are payable; see RCW 84.55.005.

(k) "Joint taxing district" means a taxing district that exists in two or more counties; the term does not include the state nor does it include an intercounty rural library district.

(l) "Junior taxing district" means a taxing district other than the state, a county, a county road district, a city, a town, a port district, or a public utility district.

(m) "Levy limit" means:

(i) The statutorily established limit that prohibits a taxing district, other than the state, from levying regular property taxes for a particular year that exceed the limit factor multiplied by the highest amount of regular property taxes that could have been lawfully levied in the taxing district in any year since 1985, plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year, or the last year the taxing district levied taxes, by the increase ~~((during the current year of the))~~ in assessed value in the taxing district ~~((due to))~~ resulting from:

(A) New construction~~((;))~~;

(B) Improvements to property~~((, and the))~~;

(C) Increases in the assessed value of state assessed property ~~((by the levy rate of that district for the preceding year, or the last year the taxing district levied taxes.~~

~~((;))~~; and

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(ii) For purposes of the levy limit, the phrase "highest amount of regular property taxes that could have been lawfully levied" means the maximum amount that could have been levied by a taxing district under the limitation set forth in chapter 84.55 RCW unless the highest amount that could have been levied was actually restricted by the taxing district's statutory dollar rate limit. If the taxing district's levy was restricted by the statutory dollar rate limit, the highest amount that could have been lawfully levied is the amount produced by multiplying the assessed value of the taxing district by the statutory dollar rate.

~~((;))~~ (iii) For purposes of the levy limit, the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, may reflect a reduced rate due to the \$5.90 statutory aggregate limitation and/or the constitutional one percent limitation, if prorating occurred in the district.

The regular property tax levy rate of the district for the preceding year may also reflect a levy error or a levy error correction. If this occurs, the rate used will be the rate had the levy error or levy error correction not occurred. RCW 84.52.085.

(iv) The levy limit for the state is the limit factor multiplied by the highest amount of regular property taxes lawfully levied in the three most recent years, plus an additional dollar amount ~~((attributable to new construction, improvements to property, and any increase in the assessed value of state assessed property))~~ calculated by multiplying the state levy rate for the preceding year by the increase in assessed value in the state resulting from:

(A) New construction;

(B) Improvements to property;

(C) Increases in the assessed value of state assessed property; and

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if

such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(n) "Levy rate" means the dollar amount per thousand dollars of assessed value applied to taxable property within a taxing district and is calculated by dividing the total amount of a statutorily authorized levy of a taxing district by the total assessed value of that district and is expressed in dollars and cents per thousand dollars of assessed value.

(o) "Limit factor" means:

(i) For taxing districts with a population of less than ten thousand in the calendar year immediately prior to the assessment year, one hundred one percent;

(ii) For taxing districts, other than the state, having made a finding of substantial need in accordance with RCW 84.55-0101, the lesser of the substantial need factor or one hundred one percent; or

(iii) For all other taxing districts, including the state, the lesser of one hundred one percent or one hundred percent plus inflation.

(p) "New construction" means the construction or alteration of any property for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits, which results in an increase in the value of the property.

(q) "Regular property tax levy" or "regular levy" means a property tax levy by or for a taxing district that is subject to the statutory aggregate dollar rate limit set forth in RCW 84.52.043, the constitutional one percent limit set forth in RCW 84.52.050, or is a levy imposed by or for a port district or a public utility district.

(r) "Regular property taxes" means those taxes resulting from regular property tax levies.

(s) "Senior taxing district" means the state (for support of common schools), a county, a county road district, a city, or a town.

(t) "Statutory aggregate dollar rate limit" or "statutory aggregate limit" means the maximum aggregate regular property tax levy rate within a county established by law for senior and junior taxing districts, other than the state. The current limit is \$5.90 per \$1,000 of assessed valuation. See RCW 84.52.043 and WAC 458-19-070 ((for the current limit)).

(u) "Substantial need limit factor" means a limit factor approved by a taxing district's legislative authority that exceeds one hundred percent plus inflation. This limit cannot exceed one hundred one percent.

(v) "Statutory dollar rate limit" means the maximum regular property tax levy rate established by law for a particular ~~(class)~~ type of taxing district.

(w) "Super majority" means a majority of at least three-fifths of the registered voters of a taxing district approving a proposition authorizing a levy, at which election the number of persons voting "yes" on the proposition constitutes three-fifths of a number equal to forty percent of the total votes cast in the taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters of the taxing district voting on the proposition when the number of registered voters voting on the proposition exceeds forty

percent of the total votes cast in the taxing district in the last preceding general election.

(x) "Tax code area" means a geographical area made up of ~~((a unique mix of))~~ one or more taxing districts, which is established for the purpose of properly calculating, collecting, and distributing taxes. Only one tax code area will have the same combination of taxing districts, with limited exceptions.

(y) "Taxing district" means the state and any county, city, town, port district, school district, road district, metropolitan park district, water-sewer district, or other municipal corporation, ~~((now or hereafter existing,))~~ having the power or legal authority to impose burdens upon property within the district on an ad valorem basis, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed for public purposes, ~~((upon))~~ on property in proportion to the increase in benefits ~~((accruing thereto))~~ received.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-020 Levy limit—Method of calculation.

(1) **Introduction.** This rule explains the general method used to calculate the levy limit for the state and all other taxing districts in accordance with RCW 84.55.010 ~~((and)),~~ 84.55.092, 84.55.120. Except for the state levy, the same method is generally used to calculate the amount of regular property taxes that can be levied by a taxing district in any year. This rule also describes what occurs when a taxing district makes a finding of substantial need in accordance with RCW 84.55-0101 to use a limit factor in excess of one hundred percent plus inflation. This rule does not attempt to include all special circumstances that may affect the applicable limit under chapter 84.55 RCW.

(2) **Increase in tax revenues - Ordinance or resolution required.** The following describes the ordinance or resolution required by taxing districts when requesting increases in tax revenues.

(a) Except by holding a public hearing and adopting an ordinance or resolution, no taxing district, other than the state, may authorize an increase in property tax revenue, other than one resulting from an increase in assessed value of the district attributable to:

(i) New construction((:));

(ii) Improvements to property((, or any));

(iii) Increases in the assessed value of state assessed property ((except by holding a public hearing and adopting an ordinance or resolution)); and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(b) The ordinance or resolution may cover a period of up to two years, but the ordinance or resolution must specifically state for each year the dollar increase and percentage change in the levy from the previous year. The dollar increase and

percentage change should reflect everything included in the levy limit and should not reflect anything excluded under chapter 84.55 RCW (such as, but not limited to, a levy for property tax refunds paid under the provisions of chapter 84.68 or 84.69 RCW).

~~((a))~~ (c) A majority of the legislative authority of a taxing district must approve ~~((a))~~ the ordinance or resolution authorizing an increase in the taxing district's levy as calculated in subsection (3) of this rule.

~~((b))~~ (d) Upon making a finding of substantial need to increase its levy by an amount greater than the rate of inflation, the legislative authority of a taxing district may adopt a second ordinance or resolution establishing a limit factor greater than one hundred percent plus inflation. But the substantial need limit factor can never exceed one hundred one percent.

(i) In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

(ii) In districts with more than four members, a majority plus one must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

(3) **Calculation of levy limit for all taxing districts other than the state.** The amount of regular property taxes that can be levied by a taxing district, other than the state, in any year is limited to an amount that will not exceed the amount resulting from the following calculation, except as otherwise provided by statute:

(a) The highest amount that could have been lawfully levied by the taxing district in any year since 1985 for 1986 collection, multiplied by the limit factor; plus

(b) A dollar ~~((component))~~ amount calculated by multiplying the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, by the increase in assessed value of the district ~~((from the previous year attributable to))~~ resulting from:

(i) New construction;

(ii) Improvements to property ~~((, and any))~~;

(iii) Increases in the assessed value of state assessed property ~~((by the actual regular property tax levy rate of that district for the preceding year, or the last year the taxing district levied taxes))~~; and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(4) **Calculation of levy limit for the state levy.** The levy limit for the state is calculated in the same manner as for other taxing districts except that the limit factor is multiplied by the highest amount that was lawfully levied by the state in the three most recent years in which such taxes were levied.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-025 Restoration of regular levy. (1)

Introduction. This rule explains how a taxing district

restores a regular property tax levy if it has not levied since 1985 and it elects to restore a regular property tax levy in accordance with RCW 84.55.015.

