

WSR 15-02-048
EXPEDITED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed January 5, 2015, 10:40 a.m.]

Title of Rule and Other Identifying Information: Chapter 388-835 WAC, Intermediate care facility/mental retardation (ICF/MR) program and reimbursement system changing to intermediate care facility/intellectual disabilities (ICF/ID) program and reimbursement system.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO DSHS Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, AND RECEIVED BY April 7, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to comply with goals stated in RCW 44.04.-280, by replacing demeaning language with respectful language. This will be done by using respectful language when referring to individuals with disabilities by replacing all instances of MR and mental retardation with ID and intellectual disability. Other housekeeping changes are also being made to reflect agency reorganization. None of these changes will result in any changes to policy, eligibility, or processes.

Statutory Authority for Adoption: RCW 74.08.090, 44.04.280, HB 2490, and Rosa's Law.

Statute Being Implemented: RCW 44.04.280 and HB 2490.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: Alan McMullen, P.O. Box 45310, Olympia, WA 98504, (360) 725-3524; and Enforcement: Not applicable.

December 26, 2014
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0005 What is the purpose of this chapter? (1) The purpose of this chapter is to establish rules authorized by Title 71A RCW, Developmental disabilities that:

(a) Regulate the purchase and provision of services in intermediate care facility for ~~((the mentally retarded))~~ those with an intellectual disability (ICF/((MR))ID); and

(b) Assure adequate ICF/((MR))ID care, service, and protection are provided through licensing and certification procedures; and

(c) Establish standards for providing habilitative training, health-related care, supervision, and residential services to eligible persons.

(2) Except where specifically referenced, this chapter supersedes and replaces any and all sections affecting ICF/((MR))ID facilities or programs contained in chapter 388-96 WAC.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0010 What terms and definitions are important to understanding this chapter? Unless the context clearly requires otherwise, the following terms and definitions are used consistently throughout the chapter:

"Accrual method of accounting" is a method of accounting where:

(1) Revenues are reported when they are earned, regardless of when they are collected; and

(2) Expenses are reported when they are incurred, regardless of when they are paid.

"Active treatment," as used in this chapter, is defined in 42 C.F.R. 483.440(a) and includes implementation of an individual program plan for each resident as outlined in 42 C.F.R. 483.440 (c) through (f).

"Administration and management" means activities used to maintain, control, and evaluate an organization's use of resources while pursuing its goals, objectives and policies.

"Admission" means entering a state-certified facility and being authorized to receive services from it.

"Allowable costs" are documented costs that:

(1) Are necessary, ordinary, and related to providing ICF/((MR))ID services to ICF/((MR))ID residents; and

(2) Not expressly declared **"nonallowable"** by applicable statutes or regulations.

"Appraisal" is a process performed by a professional person either designated by the American Institute of Real Estate Appraisers as a member, appraisal institute (MAI), or by the Society of Real Estate Appraisers as a senior real estate analyst (SREA) or a senior real property appraiser (SRPA). The appraisal process is used to establish the fair market value of an asset or to reconstruct the historical cost of an asset that was acquired in a past period. The appraisal process includes recording and analyzing property facts, rights, investments and values based on a personal inspection and a property inventory.

"Arm's-length transaction" is a transaction resulting from good faith bargaining between a buyer and seller who hold adverse positions in the market place. Arm's-length transactions are presumed to be objective transactions. A sale or exchange of ICF/((MR))ID or nursing home facilities among two or more parties where all parties continue to own one or more of the facilities involved in the transaction is not considered an arm's-length transactions. The sale of an ICF/

((MR))ID facility that is subsequently leased back to the seller within five years of the date of sale is not considered an arm's-length transaction for purposes of chapter 388-835 WAC.

"**Assets**" are economic resources of the provider, recognized, and measured in conformity with generally accepted accounting principles. Assets also include deferred charges that are recognized and measured according to generally accepted accounting principles. (The value of assets acquired in a change of ownership transaction entered into after September 30, 1984, cannot exceed the acquisition cost of the owner of record as of July 18, 1984.)

"**Bad debts**" or "**uncollectable accounts**" are amounts considered uncollectable from accounts and notes receivable. Generally accepted accounting principles must be followed when accounting for bad debts.

"**Beds,**" unless otherwise specified, means the number of set-up beds in an ICF/((MR))ID facility. The number of set-up beds cannot exceed the number of licensed beds for the facility.

"**Beneficial owner**": For a definition, see WAC 388-835-0015.

((~~Boarding home~~) **Assisted living facility**) means any home or other institution licensed according to the requirements of chapter 18.20 RCW.

"**Capitalization**" means recording expenditures as assets.

"**Capitalized lease**" is a lease that is recorded, according to generally accepted accounting principles, as an asset with an associated liability.

"**Cash method of accounting**" is a method of accounting where revenues are recorded only when cash is received and expenses are not recorded until cash is paid.