(2) **Calculation of restored regular levy.** If a taxing district has not levied since 1985 and it elects to restore a regular property tax levy, the first regular property tax payable as a result of the restored levy cannot exceed the lesser of:

(a) The combination of the following:

(i) The amount last levied plus,

(ii) A dollar ~~((component))~~ amount calculated by multiplying the ~~((increase in assessed value of property in the district attributable to new construction and improvements to property since the last levy through the current year by the levy rate that))~~ property tax levy rate which is proposed to be restored, by the increase in assessed value in the district since the last levy resulting from:

(A) New construction;

(B) Improvements to property;

(C) Increases in the assessed value of state assessed property; and

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

The levy rate that is proposed to be restored is determined by dividing the total dollar amount that was last levied by the district by the current year's assessed value after deducting the accumulated assessed values attributable to ~~((new construction and improvements to property since the last levy))~~ (A) through (D) of this subsection; or

(b) The maximum amount which could be lawfully levied by that district in the year the restored levy is proposed, subject to the statutory dollar rate limit contained in the taxing district's authorizing statute, without considering the calculation used in subsection (2)(a) of this rule.

(3) **Example.** Taxing district "A" has not levied a regular levy since 1985 when it levied \$10,000 based upon 1985 assessed values and all lawful limitations at that time. The total increase since the 1985 assessment year in assessed value of property in the district as a result of new construction ~~((and))~~ improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities beginning in 1986 through the current assessment year is \$3,000,000. The assessed value of taxing district "A" for the current year is \$15,000,000. The calculation for subsection (2)(a) of this ~~((subsection))~~ rule is as follows:

Current year A.V. -	\$15,000,000
Minus increases in new construction	
((and)) <u>improvements to property, etc., since 1985 -</u>	- 3,000,000
	\$12,000,000
Amount levied in 1985 -	\$10,000

Current year A.V. less increases in new construction ((and)) , improvements to property, etc., -	÷ \$12,000,000
Levy rate proposed to be restored -	.000833
Increases in new construction ((and)) , improvements to property, etc., -	x \$3,000,000
Calculated dollar amount -	\$2,500
Allowable 1985 levy -	+ 10,000
Allowable levy for current year (under <u>subsection (2)(a) of this rule</u>) -	\$12,500

The amount calculated under subsection (2)(a) of this ((sub-section)) rule must be compared to the amount determined under subsection (2)(b) of this ((sub-section)) rule and the lesser of the two amounts is the maximum amount that can be levied.

(4) Assessor to maintain taxing district records. Records of value increases attributable to new construction ~~((and))~~, improvements to property, ~~((and))~~ increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities are to be maintained each year by the county assessor for each taxing district whether or not the district imposes a regular property tax levy.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-030 Levy limit—Consolidation of districts. (1) **Introduction.** This rule describes the method used to calculate the first levy for a taxing district created by the consolidation of similar taxing districts in accordance with RCW 84.55.020.

(2) **Calculation of the first levy of a consolidated taxing district.** The first regular property tax levy made by a taxing district, created by the consolidation of two or more similar taxing districts, cannot exceed:

(a) The sum of the product of the limit factor multiplied by the highest amount of regular property taxes lawfully levied by each of the component districts during the three most recent years in which taxes were levied; plus

(b) The sum of each of the amounts calculated by multiplying the ~~((increase in assessed value of property attributable to new construction and improvements to property in))~~ regular property tax levy rate of each of the component districts ((since)) for the preceding year by the ~~((regular property tax rate of))~~ increase in assessed value in each component district ((in the preceding year)) resulting from:

- (i) New construction;
- (ii) Improvements to property;
- (iii) Increases in the assessed value of state assessed property; and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(3) **Example.** Taxing district "A" and taxing district "B" consolidate, becoming one taxing district. The highest amount of regular property taxes lawfully levied by district "A" during the three most recent years is \$100,000. The highest amount of regular property taxes lawfully levied by district "B" during the three most recent years is \$150,000. The increase in assessed value due to new construction ~~((and))~~, improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities in district "A" since the year prior to consolidation was \$600,000. The increase in assessed value due to new construction ~~((and))~~, improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities in district "B" since the year prior to consolidation was \$900,000. The regular property tax rate for district "A" in the year prior to consolidation was ~~\$((-50))~~ 0.50 per \$1,000 of assessed value. The regular property tax rate for district "B" in the year prior to consolidation was ~~\$((-45))~~ 0.45 per \$1,000 of assessed value. Assume the limit factor for this example is 101% because it is the lesser of one hundred one percent and one hundred percent plus the rate of inflation. The maximum amount of regular property taxes that can be levied in the year of consolidation, for taxes payable the following year, by the new consolidated taxing district is calculated as follows:

	Highest regular levy
District "A"	\$100,000
-	
District "B"	150,000
-	
Total -	<u>\$250,000</u> x 1.01 = \$252,500
Increases in assessed value multiplied by levy rate:	
District "A" - \$600,000 x \$((-50)) <u>0.50</u> ÷ \$1,000	= \$300
District "B" - \$900,000 x \$((-45)) <u>0.45</u> ÷ \$1,000	= \$405
	<u>\$705</u>

Maximum regular property taxes that can be levied in the year of consolidation, payable in the year following consolidation:

$$\$252,500 + \$705 = \$253,205$$

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-035 Levy limit—Annexation. (1) **Introduction.** One taxing district may annex territory or another dissimilar taxing district from outside the annexing taxing district's boundary. This rule sets forth the method used to calculate the first regular property tax levy made after a taxing district has annexed territory or a dissimilar taxing district in accordance with RCW 84.55.030 and 84.55.110. This rule also explains what occurs when the department of natural resources (DNR) discontinues forest fire patrol assessments on parcels of forest land.

(2) **Increase in territory due to annexation.** The first regular property tax levy of a taxing district after it annexes territory or a dissimilar taxing district cannot exceed the amount calculated as follows:

(a) Multiply the highest amount of regular property taxes that could have been lawfully levied since 1985 for 1986 collection, of the annexing district as though no annexation had occurred, by the limit factor as defined in RCW 84.55.005 and WAC 458-19-005;

(b) Multiply the ~~((increase in assessed value in))~~ regular property tax levy rate of the annexing district ((since) for the preceding year ((attributable to new construction, improvements to property, and) by the increase in assessed value ((of state assessed property by the regular property tax levy rate of the annexing district for the preceding year)) in the annexing district resulting from:

(i) New construction;

(ii) Improvements to property;

(iii) Increases in the assessed value of state assessed property; and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property; and

(c) Multiply the current year assessed value of the annexed territory or district by the levy rate that would have been used for the current year by the annexing district had there been no annexation. To calculate the levy rate that would have been used for the current year by the annexing district, divide the regular levy limit of the annexing district by the current assessed value of the annexing district, excluding the annexed area.

(d) Add together the result of each of the calculations set forth in subsection (2)(a), (b), and (c) of this rule to determine the maximum amount of the first regular levy of a taxing district after annexation.

(3) **Example.** Following is an example of the calculations prescribed in subsection (2) of this rule. Taxing district "A" annexes a portion of taxing district "B" that takes effect before ~~((March))~~ August 1st in ((2002)) 2014. The highest amount of regular property taxes that could have been levied by district "A" since 1985 for 1986 collection is \$100,000. The increase in assessed value from ~~((2001 to 2002))~~ 2013 to 2014 in district "A" due to new construction, improvements to property, ~~((and))~~ increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities is \$700,000. The levy rate for district "A" for ~~((2001))~~ 2013 was ~~\$((-50))~~ 0.50 per \$1,000 of assessed value. The ~~((2002))~~ 2014 levy rate for district "A," had there been no annexation, would have been ~~\$((-48))~~ 0.48 per \$1,000 of assessed value. The ~~((2002))~~ 2014 assessed value of the portion of taxing district "B" that was annexed by taxing district "A" is \$5,000,000, which includes the value of new construction ~~((and))~~ improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities. Assume the levy limit for

this example is 101% because it is the lesser of one hundred one percent and one hundred percent plus the rate of inflation. The first regular levy by taxing district "A" after annexation cannot exceed the amount calculated as follows:

District "A" highest levy since 1985 -	\$100,000
	x 1.01
	\$101,000
A.V. of new construction* in district "A" -	\$700,000
District "A" levy rate for ((2001)) <u>2013</u> -	x ((-.50)) <u>0.50</u>
	\$350,000
Divide by \$1,000 -	÷ 1,000
Levy amount for new construction -	\$350
((2002)) <u>2014</u> A.V. of annexed portion of district "B" -	\$5,000,000
District "A" levy rate that would have been used in ((2002)) <u>2014</u> , absent annexation -	x ((-.48)) <u>0.48</u>
	\$2,400,000
Divide by \$1,000 -	÷ 1,000
Levy amount for annexed part of district "B" -	\$2,400
	\$101,000
	350
	+ 2,400
Maximum levy amount for district "A" after annexation -	\$103,750

* For purposes of this example, "new construction" also includes improvements to property ((and)) increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities.

(4) **Loss of territory due to annexation.** When a taxing district loses a portion of its territory as a result of annexation to another district, the levy limit for the taxing district that loses part of its territory is calculated by multiplying the highest amount that could have been lawfully levied by that taxing district since 1985 for 1986 collection by the limit factor as defined in RCW 84.55.005 and WAC 458-19-005. However, only the increase in assessed value from the preceding year, attributable to new construction, improvements to property, ~~((and))~~ increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities that ((is actually situated)) occurred in the remaining territory of the taxing district is added to the amount ((thus)) determined, to calculate the levy limit. ((In no case, absent)) Except for voter approval of an excess levy, ((and)) the levy rate cannot exceed the statutory dollar rate limit for that ((class)) type of taxing district.