"**Change of ownership,**" see WAC 388-835-0020.

"**Charity allowances**" are reductions in a provider's charges because of the indigence or medical indigence of a resident.

"**Consent**" means the process of obtaining a person's permission before initiating procedures or actions against that person.

"**Contract**" means a contract between the department and a provider for the delivery of ICF/((MR))ID services to eligible medicaid recipients.

((~~"Provider" means an entity contracting with the department to deliver ICF/MR services to eligible medicaid recipients.~~))

"**Courtesy allowances**" are reductions in charges to physicians, clergy, and others for services received from a provider. Employee fringe benefits are not considered courtesy allowances.

"**Custody**" means the immediate physical confinement, sheltering and supervision of a person in order to provide them with care and protect their welfare.

((~~DDD~~) **DDA**) means the ((~~division of~~) developmental disabilities administration) of the department.

"**Department**" means the department of social and health services (DSHS) and its employees.

"**Depreciation**" is the systematic distribution of the cost (or depreciable base) of a tangible asset over its estimated useful life.

"**Discharge**" means the process that takes place when:

- (1) A resident leaves a residential facility; and
- (2) The facility relinquishes any responsibility it acquired when the resident was admitted.

"**Donated asset**" is an asset given to a provider without any payment in cash, property, or services. An asset is not considered donated if the provider makes a nominal payment when acquiring it. An asset purchased using donated funds is not a donated asset.

"**Entity**" means an individual, partnership, corporation, public institution established by law, or any other association of individuals, capable of entering into enforceable contracts.

"**Equity capital**" is the total tangible and other assets that are necessary, ordinary, and related to resident care listed on a provider's most recent cost report minus the total related long-term debt from the same cost report plus working capital as defined in this section.

"**Exemption**" means a department approved written request asking for an exception to a rule in this chapter.

"**Facility**" means a residential setting certified, according to federal regulations, as an ICF/((MR))ID by the department. A state facility is a state-owned and operated residential living center. A private facility is a residential setting licensed as a nursing home under chapter 18.51 RCW or a boarding home licensed under chapter 18.20 RCW.

"**Fair market value**" is the purchase price of an asset resulting from an arm's-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell.

"**Financial statements**" are statements prepared and presented according to generally accepted accounting principles and practice and the requirements of this chapter. Financial statements and their related notes include, but are not limited to, balance sheet, statement of operations, and statement of change in financial position.

"**Fiscal year**" is the operating or business year of a provider. Providers report on the basis of a twelve-month fiscal year, but this chapter allows reports covering abbreviated fiscal periods.

"**Funded capacity,**" for a state facility, is the number of beds on file with the office of financial management.

"**Generally accepted accounting principles**" are the accounting principles currently approved by the financial accounting standard board (FASB).

"**Generally accepted auditing standards**" are the auditing standards currently approved by the American Institute of Certified Public Accountants (AICPA).

"**Goodwill**" is the excess of the purchase price of a business over the fair market value of all identifiable, tangible, and intangible assets acquired. "**Goodwill**" also means the excess of the price paid for an asset over fair market value.

"**Habilitative services**" means those services required by an individual habilitation plan.

"**Harmful**" is when an individual is at immediate risk of serious bodily harm.

"**Historical cost**" is the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies.

"Imprest fund" is a fund:

(1) Regularly replenished for the amounts expended from it; and

(2) The cash in the fund and the receipts for expenditures should always equal a predetermined amount.

(3) An example of an imprest fund is a petty cash fund.

"ICF/((MR))ID" means a facility certified by Title XIX as an intermediate care facility for providing services to persons with mental retardation or related conditions.

"Interest" is the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the borrower.

"Joint facility costs" are any expenses incurred that benefit more than one facility or a facility and any other entity.

"Lease agreement" is a contract for a specified period of time between two parties regarding the possession and use of real or personal property and/or assets in exchange for specified periodic payments.

"Medicaid program" means either the state medical assistance program provided under RCW 74.09.500 or authorized state medical services.

"Medical assistance recipient" is an individual that the department declares eligible for medical assistance services provided in chapter 74.09 RCW.

"Modified accrual method of accounting" is a method of accounting that records revenues only when cash is received and records expenses when they are incurred, regardless of when they are paid.

"Net book value" is the historical cost of an asset less its accumulated depreciation.

"Nonallowable costs" are costs that are not documented, necessary, ordinary and related to providing services to residents.

"Nonrestricted funds" are donated funds not restricted to a specific use by the donor. General operating funds are an example of nonrestricted funds.

"Nursing facility" means a home, place, or institution, licensed or certified according to chapter 18.51 RCW.

"Operating lease" is a lease, according to generally accepted accounting principles, that requires rental or lease payments to be charged to current expenses when they are incurred.

"Ordinary costs" are costs that, by their nature and magnitude, a prudent and cost conscious management would pay.