(5) **Forest fire patrol protection assessments discontinued by DNR - Effect.** If an owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, DNR will provide this protection and impose an annual assessment on each parcel of forest land in accordance with RCW 76.04.610.

When DNR discontinues the forest fire patrol assessment by dissolving the forest protection assessment areas and an existing fire district assumes protection services and property tax levying authority for this unimproved land within its existing boundaries, the assessed value of the fire district will increase and effectively be an annexation for property tax purposes. In order to be included in the assessed value of the fire district, all details of the dissolution and annexation must be completed and the county assessor's office must receive formal notice from the fire district and DNR prior to ~~(March)~~ August 1st of the assessment year. This notice must specify the forest fire patrol assessment areas being dissolved, the fire district(s) assuming the levying and fire protection responsibilities, and the forest land impacted by the change.

AMENDATORY SECTION (Amending WSR 14-14-023, filed 6/23/14, effective 7/24/14)

WAC 458-19-060 Emergency medical service levy.

(1) **Introduction.** This rule explains the criteria contained in RCW 84.52.069 relative to a taxing district imposing a limited or permanent regular levy for emergency medical care or emergency medical services. It describes the permitted duration of this levy, the ballot title and measure that must be presented to and approved by the voters, the maximum rate for this levy, and the applicable limits.

(2) **Purpose - Voter approval required - Who may levy.** An emergency medical service (EMS) levy is a regular voter approved levy. Any taxes collected as a result of this levy can only be used to provide emergency medical care or emergency medical services, including related personnel costs, training for such personnel and related equipment, supplies, vehicles, and structures needed to provide this care or service. A permanent EMS levy, or the initial imposition of a six-year or ten-year EMS levy must be approved by a super majority of registered voters at a general or special election. However, the uninterrupted continuation of a six-year or ten-year EMS levy only requires the authorization of a majority of the registered voters at a general or special election. For purposes of this ~~(section)~~ rule, an "uninterrupted continuation of a six-year or ten-year EMS levy" means the continuation of both the levy itself and its maximum levy rate. Only a county, emergency medical service district, city, town, public hospital district, urban emergency medical service district, regional fire protection service area, or fire protection district is authorized to impose an EMS levy.

(3) **Duration - Maximum rate.** An EMS levy is imposed each year for six consecutive years, each year for ten consecutive years, or permanently. Except as provided in subsection (10) of this ~~(section)~~ rule, a taxing district may impose a regular property tax levy in an amount that cannot exceed fifty cents per thousand dollars of assessed value of the property of the taxing district.

(4) **Contents of ballot title and measure.** Any ballot title and measure seeking authorization of an EMS levy must conform to the requirements of RCW 29A.36.210. A taxing district cannot submit to the voters at the same election multiple propositions to impose a levy under RCW 84.52.069. If the approved ballot title and measure did not authorize the

maximum allowable levy rate (fifty cents) for the EMS levy, any future proposition to increase the rate up to the maximum allowable must be specifically authorized by voters at a general or special election. That is, a taxing district may impose a levy rate up to, but no greater than, the rate contained in the approved ballot measure without obtaining additional voter approval. The ballot title and measure authorizing a taxing district to impose:

(a) An EMS levy for a limited duration must state the name of the taxing district, the maximum rate per thousand dollars of assessed value to be imposed, and the maximum number of years the levy is to be allowed; or

(b) A permanent EMS levy must state the name of the taxing district and the maximum rate per thousand dollars of assessed value to be permanently imposed. A ballot title for this type of levy must include wording to indicate that it is a permanent EMS levy. A taxing district that seeks to impose a permanent levy must also provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. The detailed specifics of this procedure are set forth in RCW 84.52.069(4).

(5) **County-wide EMS levy.** A county-wide EMS levy cannot be placed on the ballot without first obtaining the approval of the legislative authority of any city within the county having a population exceeding fifty thousand. No other taxing district within the county may hold an election on a proposed EMS levy at the same time as the election on a proposed county-wide EMS levy. To the extent feasible, emergency medical care and services must be provided throughout the county whenever the county levies an EMS levy. In addition, if a county levies an EMS levy, the following conditions apply:

(a) Any other taxing district within the county, authorized to levy an EMS levy may do so, but only if the taxing district's EMS levy rate does not exceed the difference between the county's EMS levy rate and fifty cents per thousand dollars of assessed value of the property of the taxing district; and

(b) When a taxing district within the county levies an EMS levy and the voters of the county subsequently approve a county-wide EMS levy, the taxing district must then reduce its EMS levy rate so that the combined EMS levy rate of the county and the taxing district does not exceed fifty cents per thousand dollars of assessed value in the taxing district; and

(c) An EMS levy of limited duration of a taxing district within the county, authorized by the voters subsequent to a county-wide EMS levy of limited duration, will expire concurrently with the county EMS levy; and

(d) A fire protection district that has annexed an area described in subsection (10) of this ~~(section)~~ rule may levy the maximum amount of tax that would otherwise be allowed, notwithstanding any limitations in this subsection.

(6) **EMS levy of taxing district other than county.** Once a taxing district that has the authority to levy an EMS levy has done so within the county, only the county may concurrently levy an EMS levy within the boundaries of that taxing district; all other taxing districts are prohibited from levying an EMS levy within that taxing district's boundaries while it collects an EMS levy.

(a) If a regional fire protection service authority imposes a tax under this ~~((section))~~ rule, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this ~~((section))~~ rule.

(b) For purposes of this subsection, "participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.

(7) **Constitutional one percent limit is applicable.** An EMS levy is subject to the constitutional one percent limit for regular property taxes. If a reduction of the rate of an EMS levy is required because this limit is exceeded, it is to be reduced in the manner set forth in RCW 84.52.010~~((+))~~ and WAC 458-19-075.

(8) **Statutory aggregate dollar rate limit is not applicable.** An EMS levy is not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value (see RCW 84.52.043).

(9) **Applicability of limit factor to EMS levy.** The first year an EMS levy is made following voter approval, the levy limit set forth in RCW 84.55.010 does not apply. However, after the first year any EMS levy made is subject to this limit. In other words, beginning the second year this levy is made it cannot exceed the limit factor multiplied by the highest amount of regular property taxes that could have lawfully been levied since the voters last approved such a levy plus an additional dollar amount calculated by multiplying the regular property tax levy rate of the district for the preceding year by the increase in assessed value in ~~((that))~~ the district resulting from:

(a) New construction~~((:))~~;

(b) Improvements to property~~((, and any))~~;

(c) Increases in the assessed value of ~~((state-assessed))~~ state assessed property ~~((by the regular property tax rate for the district in the preceding year))~~; and

(d) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property. The EMS levy is calculated separately from any other levies made by the taxing district for purposes of calculating the levy limit.

(10) For purposes of imposing the tax authorized under this ~~((section))~~ rule, the boundary of a county with a population greater than one million five hundred thousand does not include the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county having a population greater than one million five hundred thousand is less than two hundred fifty million dollars.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-065 Levy limit—Protection of future levy capacity. (1) **Introduction.** This rule explains what occurs when a taxing district levies taxes in an amount less

than the maximum allowed under the levy limit for any year and how future levies of the district will be calculated.

(2) **Use of maximum lawful levy amount.** In any year when a taxing district, other than the state, levies taxes in an amount less than the maximum amount allowed by the levy limit, whether voluntarily or as a result of the operation of the statutory aggregate dollar rate limit or constitutional one percent limit reducing or eliminating the taxing district's levy rate, the levy limit for succeeding years after 1985 will be calculated as though the maximum lawful levy amount allowed by the levy limit or the taxing district's statutory dollar rate limit had been levied.

(3) **Examples.** These examples do not include any amounts for new construction, improvements to property, ~~((or))~~ increases in the assessed value of state assessed property, or increases in the assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities.

(a) In ~~((2001))~~ 2013, the highest amount of regular property taxes that could have been lawfully levied by taxing district "A" as restricted by the levy limit was \$100,000. But in ~~((2001))~~ 2013 taxing district "A" ~~((is))~~ was otherwise limited by the statutory aggregate dollar rate limit to a maximum levy of \$95,000. The levy limit for the ~~((2002))~~ 2014 levy will be calculated on the basis of what could have been the highest levy amount since 1985, that is \$100,000 multiplied by the limit factor. The amount actually levied in ~~((2001))~~ 2013 is not controlling.

(b) Using the same basic facts from the previous example, if the levy amount of district "A" had been limited by the statutory dollar rate limit in ~~((2001))~~ 2013 to \$95,000, and \$95,000 was the highest amount of regular property taxes that could have been lawfully levied since 1985, then the levy limit for ~~((2002))~~ 2014 will be calculated on the basis of \$95,000, that is \$95,000 multiplied by the limit factor.

AMENDATORY SECTION (Amending WSR 14-14-023, filed 6/23/14, effective 7/24/14)

WAC 458-19-085 Refunds—Procedures—Applicable limits. (1) **Introduction.** Chapters 84.68 and 84.69 RCW both set out procedures and conditions under which property taxes are refunded. This rule explains the differences between the types of refunds authorized under each chapter, the procedures related to the refunds, and the effect the refunds have on levy limits and the levy setting process in general.

(2) **Court ordered refunds under chapter 84.68 RCW - County tax refund fund levy.** Any person who believes that the taxes levied against their property are unlawful or excessive may pay the taxes under protest, setting forth all the grounds upon which the tax is claimed to be unlawful or excessive, and bring an action in superior court or in any federal court of competent jurisdiction against the state, county, or municipality. RCW 84.68.020. If the court determines that the taxes were indeed unlawful or excessive, it will enter a judgment in favor of the taxpayer who paid the tax under protest and determine the amount to be refunded to the taxpayer. When such a judgment is entered, the law provides a specific procedure for refunding the money to the taxpayer in RCW 84.68.030 and for taxing districts to generate the moneys to be refunded in RCW 84.68.040. Any and all taxing districts

that were levying taxes against the property at the time for which a refund is directed by court order under RCW 84.68.-020 must levy, or have levied for them, an amount for the county tax refund fund. The county tax refund fund levy is a regular levy that is subject to all the applicable levy limitations provided in law for regular levies. However, the law specifically exempts a refund fund levy from the levy limit set forth in RCW 84.55.010.

(a) Method used to make refunds. When a court judgment is entered in favor of a taxpayer, RCW 84.68.030 states that the refund is to be paid via warrants drawn against the "county tax refund fund." If, at the time the judgment is entered, there are no moneys in that fund, then the warrants bear interest and are "callable under such conditions as are provided by law for county warrants."

(b) Process used to generate funds for the county tax refund fund. RCW 84.68.040 provides that as part of the annual levying of taxes for county purposes, the county is required to make and enter a tax levy or levies for the county tax refund fund. The purpose of the refund fund levy is to produce moneys to be deposited into a fund from which a taxpayer, who paid taxes that were later adjudged to be unlawful or excessive, can be repaid, without unduly affecting the operating funds of the taxing districts. This levy has precedence over all other tax levies for county and/or taxing district purposes.

(c) Who makes and enters the tax levies for the refund fund levy? Officers of local taxing districts, the county legislative authority, the county assessor, and any other person or entity that would normally be involved in the levy making process are required to make and enter the refund fund levy. However, if a taxing district is required to levy for the county tax refund fund and fails to do so, or if a taxing district is required to levy for the county tax refund fund and does not have a regular nonvoted levy, then the county legislative authority levies the tax for or on behalf of the district, the assessor sets the rate, and the treasurer collects the tax.

(d) What limitations apply to the county tax refund fund levy? There are four basic levy limitations that need to be taken into consideration: The levy limit set forth in RCW 84.55.010; the constitutional (Article VII, section 2) and statutory (RCW 84.52.010) one percent limit; the statutory dollar rate limit for the various taxing districts; and the aggregate dollar rate limit contained in RCW 84.52.043.

(i) The levy limit set forth in RCW 84.55.010 does not apply to the county tax refund fund levy, regardless of which taxing district is involved (see RCW 84.55.070). Therefore, a taxing district(s) can levy the amount to be refunded even if that amount will cause the total levy of the taxing district to exceed the levy limit. For example, a court orders County A to refund \$10,000 to a Taxpayer. The proper county officials in County A must determine what portion of the \$10,000 is attributable to Taxing District No. 1. For purposes of this example, Taxing District No. 1 owes the Taxpayer \$1,000. Taxing District No. 1's levy last year was \$30,000. Without considering new construction, improvements to property, ~~((and))~~ increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, the levy for this year under the levy limit would be \$30,300.

However, Taxing District No. 1's levy for this year, including the refund fund levy, can be \$31,300.

(ii) The constitutional one percent limit, the statutory dollar rate limit, and the aggregate dollar rate limit apply to any refund fund levy. Consequently, any refund fund levy must be contained within the maximum dollar rate authorized by law for any taxing district. For example, if under the levy limit, the county current expense levy rate is \$1.80/\$1,000 and the refund fund levy rate is ~~\$((-10/\$1,000))~~ 0.10/\$1,000 A.V., then only \$1.70 may go to the current expense fund. Similarly, if the current expense levy rate, as limited by the levy limit, is \$1.50/\$1,000 A.V., then the ~~\$((-10/\$1,000))~~ 0.10/\$1,000 is added to the \$1.50 making a levy rate that is \$1.60/\$1,000 A.V. Any combination is possible as long as the total of the two does not exceed the statutory dollar rate maximum of \$1.80/\$1,000 A.V. for levies made for county purposes. All moneys levied for the county tax refund fund levy are allocated first, without consideration of any delinquency, and then whatever balance is remaining goes to the district's operating fund.

(e) Refund fund's relationship to excess levies. Because the refund fund levy is the direct result of a court ordered judgment in a specific amount, it does not matter whether the judgment amount is derived from taxes paid on regular, excess, or bond levies, or any combination of these levies. The refund fund levy is separate and independent of the levies from which it arose. The levy includes an additional amount deemed necessary to meet the obligations of the county tax refund fund, taking into consideration the probable portions of the taxes that will not be collected or collectible during the year in which they are due and payable, as well as any unobligated cash in hand in this fund.

(f) Applicability to school district levies and state school levy. All taxing districts for which, and within which, taxes were collected unlawfully are required to levy for the refund fund. A refund fund for the school district would not be limited by a dollar rate limit. However, the school district refund fund levy would be subject to the constitutional one percent limit because the refund fund is a regular levy subject to all applicable limits. The state school levy will include a refund fund levy, which will be calculated by the department at the time it levies the state school levy. The state, as a taxing district itself, follows the same procedures that apply to any other taxing district, to the extent that those procedures are applicable.

(g) Separate account in county treasury. The county treasurer must keep a separate account for each district for which a refund fund is created and can only disburse money from that account to the taxpayer(s) entitled to receive a court ordered refund.

(3) Administrative refunds under chapter 84.69 RCW. Property taxes may be refunded on the order of the county treasurer before or after delinquency if the property taxes were paid under one of the circumstances listed in RCW 84.69.020. These circumstances include errors, changes in valuation or status by a county board of equalization or the state board of tax appeals, and delays in applying for a senior citizen exemption or deferral.

(a) The levy limit set forth in RCW 84.55.010 does not apply. RCW 84.55.070 states that the limitations contained in chapter 84.55 RCW do not apply to property tax refunds paid or to be paid under the provisions of RCW 84.69.180. Therefore, an amount necessary to fund any refund paid in accordance with RCW 84.69.020 may be added to the levy for a taxing district without regard to the levy limit. A refund (~~fund~~) levy is not subject to the levy limit. However, the statutory dollar rate limit still applies to each taxing district, as well as the five dollar and ninety cent limit set forth in RCW 84.52.043 and the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and RCW 84.52.050.

(b) Refunds include interest. Refunds authorized under RCW 84.69.020 must include interest that is payable from the time the taxes were paid. The rate of interest is calculated in accordance with RCW 84.69.100, established annually by the department, and published in WAC 458-18-220.

(c) Taxing districts, other than the state, may levy a tax upon all the taxable property within the district for the purpose of:

(i) Funding refunds paid or to be paid under this chapter, except for refunds due to taxes paid more than once, RCW 84.69.020(1), including interest, as ordered by the county treasurer or county legislative authority within the preceding twelve months; and

(ii) Taxes that have been abated or canceled, offset by any supplemental taxes collected under Title 84 RCW other than amounts collected due to highly valued disputed property, RCW 84.52.018, within the preceding twelve months can be levied by taxing districts other than the state.

(iii) This subsection (3)(c)(ii) only applies to abatements and cancellations that do not require a refund under chapter 84.69 RCW. Cancellations that require a refund are included within the scope of (c)(i) of this subsection.

(d) Example 1. This example demonstrates net refunds, cancellations, and supplements that occurred within the past twelve months and the refund levy that can be requested by the taxing district:

Refunds		\$8,000
Cancellations	\$10,000	
Abatements	\$ 1,000	
Supplements	\$ 7,000	
Net cancellations and abatements offset by supplements		\$4,000
Net amount eligible for a refund levy		\$12,000

(e) Example 2. This example assumes that the base for computing the allowable levy is \$10,000 and refers to the county current expense levy rate that may not exceed one dollar and eighty cents per thousand dollars of assessed value in accordance with RCW 84.52.043.