"Owner" means a sole proprietor, general or limited partner, or beneficial interest holder of at least five percent of a corporation's outstanding stock.

"Ownership interest" means all beneficial interests owned by a person (calculated in the aggregate) regardless of the form such beneficial ownership takes. Also, see WAC 388-835-0015.

"Per diem costs" or **"per resident day costs"** are total allowable costs for a fiscal period divided by total resident days for that same period.

"Prospective daily payment rate" is the daily amount the department assigns to each provider for providing services to ICF/((MR))ID residents. The rate is used to compute the department's maximum participation in the provider's cost.

"Provider" means an entity contracting with the department to deliver ICF/ID services to eligible medicaid recipients.

"Qualified ((mental retardation)) intellectual disability professional (((QMRP)) QIDP)" means ((QMRP)) QIDP as defined under 42 C.F.R. 483.430(a).

"Qualified therapist," see WAC 388-835-0030.

"Regression analysis" is a statistical technique used to analyze the relationship between a dependent or criterion variable and a set of independent or predictor variables.

"Regional services" are the services of a local office of the ((division of)) developmental disabilities administration.

"Related organization" is an entity that either controls another entity or is controlled by another entity or provider. Control results from common ownership or the ability to exercise significant influence on the other entity's activities. Control occurs when an entity or provider has:

(1) At least a five percent ownership interest in the other entity; or

(2) The ability to influence the activities of the other.

"Relative" means spouse; natural parent, child, or sibling; adopted child or adoptive parent; stepparent, stepchild, stepbrother, stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law; grandparent or grandchild; uncle, aunt, nephew, niece, or cousin.

"Resident" or **"person"** means a person the ((division)) administration determines is, under RCW 71A.16.040 eligible for ((division)) administration-funded services.

"Resident day" means a calendar day of resident care. When computing calendar days of resident care, the day of admission is always counted. The day of discharge is counted only when discharge and admission occur on the same day. For the purpose of this definition, a person is considered admitted when they are assigned a bed and a resident record is opened for them.

"Resident care and training staff" are staff whose primary responsibility is the care and development of the residents, including:

(1) Resident activity program;

(2) Domiciliary services; and

(3) Habilitative services under the supervision of a ((QMRP)) QIDP.

"Restricted fund" is a fund where the donor restricts the use of the fund principal or income to a specific purpose. Restricted funds generally fall into one of three categories:

(1) Funds restricted to specific operating purposes; or

(2) Funds restricted to additions of property, plant, and equipment; or

(3) Endowment funds.

"RHC" - Residential habilitation center. A facility owned and operated by the state and is certified as an ICF/((MR))ID or a nursing facility.

"Secretary" means the secretary of DSHS.

"Start-up costs" are the one-time costs incurred from the time preparations begin on a newly constructed or purchased building until the first resident is admitted. Such **"preopening"** costs include, but are not limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training costs. Start-up costs do not include expenditures for capital assets.

"**Superintendent**" means the superintendent of a residential habilitation center (RHC) or the superintendent's designee.

"**Title XIX**" means the 1965 amendments to the Social Security Act, P.L. 89-07, as amended.

"**Uniform chart of accounts**" means a list of department established account titles and related code numbers that providers must use when reporting costs.

"**Vendor number**" or "**provider number**" is a number assigned by the department to each provider who delivers ICF/((MR))ID services to ICF/((MR))ID medicaid recipients.

"**Working capital**" is the difference between the total current assets that are necessary, ordinary, and related to resident care, as reported in a provider's most recent cost report, and the total current liabilities necessary, ordinary, and related to resident care reported in the same cost report.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0020 What is a "change in ownership"? (1) A "change in ownership" is a change in the individual or legal organization responsible for the daily operation of an ICF/((MR))ID facility.

(2) Types of events causing a change in ownership include but are not limited to:

(a) Changing the form of legal organization of the owner, such as a sole proprietorship becomes a partnership or corporation;

(b) Transferring the title to the ICF/((MR))ID enterprise from the provider to another party;

(c) Leasing the ICF/((MR))ID facility to another party or an existing lease is terminated;

(d) When the provider is a partnership, any event that dissolves the partnership;

(e) When the provider is a corporation and the corporation:

(i) Is dissolved;

(ii) Merges with another corporation which is the survivor; or

(iii) Consolidates with one or more other corporations to form a new corporation.