(i) Statutory rate requested does not exceed the dollar rate allowable:

The allowable levy for the county current expense fund	\$10,000
Refunds paid or to be paid	<u>\$2,000</u>
Total amount of levy	\$12,000
Assessed value	\$7,000,000
Levy rate	\$1.714/\$1,000
The levy rate is within the statutory rate limit of \$1.80/\$1,000	

(ii) Statutory rate requested exceeds the dollar rate allowable:

Allowable levy	\$10,000
Refunds paid or to be paid	<u>\$2,000</u>
Total amount of levy	\$12,000
Assessed value	\$6,500,000
Levy rate	\$1.846/\$1,000
The dollar rate cannot exceed \$1.80/\$1,000; therefore, the maximum that can be levied is \$6,500,000 x \$1.80/\$1,000	
Amount to be refunded	\$2,000
Amount to be credited to current expense	\$9,700

(f) The base for computing the following year's levy limit does not include the refund levy amount. In the preceding example, the base for the following year's levy limit calculation is \$10,000. However, when calculating the additional levy amount based on the value of new construction, improvements to property (~~and any~~), increases in assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, the actual regular levy rate (including the refund levy) is used.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-550 State levy—Apportionment between counties. (1) **Introduction.** The department is charged with levying the state taxes authorized by law. As part of this task, the department apportions the amount of tax levied for state purposes among the counties in proportion to the value of taxable property in each county for the year to ensure that each county pays its due and just share of the state tax. This rule explains how the state property tax levy rate is determined, how the department adjusts the previous year's apportionment because of changes and errors in taxable values reported to the department after October 1 of the preceding year, and how the limit factor set forth in RCW 84.55.010 is applied to the state levy.

(2) **Calculation of state levy rate.** The levy rate for the state property tax levy is the lesser of:

(a) \$3.60 per thousand dollars of the (~~fair~~) true and fair value of the taxable property in the state; or

(b) The rate that, when applied to the valuation figures specified in subsection (3) of this rule, will produce a total amount equal to the levy limit set forth in RCW 84.55.010. This levy limit equals the limit factor multiplied by the highest state property tax levy of the most recent three annual state levies, plus an amount calculated by multiplying ~~((increases in value due to))~~ the state levy rate for the preceding year by the increase in assessed value in the state resulting from:

(i) ~~New construction~~((-));

(ii) ~~Improvements to~~((real)) ~~property~~((-and the));

(iii) ~~Increases in the assessed value of~~ ~~((state-assessed))~~ state assessed property ~~((by the state levy rate applicable in the year prior to the current year for which the tax levy is being computed))~~; and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(3) **Apportionment between the counties - Adjustment for changes or errors.** When determining the amount of the state levy using the calculations set forth in subsection (2)(b) ~~((above))~~ of this rule, the dollar amount apportioned to each county is based upon the valuation figures reported to the department by each county by October 1 of the levy year. If use of the counties' certified assessed values for state levy purposes causes an erroneous apportionment among the counties because of later changes or later-identified errors in valuation within a county, the department will adjust the following year's levy apportionment to reflect these changes and ~~((the))~~ corrections ~~((for these errors))~~.

(a) For purposes of this rule, a change in taxable value includes any final adjustment made by a reviewing body (county board of equalization, state board of tax appeals, or court of competent jurisdiction) and may also include additions of omitted property, other additions to or deletions from the assessment or tax rolls, any assessment return submitted by a county to the department subsequent to December 1st, or a change in the indicated ratio of a county.

(b) Errors requiring adjustments under this rule include errors corrected by a final reviewing body or any other error that may have come to the department's attention and would otherwise be a subject for correction in the exercise of its supervisory powers.

(4) **Changes or errors in current levy - Adjust apportionment for the following year's levy.** If there are any changes or errors relating to the values used in apportioning the current levy, the apportionment for the following year's levy will be adjusted. For purposes of this apportionment, the department will recalculate the previous year's levy and the apportionment thereof to correct any changes or errors in taxable values reported to the department after October 1 of the preceding year. The department will adjust the apportioned amount of the current year's state levy for each county by the difference between the dollar amounts of state levy due from each county as shown by the original and revised levy computations for the previous year.

(5) **County required to correct any error upon discovery.** Nothing in this rule relieves a county from its obligation to correct any error immediately upon discovery when the correction may be timely made to avoid distortion in the true apportionment of the state levy between counties.

WSR 15-03-091
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-01—Filed January 21, 2015, 10:34 a.m., effective February 21, 2015]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: WAC 220-52-041 and 220-52-042 were adopted on December 19, 2014, and WAC 220-52-045 and 220-52-049 were adopted on January 16, 2015.

Purpose: This rule change project includes revisions to existing coastal commercial Dungeness crab rules to improve the intent and enforceability of rules that describe the process and requirements for issuing replacement buoy tags and submitting coastal Dungeness crab logbooks. These changes also implement gear retrieval requirements for coastal Dungeness crab fishermen to improve enforceability and minimize derelict crab gear. Additional changes to the preseason gear set period are [to] promote safety, enhance enforceability and provide for a coordinated season opening with Oregon.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-041, 220-52-042, 220-52-045, and 220-52-049.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, 77.12.047.

Adopted under notice filed as WSR 14-21-167 on October 22, 2014.

Changes Other than Editing from Proposed to Adopted Version: The adopted version was changed from the proposed version as filed under WSR 14-21-167 to include a September 15 end date to the gear tending provision described in WAC 220-52-049 and to include language in WAC 220-52-045 to describe the target start date for the opening of the coastal commercial Dungeness crab season is December 1 based on the results of preseason test fishing to determine crab condition. These changes provide more clarity in the rule language.

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

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

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

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

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

Date Adopted: December 19, 2014, and January 16, 2015.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 07-23-090, filed 11/20/07, effective 12/21/07)

WAC 220-52-041 Coastal Dungeness crab logbook requirements. (1) It is unlawful for any vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery to fail to have in possession, and complete a department-issued logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, the Columbia River, or the Pacific Ocean waters (~~(adjacent to the state of)~~) for all crab deliveries to a Washington port. For the purposes of this section, "delivery" is defined as provided in RCW 77.65.210.

(2) It is unlawful for any vessel operator engaged in fishing to fail to comply with the following method and time frame related to harvest logbook submittal and record keeping:

(a) The department must receive a copy of the completed logbook sheets within ten days following any calendar month in which fishing occurred. Completed Dungeness crab harvest logs must be sent to the following address: Washington Department of Fish and Wildlife, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Vessel operators engaged in fishing for Dungeness crab in the coastal commercial fishery must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting logs to the department must maintain a copy of all submitted logs for no less than three years after the fishing activity ended.

(c) Vessel operators can obtain logbooks by contacting the department's coastal Dungeness crab manager at 360-249-4628.

(3) A violation of this section is ((a misdemeanor)) an infraction, punishable under RCW ((77.15.280)) 77.15.160.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-042 Commercial crab fishery—Buoy tag, pot tag, and buoy requirements. (1) **Buoy tag and pot tag required.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy tag and pot tag that meet the requirements of this section, except as provided by (b) of this subsection. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) Persons operating under a valid coastal gear recovery permit as provided in WAC 220-52-045 may possess crab pots or buoys missing tags or bearing the tags of another

license holder, provided the permittee adheres to provisions of the permit. Failure to adhere to the provisions of the permit is a gross misdemeanor, punishable under RCW 77.15.750 Unlawful use of a department permit—Penalty.

(2) **Commercial crab fishery pot tag requirements:** Each shellfish pot used in the commercial crab fishery must have a durable, nonbiodegradable tag securely attached to the pot that is permanently and legibly marked with the license owner's name or license number and telephone number. If the tag information is illegible, or the tag is lost for any reason, the pot is not in compliance with state law. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) **Commercial crab fishery buoy tag requirements.**

(a) The department issues crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license.

(b) In coastal waters each crab pot must have the department-issued buoy tag securely attached to the first buoy on the crab pot buoy line (the buoy closest to the crab pot), and the buoy tag must be attached to the end of the first buoy, at the end away from the crab pot buoy line.

(c) In Puget Sound, all crab buoys must have the department-issued buoy tag attached to the outermost end of the buoy line.

(d) If there is more than one buoy attached to a pot, only one buoy tag is required.

(e) Replacement crab buoy tags.

(i) Puget Sound: The department only issues additional tags to replace lost tags to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration, under penalty of perjury, in the presence of an authorized department employee. The declaration must state 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.

(ii) Coastal: The department only issues replacement buoy tags for the coastal crab fishery 15 days after the season is opened and after a signed affidavit is received by ((the)) an authorized department ((from the owner of a coastal commercial crab fishery license)) employee. The affidavit must be signed by the primary or alternate operator fishing the commercial crab gear and state 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.

(A) Coastal crab license holders with a 300-pot limit may replace ((up to 15)) lost tags ((by January 15th, up to a total of 30 lost tags by February 15th, and up to a total of 45 lost tags after March 15th of each season)) according to the following schedule:

(I) Period 1, up to 15 tags.