(3) Ownership does not change when:

(a) The provider contracts with another party to manage the facility and act as the provider's agent subject to the provider's general approval of daily operating decisions; or

(b) When the provider is a corporation, some or all of its corporate stock is transferred.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0030 What is a "qualified therapist"? A qualified therapist is any of the following:

(1) An activity specialist who has department specified specialized education, training, or experience;

(2) An audiologist eligible for a certificate of clinical competency in audiology or possessing the equivalent education and clinical experience;

(3) A dental hygienist defined, licensed and regulated by chapter 18.29 RCW;

(4) A dietitian either:

(a) Eligible for registration by the American Dietetic Association under requirements in effect on January 17, 1974; or

(b) With a baccalaureate degree whose major studies covered food and nutrition, dietetics, or food service management; plus one year supervisory experience in the dietetic service of a health care institution; and annual participation in continuing dietetic education;

(5) An occupational therapist who graduated from a program in occupational therapy or who possesses the equivalent of such education or training and meets all Washington state legal requirements;

(6) A pharmacist who is licensed by the Washington state board of pharmacy to engage in the practice of pharmacy;

(7) A physical therapist, meaning someone practicing physical therapy as defined in RCW 18.74.010(3). Physical therapist does not include massage operators as defined in RCW 18.108.010;

(8) A physician as defined, licensed and regulated by chapter 18.71 RCW or an osteopathic physician as defined, licensed and regulated by chapter 18.57 RCW;

(9) A psychologist as defined, licensed and regulated by chapter 18.83 RCW;

(10) A qualified ((~~mental-retardation~~)) intellectual disability professional;

(11) A registered nurse as defined by chapter 18.88A RCW;

(12) A social worker who is a graduate of a school of social work; or

(13) A speech pathologist either:

(a) Eligible for a certificate of clinical competence in speech pathology; or

(b) Possessing the equivalent education and clinical experience.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0040 What general requirements apply to ICF/MR care facilities? The following general requirements apply:

(1) The ((~~division~~)) administration will recognize only the official name of an ICF/((MR))ID as shown on the license.

(2) All state and private ICF/((MR))ID facilities must be certified as a Title XIX ((~~MR~~)) ICF/((MR))ID facility.

(3) All private ICF/((MR))ID facilities with a certified capacity of at least sixteen beds must be licensed as a nursing home under chapter 18.51 RCW, Nursing homes.

(4) All private ICF/((MR))ID facilities with a certified capacity of less than sixteen beds must be licensed as a boarding home for the aged under chapter 18.20 RCW.

(5) All facilities certified to provide ICF/((MR))ID services must comply with all applicable Title XIX, Section 1905 of the Social Security Act 42 U.S.C federal regulations as amended. In addition, all private-operated facilities must

comply with state regulation governing the licensing of nursing homes or boarding homes for the aged and any other relevant state regulations.

(6) All certified facilities must only admit persons with developmental disabilities as residents.

(7) State facilities may not exceed funded capacity unless authorized by the secretary to do so (see RCW 71A.20.090).

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0045 What are the minimum staff requirements for an ICF/((MR))ID facility? All ICF/((MR))ID facilities must provide sufficient number of qualified staff to meet the needs of their residents.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0050 What general requirements apply to the quality of ICF/((MR))ID services? (1) DSHS is responsible for assuring the:

(a) Health care and habilitative training needs of an individual are identified and met according to state and federal regulations.

(b) Individual is placed in a facility certified as capable of meeting their needs.

(2) ((DDD)) DDA regional service staff is responsible for authorizing changes in residential services.

(3) All services provided must be essential to the resident's habilitation and health care needs and to achieving the primary goal of attaining the highest level of independence possible for each individual resident.

(4) A resident in an ICF/((MR))ID is eligible for community residential services when such services meet their needs.

(5) Every ICF/((MR))ID must provide habilitative training and health care that at least includes the following:

(a) Active treatment;

(b) Services according to the identified needs of the individual resident and provided by or under the supervision of qualified therapists;

(c) Routine items and supplies provided uniformly to all residents;

(d) Providing necessary surgical appliances, prosthetic devices, and aids to mobility for the exclusive use of individual residents;

(e) Nonreusable supplies not usually provided to all residents may be individually ordered. A department representative must authorize requests for such supplies.

(6) Each ICF/((MR))ID facility is responsible for providing transportation for residents. This responsibility may include the guarantee of a resident's use of public transportation.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0055 What are the resident's rights if DSHS decides that they are no longer eligible for ICF/((MR))ID services? (1) A resident, their guardian, next-of-

kin, or responsible party must be informed by DSHS in writing thirty days before any redetermination of their eligibility for ICF/((MR))ID services takes place.

(2) The redetermination notice must include:

(a) The reasons for the proposed eligibility change;

(b) A statement that the resident or any other individual designated by the resident has a right to a conference with a ((DDD)) DDA representative within thirty days of receipt of the notice;

(c) A statement that the resident has the right to request a hearing to contest the department's decision within thirty days of the notice;

(d) Information as to how a hearing can be requested;

(e) A statement that the resident has the right to be represented at the hearing by an authorized representative; and

(f) Information regarding the availability and location of legal services within the resident's community.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0060 What are DSHS responsibilities when it decides to redetermine a resident eligibility for ICF/((MR))ID services? DSHS must send a hearing request form with the notice of redetermination.

(1) If the resident requests a hearing within the thirty-day time period, DSHS must not redetermine eligibility until a hearing decision is reached or appeal rights have been exhausted unless redetermination is warranted by the resident's health or safety needs.

(2) If the secretary or the secretary's designee concludes that redetermination is not appropriate, no further action will be taken to redetermine eligibility unless there is a change in the situation or circumstances. If there is a change in the situation or circumstances, the request may be resubmitted.

(3) If the secretary or the secretary's designee affirms the decision to change the resident's eligibility and no judicial review is filed within thirty days of the receipt of notice of redetermination, the department must proceed with the planned action.

(4) If the secretary or secretary's designee affirms the decision to change the resident's eligibility and a request for judicial review has been filed, any proposed redetermination must be delayed until the appeal process is complete unless a delay jeopardizes the resident's health or safety.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0070 What requirements apply to the placement of individuals in an ICF/((MR))ID facility? (1) Placing individuals in an ICF/((MR))ID facility is the responsibility of the ((division of)) developmental disabilities administration and must be done according to applicable federal and state regulations.

(2) A facility may not admit an individual who requires services the facility cannot provide.

(3) Department representatives must determine an individual's eligibility for ICF/((MR))ID services before payment can be approved.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0075 What if an individual is transferred between facilities? (1) When an individual is transferred between facilities, all essential information concerning the individual, their condition, regimen of care and training must be transmitted, in writing, by the sending facility to the receiving facility at the time of the transfer.

(2) "Transferred between facilities" means transferred from:

- (a) An ICF/~~(MR)~~ID to ICF/~~(MR)~~ID;
- (b) An ICF/~~(MR)~~ID to a hospital;
- (c) A hospital to an ICF/~~(MR)~~ID; or
- (d) An ICF/~~(MR)~~ID or hospital to alternative community placement.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0080 What if an ICF/~~(MR)~~ID facility is closed? (1) When a facility plans to close, it must notify the department, in writing, at least one hundred and eighty days before the date of closure.

(2) Upon receipt of a notice of closure, the department must stop referring individuals to the facility and begin the orderly transfer of its residents.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0095 Is a transfer plan required for each resident? (1) ~~(DD)~~ DDA must prepare a written plan for each resident to be transferred.

(2) These plans must:

- (a) Identify the location of available facilities that provide services appropriate and consistent with the resident's needs;
- (b) Provide for coordination between the staffs of the old and new agencies;
- (c) Allow for a pre-transfer visit, when the resident's condition permits, to the new facility, so the resident can become familiar with the new surroundings and residents;
- (d) Encourage active participation by the resident's guardian or family in the transfer preparation;
- (e) Facilitate discussions between the staffs of the old and new facilities regarding expectations;
- (f) Provide opportunities for consultations on request between the two staffs; and
- (g) Require follow-up by ~~(DD)~~ DDA to monitor the effects of the transfer.

AMENDATORY SECTION (Amending WSR 04-16-018, filed 7/23/04, effective 8/23/04)

WAC 388-835-0100 Why would an individual move? An individual may move if:

- (1) The services provided to an individual do not meet their needs;
- (2) A facility's ICF/~~(MR)~~ID certification or license is revoked or suspended;

- (3) Medical reasons dictate relocation;
- (4) A resident's welfare would be improved;
- (5) The welfare of the other residents would be enhanced;
- (6) There is no payment for services provided to the resident during their stay at the facility;
- (7) The resident and/or guardian make a formal request;
- (8) The facility is partially closing; or
- (9) The facility is closing.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0105 What are DSHS' responsibilities for placing individuals? (1) When services available to an individual do not meet their needs, the department is responsible for initiating and facilitating the resident's relocation.

(2) The department may enforce immediate movement of a resident from an ICF/~~(MR)~~ID facility when the facility's ICF/~~(MR)~~ID certification or license is revoked or suspended.

(3) The department must notify a resident and their guardian, next of kin, or responsible party, in writing, when:

(a) DSHS or ~~(Health Care Financing Administration (HCFA))~~ Centers for Medicare and Medicaid (CMS) determines a facility no longer meets certification requirements as an ICF/~~(MR)~~ID;

(b) DSHS determines the facility does not meet contract requirements; or

(c) A facility voluntarily terminates their contract with DSHS or stops participating in the ICF/~~(MR)~~ID program.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0125 Can residents request a transfer? (1) Every resident has a right to:

- (a) Request a transfer; and
- (b) Select where they wish to move.

(2) If the resident's selection is available and appropriate to their habilitation and health care needs, the department must make all reasonable attempts to accomplish transfer.

(3) If the selection is neither appropriate nor available, the resident may make another selection.

(4) All requests by the resident or their guardian must be in writing.

(5) ~~(DD)~~ DDA is solely responsible for arranging the resident's transfer.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0130 What rights are available to a resident regarding a proposed transfer? (1) A resident, their guardian, next-of-kin, or responsible party must be notified in writing at least thirty days before any transfer occurs.