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

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

(B) Coastal crab license holders with a 500-pot limit may replace ~~((up to 25))~~ lost tags ~~((by January 15th, up to a total of 50 lost tags by February 15th, and up to a total of 75 lost tags after March 15th of each season.~~

~~((C)))~~ according to the following schedule:

~~((I))~~ Period 1, up to 25 tags.

~~((II))~~ Period 2, 15 additional tags with no more than 40 tags total issued through the end of Period 2.

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

~~((C))~~ Replacement tag periods are defined as follows:

~~((I))~~ Period 1: The first business day after 15 days following the season opening through the next 30 days.

~~((II))~~ Period 2: The first business day after the end of Period 1 through the next 30 days.

~~((III))~~ Period 3: The first business day after the end of Period 2 through the end of the season.

~~((D))~~ In the case of extraordinary loss of crab pot gear, the department may issue replacement tags in excess of the amount listed in this subsection on a case-by-case basis.

(4) A violation of subsection (3) of this section is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Commercial crab fishery buoy requirements.**

(a) All buoys attached to commercial crab gear must consist of a durable material and remain floating on the water's surface when 5 pounds of weight is attached.

(b) No buoys attached to commercial crab gear in Puget Sound may be both red and white in color unless a minimum of 30 percent of the surface of each buoy is also prominently marked with an additional color or colors other than red or white. Red and white colors are reserved for personal use crab gear as described in WAC 220-56-320.

(c) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder may register only one unique buoy brand and one buoy color scheme with the department per license. Persons holding more than one state license must register buoy color(s) for each license that are distinctly different. The buoy color(s) will be shown in a color photograph.

(i) All buoys fished under a single license must be marked in a uniform manner with one buoy brand number registered by the license holder with the department and be of identical color or color combinations.

(ii) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

(6) Violation of subsection (5) of this section is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-045 Commercial crab fishery—Seasons and areas—Coastal. The open times and areas for coastal commercial crab fishing are as follows:

(1) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are ~~((open))~~ closed to commercial crab fishing ~~((December 1 through September 15 except that it is permissible to set baited crab gear beginning at 8:00 a.m. November 28))~~ except as provided by emergency rule. The target date for the commercial season opening is December 1 based on the results of test fishing to determine crab condition.

(2) The department may delay opening of the coastal crab fishery due to softshell crab conditions. If the department delays a season due to softshell crab conditions, the following provisions will apply:

(a) After consultation with the Oregon department of fish and wildlife and the California department of fish and wildlife, the director may establish a softshell crab demarcation line by emergency rule.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to softshell crab for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(c) It is unlawful for fishers to set crab gear in any area where the season opening is delayed, except that gear may be set as allowed by emergency rule. Emergency rules will allow setting ~~((64 hours))~~ crab gear in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crab or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-52-049 Commercial crab fishery—Gear limits—Coastal. (1) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless the person's Dungeness crab coastal fishery license or the equivalent Oregon or California Dungeness crab fishery license is assigned a crab pot limit. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(c) It is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license. A violation of this subsection is a

gross misdemeanor, punishable under RCW 77.15.530, Unlawful use of a nondesignated vessel—Penalty.

(d) It is unlawful for a person to take or fish for Dungeness crab or to deploy crab pots unless the person is in possession of valid documentation issued by the department that specifies the crab pot limit assigned to the license. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(e) Beginning May 1, through September 15, it is unlawful to leave Dungeness crab pots deployed in Grays Harbor, Willapa Bay, Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington for more than 21 consecutive days without making a Dungeness crab landing.

(2) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (Catch Area 60B) with more than 200 shellfish pots in the aggregate. It is unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) Determination of coastal crab pot limits.

(a) The number of crab pots assigned to a Washington Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license is based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria is used to determine and assign a crab pot limit to a Dungeness crab coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997; from December 1, 1997, through September 15, 1998; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license determines the crab pot limit for that license. A crab pot limit of 300 will be assigned to a license with landings totaling up to 35,999 pounds and a crab pot limit of 500 will be assigned to a license with landings totaling 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon department of fish and wildlife and/or the California department of fish and game.

(iii) Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license will be assigned more than one coastal crab pot limit.

(4) **Appeals of coastal crab pot limits.** An appeal of a crab pot limit by a coastal commercial license holder must be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department will remain in effect until such time as the appeal process is concluded.

**WSR 15-03-092
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-11—Filed January 21, 2015, 10:37 a.m., effective February 21, 2015]

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

Purpose: The purpose of this rule change is to amend WAC language so Washington department of fish and wildlife aquatic lands enhancement account (ALEA) grants may be offered once per biennium, rather than annually. This change does not affect the underlying process of funding and it is primarily a technical change to promote efficiency in the grant process. Changing the rule to offer grants once per biennium will result in significant savings in staff time, as well as a savings of \$3,950; the annual subscription cost of Fluidview, the department's online application, review and scoring system for ALEA grants. The change does not affect the amount of grant funds that will be available to aware [award] to grant recipients.

Citation of Existing Rules Affected by this Order: Amending WAC 220-130-040.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.100.050, and 77.100.080.

Adopted under notice filed as WSR 14-21-138 on October 21, 2014.

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: January 9, 2015.

Miranda Wecker, Chair
Fish and Wildlife Commission

WSR 15-03-093
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 21, 2015, 10:54 a.m., effective February 21, 2015]

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

Purpose: WAC 458-30-200 and 458-30-210 provide definitions used in the administration of chapter 458-30 WAC. Amending WAC 458-30-200 will clarify and update definitions the department and county assessor offices use when administering the current use program under chapter 84.34 RCW. Additionally, the department believes that the definitions found in WAC 458-30-210 can be incorporated into the definitions in WAC 458-30-200 to improve the entire chapter. WAC 458-30-210 can then be repealed.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-200 Definitions; and repealing WAC 458-30-210 Classification of land under chapter 84.34 RCW.

Statutory Authority for Adoption: RCW 84.34.141.

Adopted under notice filed as WSR 14-24-119 on December 3, 2014.

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 1, Repealed 1.

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

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

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

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: January 21, 2014 [2015].

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-097, filed 11/6/07, effective 12/7/07)

WAC 220-130-040 Review and selection process. (1)

The application method is on application forms provided by the department specifically for this purpose. Application forms will be available by request from the Olympia headquarters and at all regional offices of the department.

(2) Applications for projects will be accepted (~~each year~~) at least once per biennium during the open application period of December 1 through February 28.

(a) Applications accepted prior to the start of a biennium may be for project funding for one or both years of the ensuing biennium.

(b) ~~If applications are accepted ((during the first year of a~~) after the start of the biennium, ~~they~~ will be for project funding in the second year of a biennium.

(3) The funding decision deadline is May 31 of the year of application.

(4) Exceptions to the funding deadline dates will only be allowed in the event of applications for volunteer projects which are responsive to an emergency situation which may arise and which has been declared to be an emergency by the director.

(5) The department will send each applicant, within forty-five days of receipt of each application, a written acknowledgment of the receipt of the application and give the applicant an estimated date when notification of acceptance or rejection of the proposal can be expected. The written acknowledgment will also provide the department's selection criteria and a general description of the review and selection process. Final decisions and notification of acceptance or rejection of proposals where funding is requested will be made only after the biennial budget is passed by the legislature and signed by the governor.

(6) The department will determine when a proposed project might affect the management programs of federal, other state, and local agencies and of treaty tribes and will make contact with these entities, when the department determines that it is appropriate to do so, during the review and selection process. If the department determines that ongoing coordination between a volunteer group and another agency or tribe would be appropriate, it may be required as a condition of the agreement, when issued.

(7) The department may provide suggested modifications to the proposal which would increase its likelihood of approval together with the name and telephone number of the person within the department responsible for monitoring the review of the proposal.

AMENDATORY SECTION (Amending WSR 12-07-059, filed 3/19/12, effective 4/19/12)

WAC 458-30-200 Definitions. (1) **Introduction.** This ~~((section))~~ rule provides definitions for the terms used in conjunction with land classified under the Open Space Taxation Act, codified as chapter 84.34 RCW. The terms listed in this ~~((section))~~ rule are intended to act in concert with each other as appropriate.

(2) **Definitions.** For purposes of land classified under chapter 84.34 RCW, the following definitions apply:

(a) "Additional tax" means the additional property taxes that will be collected when classification is withdrawn or removed from land classified under chapter 84.34 RCW.

(b) "Affidavit" means the real estate excise tax affidavit required by chapter 82.45 RCW and chapter 458-61 WAC. The affidavit will be prescribed by the department and furnished to county treasurers. This form is used by landowners to report sales or transfers of classified land. The owner or

transferor and the purchaser or transferee, or agents of each, must sign the affidavit under penalty of perjury.

(c) "Agreement" means an agreement executed between an owner and the granting authority regarding the classification or reclassification of land as either open space or timber land under chapter 84.34 RCW.