(2) The transfer notice must include:

- (a) The reasons supporting the proposed transfer;
- (b) A statement that the resident or any other individual designated by the resident has a right to a conference with a

~~((DD))~~ DDA representative within twenty-eight days of receipt of the notice;

(c) A statement that the resident has the right to request a hearing to contest the department's decision within thirty days of the notice;

(d) Information as to how a hearing can be requested;

(e) A statement that the resident has the right to be represented at the hearing by an authorized representative; and

(f) Information regarding the availability and location of legal services within the resident's community.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0145 Does a facility have a responsibility to report incidents involving residents? Any facility that has an ICF/~~((MR))~~ID contract with DSHS must immediately contact their ~~((DD))~~ DDA regional services office regarding unauthorized leaves, disappearances, serious accidents, or other traumatic incidents effecting a resident or the resident's health or welfare.

SOCIAL LEAVE FOR ICF/~~((MR))~~ID RESIDENTS

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0155 What requirements apply to social leaves for ICF/~~((MR))~~ID residents? (1) All social leaves should be consistent with the goals and objectives in the resident's individual habilitation plan.

(2) Any facility vacancies resulting from a resident's social leave will be reimbursed if the leave complies with the individual habilitation plan and the following conditions:

(a) The facility must notify the ~~((DD-director))~~ DDA assistant secretary or their designee of all social leaves exceeding fifty-three hours.

(b) All social leaves exceeding seven consecutive days must receive prior written approval from the ~~((DD-director))~~ DDA assistant secretary or their designee.

(c) The ~~((DD-director))~~ DDA assistant secretary or their designee must give written approval before a resident can accumulate more than seventeen days of social leave per year.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0165 Is a superintendent required to give notice when they detain a resident? (1) When a superintendent detains an RHC resident, the superintendent or their designee must notify the resident and their legal representative as required in RCW 71A.10.070.

(2) If the resident's legal representative is not available, the superintendent must also notify one or more of the following persons in the order of priority listed:

(a) A parent of the resident;

(b) Other persons of close kinship relationship to the resident;

(c) The Washington protection and advocacy agency for the rights of a person with a developmental disability, appointed in compliance with 42 U.S.C. section 6042; or

(d) A person, who is not a DSHS employee or an ICF/~~((MR))~~ID but who, in the superintendent's opinion, is concerned with the resident's welfare.

(3) Nothing in this section prevents a superintendent from notifying:

(a) A mental health professional;

(b) Local law enforcement;

(c) Adult protective services;

(d) Child protective services;

(e) Other agencies as appropriate; or

(f) ~~((Director, division of))~~ Assistant secretary, developmental disabilities administration, or designee.

~~((ICR/MR))~~ICF/ID CONTRACTS

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0175 What if a facility violates its ICF/~~((MR))~~ID contract? (1) If a facility violates the terms of their contract, DSHS may temporarily suspend referring residents to it.

(2) Whenever DSHS suspends referrals it must notify the facility immediately, in writing, and give the reasons for its action.

(3) The suspension may continue until DSHS determines that the circumstances leading to it have been corrected.

AMENDATORY SECTION (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

WAC 388-835-0180 What if an ICF/~~((MR))~~ID contract is terminated? (1) Before a contract is terminated, the provider must give DSHS one hundred and eighty days written notice of the termination.

(2) When a contract is terminated, the provider must submit final reports to DSHS according to the requirements of WAC 388-835-0185.

(3) When notified of a contract termination, DSHS must determine, by preliminary or final settlement calculations, the amount of any overpayments made to the provider, including overpayments disputed by the provider. If preliminary or final settlements are not available for any periods before the termination date of the contract, DSHS must use available relevant information to make a reasonable estimate of any overpayments or underpayments.

(4) The provider must file a properly completed final cost report (see the requirements in WAC 388-835-0225, 388-835-0230, and 388-835-0235). This report may be audited by DSHS. A final settlement must be determined within ninety days after the audit process is completed (including any administrative review of the audit requested by the provider) or within twelve months of the termination of the contract if an audit is not performed.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0200 Does decertification, termination or nonrenewal of a contract stop payment of Title XIX funds? A decertification, termination, or nonrenewal of a contract stops the payment of Title XIX funds. Actions such as these do not affect a facility's right to operate as a nursing home or boarding home, but they do disqualify the facility from operating as an ICF/((MR))ID facility and receiving federal funds.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0205 How does a change in ownership affect an ICF/((MR))ID contract with DSHS? (1) On the effective date of a change of ownership, DSHS's contract with the former owner is terminated. The former owner must give DSHS one hundred and eighty days written notice before the contract is terminated. When a certificate of need is required for the new owner and the new owner wishes to continue to provide services to residents without interruption, a certificate of need must be obtained before the former owner submits their notice of termination (see chapter 70.38 RCW for certificate of need requirements).