(d) "Agricultural product" means livestock and plants that are produced for commercial purposes and includes any agricultural, horticultural, or aquacultural produce or crop; the raising of livestock, poultry, bees, or fur-bearing animals; or the production of milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. When used in relation to livestock or fur-bearing animals used for food or fiber, "raising" means breeding or increasing the value, size, or weight of the animal. Agricultural product does not include marijuana, useable marijuana, or marijuana-infused products as those terms are defined in RCW 69.50.101.

(e) "Applicant" means the owner who submits an application for classification or reclassification of land under chapter 84.34 RCW.

(f) "Application" means an application for classification or reclassification of land under chapter 84.34 RCW.

(g) "Approval" means a determination by the granting authority that land qualifies for classification or reclassification under chapter 84.34 RCW.

(h) "Appurtenance" refers to something used with, and related to or dependent upon another thing; that is, something that belongs to something else, an adjunct. The thing appurtenant is strictly necessary and essential to the proper use and enjoyment of the land, as well as useful or necessary for carrying out the purposes for which the land was classified under chapter 84.34 RCW.

(i) In terms of farm and agricultural land, an appurtenance is something used for a particular sort of farm and is widely and routinely used in the operation of the commercial agricultural enterprise.

(ii) For example, an appurtenance may be an outhouse, barn, or tool shed or it may be equipment used for a particular purpose or task, such as tools, instruments, or machinery.

(i) "Aquaculture" means the growing and harvesting of marine or fresh water flora or fauna in a soil or water medium for commercial agricultural purposes.

(j) "Assessor" means the county assessor or any agency or person who is authorized to act on behalf of the assessor.

(k) "Assessment year" means the year in which the property is listed and valued by the assessor and precedes the year in which the taxes on the property are due and payable.

(l) "Change in use" means a direct action taken by an owner that actually changes the use of, or has started changing the use of, classified land to a use that is not in compliance with the conditions of the agreement executed between the owner and the granting authority or to a use that is otherwise not in compliance with the provisions of chapter 84.34 RCW ((see)) WAC 458-30-295((3)).

(m) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under chapter 84.34 RCW.

(n) "Commercial agricultural purposes" means the use of farm and agricultural land on a continuous and regular basis, prior to and subsequent to application for classification or

reclassification, that demonstrates that the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit from cash income by producing an agricultural product. ~~((In addition, commercial agricultural purposes include the following uses of agricultural land:~~

~~(i) Land enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture;~~

~~(ii) Land used primarily for equestrian-related activities for which a charge is made, including but not limited to stabling, training, riding, clinics, schooling, shows, or grazing for feed;~~

~~(iii) Land used for incidental uses that do not exceed twenty percent of the total classified land and are compatible with commercial agricultural purposes;~~

~~(iv) Land on which appurtenances necessary to the production, preparation, or sale of the agricultural products exist in conjunction with the lands producing such products;~~

~~(v) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified parcel of twenty acres or more, and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes;~~

~~(vi) Land, one to five acres which is not contiguous to a classified parcel, that constitutes an integral part of the farming operation being conducted on land qualifying as "farm and agricultural land";~~

~~(vii) Cultivating Christmas trees or short rotation hardwoods, or growing other standing crops on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of growing such trees or other standing crops.))~~

An owner or lessee must engage in commercial agricultural activities on the land to demonstrate a commercial agricultural purpose.

(o) "Contiguous" means land that adjoins and touches other land owned by the same owner or held under the same ownership. Land that is an integral part of a farming operation is considered contiguous even though the land may be separated by a public road, railroad, right of way, or waterway.

For purposes of this subsection (2)(o):

(i) "Same ownership" means owned by the same person or persons, except that parcels owned by different persons are deemed held by the same ownership if the parcels are:

(A) Managed as part of a single operation; and

(B) Owned by:

(I) Members of the same family;

(II) Legal entities that are wholly owned by members of the same family; or

(III) An individual who owns at least one of the parcels and a legal entity or entities that own the other parcel or parcels if the entity or entities are wholly owned by that individual, members of his or her family, or that individual and members of his or her family.

(ii) "Family" includes only:

(A) An individual and his or her spouse or domestic partner, child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(B) The spouse or domestic partner of an individual's child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling;

(C) A child, stepchild, adopted child, grandchild, parent, stepparent, grandparent, cousin, or sibling of the individual's spouse or the individual's domestic partner; and

(D) The spouse or domestic partner of any individual described in ~~((this subsection (2)))~~ (o)(i)(B)(III) of this subsection.

(p) "County financial authority" and "financial authority" mean the treasurer or any agency or person charged with the responsibility of billing and collecting property taxes.

(q) "County legislative authority" means the county commission, council, or other legislative body.

(r) "County recording authority" means the auditor or any agency or person charged with the recording of documents.

(s) "Current" and "currently" means as of the date on which property is to be listed and valued by the assessor.

(t) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls following its classification or reclassification under chapter 84.34 RCW.

(u) "Department" means the department of revenue.

(v) "Farm and agricultural conservation land" means either:

(i) Land previously classified as farm and agricultural land that no longer meets the criteria and is reclassified as open space land; or

(ii) Traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, has not been irrevocably devoted to a use inconsistent with agricultural uses, and has a high potential for returning to commercial agriculture.

(w) "Farm and agricultural land" means:

(i) Any parcel of land twenty or more acres in size or multiple parcels of land that are contiguous and total twenty or more acres in size when the lands are:

(A) Primarily used to produce agricultural products for commercial agricultural purposes;

(B) Enrolled in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(C) Primarily used for other commercial agricultural purposes as established by rule.

(ii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

(A) One hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or

(B) Two hundred dollars or more in cash per acre per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

For the purposes of meeting the minimum gross income requirements as described in (w)(ii)(A) and (B) of this sub-

section for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(iii) Any parcel of land or contiguous parcels of land at least five acres, but less than twenty acres in size that are primarily used for commercial agricultural purposes and that have:

(A) Standing crops with an expectation of harvest within seven years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year; or

(B) Standing crops of short rotation hardwoods with an expectation of harvest within fifteen years and a demonstrable investment in the production of those crops equivalent to one hundred dollars or more per acre in the current or previous calendar year.

For the purposes of meeting the minimum investment requirements as described in (w)(iii)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income invested by the lessee in the production of the standing crop on the owner's classified farm and agricultural land.

(iv) Any parcel of land or contiguous parcels of land less than five acres in size that are primarily used for commercial agricultural purposes, and produce a gross income equal to:

(A) One thousand dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application was made prior to January 1, 1993; or

(B) One thousand five hundred dollars or more in cash per year for three of the five calendar years preceding the date of application for classification when the application is made on or after January 1, 1993.

For the purposes of meeting the minimum gross income requirements as described in (w)(iv)(A) and (B) of this subsection for leased classified farm and agricultural land, the owner may use either the cash income received from leasing his or her classified farm and agricultural land, or the cash income received by the lessee for the production of the agricultural product on the owner's classified farm and agricultural land.

(v) Farm and agricultural land also includes:

(A) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified farm and agricultural land parcel of twenty acres or more or multiple parcels that are contiguous and total twenty acres or more, and the use of the housing or residence is integral to the use of the classified farm and agricultural land for commercial agricultural purposes;

(B) Land on which appurtenances necessary for the production, preparation, or sale of the agricultural products are situated when the appurtenances are used in conjunction with the land(s) producing agricultural products, such as a machinery maintenance shed or a shipping facility located on farm

and agricultural land that produces the products to be shipped;

(C) Land incidentally used for an activity or enterprise that is compatible with commercial agricultural purposes as long as the incidental use does not exceed twenty percent of the classified land. An incidental use of classified farm and agricultural land may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand;

(D) A noncontiguous parcel of land from one to five acres in size that constitutes an integral part of the commercial agricultural operation being conducted on land qualifying as "farm and agricultural land." As used in this paragraph, noncontiguous means not adjoining or touching but held by the same ownership as defined in RCW 84.34.020;

(E) Land used primarily for equestrian related activities for which a charge is made including, but not limited to, stabling, training, riding, clinics, schooling, shows, or grazing for feed and that otherwise meets the requirements in (w)(i), (ii), or (iv) of this subsection; or

(F) Land used primarily for horticultural purposes including growing plants in the ground or in a container, regardless of whether under a structure, such as a greenhouse, subject to the following:

(I) The land is not primarily used for the storage, care, or selling of plants purchased from other growers for retail sale;

(II) If the land is less than five acres and used primarily to grow plants in containers, such land does not qualify as "farm and agricultural land" if more than twenty-five percent of the land used primarily to grow plants in containers is open to the general public for on-site retail sales;

(III) If more than twenty percent of the land used for growing plants in containers is covered by pavement, none of the paved area is eligible for classification as "farm and agricultural land." However, this limitation does not prevent up to twenty percent of the paved area from qualifying as "incidental use" as described in (bb) of this subsection; and

(IV) If the land classified under (w)(v)(F) of this subsection, in addition to any contiguous land classified under (w) of this subsection, is less than twenty acres, it must meet the applicable income or investment requirements described in (w)(ii), (iii), or (iv) of this subsection.