(2) If the new provider plans to participate in the cost related reimbursement system, they must meet the conditions specified in WAC 388-835-0215 and submit the projected budget required in WAC 388-835-0220. The new owner's ((CF/MR)) ICF/ID contract is effective on the date ownership changes.

(3) When a contract is terminated, the provider must reverse any accumulated liabilities assumed by a new owner against the appropriate accounts.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0210 What is the prospective cost related reimbursement system (PCRRS)? PCRRS is the system used by DSHS pay for ICF/((MR))ID services provided to ICF/((MR))ID residents. Reimbursement rates for such services are determined according to the principles, methods, and standards contained in this chapter.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0215 What are the requirements for participating in PCRRS? To participate in PCRRS, an entity responsible for operating an ICF/((MR))ID facility must:

- (1) Obtain a state certificate of need as required by chapter 70.38 RCW, Health planning and development;
- (2) Possess a current license to operate an appropriate facility (e.g., nursing home, boarding home);
- (3) Be currently certified under Title XIX to provide ICF/((MR))ID services;
- (4) Hold a current contract to provide ICF/((MR))ID services and comply with all of its provisions; and

(5) Comply with all applicable federal and state regulations, including the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0220 What are the projected budget requirements for new providers? (1) Unless the ((DDD director)) DDA assistant secretary approves a shorter period, each new provider must submit a one-year projected budget to DSHS at least sixty days before the contract will become effective.

(2) The projected budget must cover the twelve months immediately following the date the provider will enter the program.

(3) The projected budget must:

- (a) Be prepared according to DSHS instructions;
- (b) Be completed on the forms provided by DSHS; and
- (c) Include all earnest money, purchase, and lease agreements involved in the change of ownership transaction.

(4) A new provider must also clearly identify, in their projected budget, all individuals and organizations having a beneficial ownership interest in the:

- (a) Current operating entity;
- (b) Land, building, or equipment used by the facility; and
- (c) Purchasing or leasing entity.

(5) For purposes of this section, a "new provider" is one:

- (a) Operating a new facility;
- (b) Acquiring or assuming responsibility for operating an existing facility; or
- (c) Obtaining a certificate of need approval due to an addition to or renovation of a facility.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0230 Must a cost report be certified?

(1) Every provider cost report required by DSHS must be accompanied by a certification signed on behalf of the provider who was responsible to DSHS during the reporting period.

(2) If a provider files a federal income tax return, the person normally signing the return and the ICF/((MR))ID facility administrator must sign the certification.

(3) If someone, who is not an employee of the provider, prepares the cost report, they must submit, as part of the certification, a signed statement indicating their relationship to the provider.

(4) Only original signatures must be affixed to certifications submitted to DSHS.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0280 Do ICF/((MR))ID providers have to maintain records related to their contracts? (1) A provider must, according to the terms of their contract, maintain adequate records so DSHS can audit reported data to verify provider compliance with generally accepted accounting principles and DSHS reimbursement principles and reporting instructions.

(2) If a provider maintains records based upon a chart of accounts other than the one established by DSHS, they must give DSHS a written schedule clearly illustrating how their individual account numbers correspond to those used by DSHS.

(3) After filing a report with DSHS, a provider must keep for five years, at a location in Washington state specified by the provider, all records supporting the report.

(4) If at the end of five years there are unresolved audit issues related to the report, the records supporting the report must be kept until the issues are resolved.

(5) Providers, according to the terms of their contract, must make records available for review upon demand by authorized personnel from DSHS and the United States Department of Health and Human Services during normal business hours at a location in Washington state specified by the provider.

(6) When a contract is terminated, final settlement must not be made until accessibility to and preservation of the provider's records within Washington state is assured.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0295 Are the reports submitted to DSHS by providers available to the public? According to chapter 388-01 WAC, all required financial and statistical reports submitted by ICF/((MR))ID facilities to DSHS are public documents and available to the public upon request.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0300 What is an ICF/((MR))ID field audit? A field audit consists of an on-site audit of the provider's financial records to verify that information provided on the cost report for the period being audited is accurate and represents allowable cost.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0310 When does DSHS complete a field audit? (1) If auditors are given timely access to a ICF/((MR))ID facility and to all records necessary to conducting their audit, DSHS must complete an audit within one year:

(a) Of receiving a properly completed annual cost report; or

(b) After the facility is notified it has been selected for an audit.

(2) For a state ICF/((MR))ID, DSHS must complete a field audit within three years after a properly completed cost report is received if auditors are given timely access to the facility and all records necessary to conducting their audit.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0315 How should a provider prepare for a field audit? (1) A provider must allow auditors access to the ICF/((MR))ID facility and all financial and statistical

records. These records must be available at a location in the state of Washington specified by the provider. They must include:

(a) All income tax returns relating to the audited cost report and work papers supporting the report's data; or

(b) Work papers related to resident trust funds.

(2) The provider must reconcile reported cost data with:

(a) Applicable federal income and payroll tax returns; and

(b) The financial statements for the period covered by the report.