(x) "Farm employee or farm and agricultural employee" means an individual who is employed on farm and agricultural land on a full-time basis or a seasonal or migratory worker who works on farm and agricultural land only during the planting, growing, and/or harvesting seasons. For purposes of (x) of this subsection, "full-time basis" refers to an individual who is employed at least twenty-five hours per week on farm and agricultural land. It does not include a person who is employed full time by a business activity that is not conducted on classified farm and agricultural land and who only works occasional weekends or during the harvest season on classified farm and agricultural land.

(y) "Farm woodlot" means an area of land within a parcel(s) of classified farm and agricultural land that is used in a manner compatible with commercial agricultural purposes including, but not limited to, the growing and cutting of trees for the use of the owner or the sheltering of livestock.

~~((*)~~) (z) "Granting authority" means the appropriate agency or official that acts on an application for classification

or reclassification under chapter 84.34 RCW. The granting authority for:

(i) Open space land classification under RCW 84.34.020 (1) and 84.34.037 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative ~~((body))~~ authority and three members of the city legislative ~~((body))~~ authority in the county in which the land is located in a meeting where members may be physically absent but participating through telephonic connection or separate affirmative acts by both the county and city legislative authorities where both affirm the entirety of the application either without modification or with identical modifications;

(ii) Farm and agricultural land classification under RCW 84.34.020(2) and 84.34.035 is the assessor or the assessor's designee; and

(iii) Timber land classification under RCW 84.34.020(3) and 84.34.041 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative ~~((body))~~ authority and three members of the city legislative ~~((body))~~ authority in the county in which the land is located in a meeting where members may be physically absent but participating through telephonic connection or separate affirmative acts by both the county and city legislative authorities where both affirm the entirety of the application either without modification or with identical modifications.

~~((*)~~) (aa) "Gross income" means cash income derived from commercial agricultural purposes, as defined in (n) of this subsection. Gross income includes payments received from the United States Department of Agriculture for participating in a crop reduction or acreage set-aside program when such payments are based on the productive capacity of the land. It also includes the wholesale value of agricultural products produced from any parcel of classified land of at least five acres but less than twenty acres in which the agricultural products are donated to nonprofit food banks or feeding programs. The term does not include the following:

(i) The value of any products produced on the land and consumed by the owner or lessee;

(ii) Cash income derived from leases for the use of the land for noncommercial agricultural ~~((activities))~~ purposes;

(iii) Payments for soil conservation programs; or

(iv) The value represented from an exchange of goods or services for other goods or services (bartering).

~~((*)~~) (bb) "Incidental use" means a use of land classified as farm and agricultural land or timber land that is compatible with commercial agricultural purposes or the commercial growing and harvesting of timber. Incidental use for land classified as farm and agricultural land cannot exceed twenty percent of the total classified land, while incidental use for timber land cannot exceed ten percent of the total classified land. An incidental use may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand.

~~((*)~~) (cc) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural purposes. To be con-

sidered integral to the farming operation, the residence of the farm operator or owner and/or housing for farm employees must be the place(s) from which the farmer conducts his/her commercial agricultural business.

~~((aa))~~ (dd) "Interest" means the amount of applicable interest upon additional tax.

~~((bb))~~ (ee) "Net cash rental" means the earning or productive capacity of farm and agricultural land less the production costs customarily or typically paid by an owner or landlord. See WAC 458-30-260 for a more detailed explanation.

~~((ee))~~ (ff) "Notice of continuance" means the notice signed when land classified under chapter 84.34 RCW is sold or transferred if the new owner of the land intends to continue the classified use of the land and elects to have the land remain classified under chapter 84.34 RCW. This notice is part of the real estate excise tax affidavit or may be a separate document prepared by the department and attached to this affidavit.

~~((dd))~~ (gg) "Open space land" means one of the following:

(i) Any parcel(s) of land so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly:

(ii) Any parcel(s) of land, by preserving it in its present use would either:

(A) Conserve and enhance natural or scenic resources:

(B) Protect streams or water supply:

(C) Promote conservation of soils, wetlands, beaches, or tidal marshes:

(D) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space:

(E) Enhance recreation opportunities:

(F) Preserve historic sites:

(G) Preserve visual quality along highway, road, or street corridors, or scenic vistas:

(H) Retain in its natural state, tracts of land of not less than one acre in size situated in an urban area and open to public use on such conditions as may be reasonably required by the granting authority; or

(iii) Any parcel(s) of farm and agricultural conservation land.

(hh) "Owner" means:

(i) Any person(s) having a fee interest in a parcel of land; or

(ii) The contract vendee when the land is subject to a real estate contract.

~~((ee))~~ (ii) "Parcel of land" means a property identified as such on the assessment roll. For purposes of chapter 84.34 RCW and this WAC chapter, a parcel does not include any land area not owned by the applicant including, but not limited to, a public road, right of way, railroad, or waterway.

~~((ff))~~ (jj) "Penalty" means the amount due when land is removed from classification under chapter 84.34 RCW. The amount of the penalty is equal to twenty percent of the additional tax and interest calculated in accordance with RCW 84.34.080 or 84.34.108.

~~((gg))~~ (kk) "Planning authority" means the local government agency empowered by the appropriate legislative

authority to develop policies and proposals relating to land use.

~~((hh))~~ (ll) "Primary use" means the existing use of a parcel or parcels of land so prevalent that when the characteristic use of the land is evaluated a conflicting or nonrelated use appears to be very limited or excluded. The primary use of a parcel does not represent a specific percentage of the total classified land.

~~((ii))~~ (mm) "Qualification of land" means the approval of an application for classification or reclassification of land by a granting authority in accordance with chapter 84.34 RCW.

~~((jj))~~ (nn) "Rating system" means a public benefit rating system adopted for classified open space land according to RCW 84.34.055.

~~((kk))~~ (oo) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to a different classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as open space land under RCW 84.34.020(1).

~~((H))~~ (pp) "Removal" or "removed" means land classified under chapter 84.34 RCW is removed from classification by the assessor either because the owner requests removal, the new owner fails to sign the notice of continuance, the assessor does not approve a notice of continuance, or the land is no longer being used for the purpose for which classification was granted.

~~((mm))~~ (qq) "Sale of ownership" means the conveyance of the ownership of a parcel of land in exchange for valuable consideration.

~~((nn))~~ (rr) "Standing crop" includes short rotation hardwoods, Christmas trees, vineyards, fruit trees, or other perennial crops that:

(i) Are planted using agricultural methods normally used in the commercial production of that particular crop; and

(ii) Typically do not produce harvestable quantities in the initial years after planting.

~~((oo))~~ (ss) "Tax year" means the year when property tax is due and payable.

~~((pp))~~ (tt) "Timber land" means any parcel of land, five or more acres in size, or multiple parcels of land that are contiguous and total five or more acres in size, that are primarily used for the commercial growth and harvesting of forest crops.

(i) Timber land refers only to the land and also includes:

(A) Land incidentally used for an activity or enterprise that is compatible with the commercial growing and harvesting of timber as long as the incidental use does not exceed ten percent of the classified land; and

(B) Land on which appurtenances necessary for the production, preparation, or sale of commercial timber products are situated when the appurtenances are used in conjunction with the land(s) producing timber products.

(ii) Timber land does not include:

(A) Land listed on the assessment roll as designated forest land according to chapter 84.33 RCW;

(B) Land on which nonforest crops are located; or

(C) Land used as a residential home site.

~~((uu))~~ (uu) "Timber management plan" ~~((means the plan filed with the county legislative authority or the assessor when classified timber land is sold or transferred. It))~~ is synonymous with a "forest management plan" and details an owner's plan regarding the management of classified timber land including, but not limited to, the planting, growing and/or harvesting of timber. The elements of such a plan are set forth in WAC 458-30-232.

~~((vv))~~ (vv) "Transfer" means the conveyance of the ownership of a parcel of land without an exchange of valuable consideration and may include situations where classified land is donated to an owner, corporation, partnership, or limited liability corporation.

~~((ww))~~ (ww) "True and fair value" is the value of a parcel of land placed on the assessment rolls at its highest and best use without regard to its current use. The term also refers to market value, that is, the amount of money a buyer of property willing, but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might reasonably be applied.

~~((xx))~~ (xx) "Withdrawal" or "withdrawn" means action taken by the owner of land classified under chapter 84.34 RCW by filing a notice of request to withdraw the land from classification under the current use program in compliance with RCW 84.34.070. Once land has been classified under chapter 84.34 RCW, it must remain ~~((ss))~~ classified for at least ten years from the date of classification. At any time after eight years of the initial ten-year classification period have elapsed, the owner may file a notice of request to withdraw all or a portion of the land from classification with the assessor of the county in which the land is located. Land is withdrawn from classification as a result of a voluntary act by the owner.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-30-210 Classification of land under chapter 84.34 RCW.