(c) The reconciliation must be in a form that facilitates verification by the auditors.

(3) The provider must designate and make available to the auditors at least one individual familiar with the internal operations of the facility being audited. The designated individual(s) must have sufficient knowledge and access to records to effectively respond to auditor questions and requests for information and documentation.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0335 What general requirements apply to accounting for resident trust accounts? (1) A provider must establish and maintain a bookkeeping system for all resident money received by the facility on behalf of the resident.

(2) This system must be incorporated into the facility's business records and be capable of being audited.

(3) The bookkeeping system must apply to residents that are:

(a) Incapable of handling their money and whose guardian, relative, ((DDD)) DDA regional service office administrator, or physician requests in writing that the facility accept this responsibility. (If the Social Security Form SSA-780, "Certificate of Applicant for Benefits on Behalf of Another," is used as documentation, it must be signed by one of the persons designated in this subsection.)

(b) Capable of handling their own money, but they ask the facility, in writing, to accept this responsibility for them.

(4) It is the facility's responsibility to maintain written authorization requests in a resident's file.

(5) A resident must be given at least a quarterly reporting of all financial transactions affecting their account. The resident's representative payee, guardian and/or other designated agents must be sent a copy of this quarterly report or any other reports related to the resident's account.

(6) Facilities must purchase surety bonds, or otherwise provide assurances or security satisfactory to DSHS, that assures the security of all resident personal funds deposited with them.

(7) Facilities may not require residents to deposit personal funds with them. A facility may hold a resident's personal funds only if the resident or resident's guardian gives written authorization to do so.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0340 What specific accounting procedures apply to resident trust accounts? (1) A provider must maintain a subsidiary ledger with an account for each resident for whom the provider holds money in trust.

(2) Each account and related supporting information must be:

(a) Maintained at the facility;

(b) Kept current;

(c) Balanced each month; and

(d) Detailed, with supporting verification, showing all money received on behalf of the individual resident and how that money was used.

(3) A provider must make each resident trust account available to DSHS representatives for inspection and audit.

(4) A provider must maintain each resident trust accounts for a minimum of five years.

(5) A provider must notify the ~~((DDD))~~ DDA regional service office when an individual's account balance is within one hundred dollars of the amount listed on their award letter.

(6) A resident can accumulate funds by:

(a) Not spending their entire clothing and personal incidentals allowance; and

(b) Saving other income DSHS specifically designates as exempt.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0370 What controls must a provider use to ensure the safety of trust fund money? (1) A provider must not release trust fund money to anyone other than the:

(a) Resident or, with their written consent, their guardian;

(b) Resident's designated agent as appointed by power of attorney; or

(c) Appropriate DSHS personnel designated by the ~~((DDD))~~ DDA regional services administrator.

(2) A provider must complete a receipt, in duplicate, when money is received. One copy must be given to the person making the payment or deposit and the other copy must remain in the receipt book for easy reference.

(3) All residents must endorse, with their own signature, any checks or state warrants they receive. Only when a resident is incapable of signing their own name may the provider use the resident's "X" mark followed by their printed name and the signature of two witnesses.

(4) When both a general fund account and a trust fund account are kept at the same bank, the trust account portion of any deposit can be deposited directly to the trust account.

(5) A provider must credit a resident's trust account ledger sheet when the resident's allowance is received. This entry must be referenced with the receipt number and must be supported by a copy of the deposit slip (one copy for all deposits made).

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0390 How are trust funds liquidated?

(1) In the case of deceased resident, the provider must obtain a receipt from the next-of-kin, guardian, or duly qualified agent when the balance of the trust fund is released. If the next-of-kin, guardian or duly qualified agent cannot be identified, the ~~((DDD))~~ DDA regional service office must be contacted, in writing within seven days of the resident's death, to assist in the release of the resident's trust fund money. A check or other document showing payment to the next-of-kin, guardian, or duly qualified agent will serve as a receipt.

(2) In situations where the resident leaves the ICF/ ~~((MR))~~ ID facility without authorization and their whereabouts is unknown, the facility:

(a) Will make a reasonable attempt to locate the missing resident. A "reasonable attempt" includes, but is not limited to, contacting friends, relatives, police, the guardian, and the ~~((DDD))~~ DDA regional office in the area; and

(b) If the resident cannot be located after ninety days, the facility must notify the department of revenue regarding the existence of "abandoned property" (see chapter 63.29 RCW Uniform Unclaimed Property Act). The facility must deliver to the department of revenue the balance of the resident's trust fund account within twenty days following their notification.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0400 What are allowable costs? (1)

Allowable costs are documented costs that are necessary, ordinary, related to providing ICF/ ~~((MR))~~ ID services to ICF/ ~~((MR))~~ ID residents, and not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude that a prudent and cost conscious management would pay.

(2) Allowable costs do not include increased costs resulting from transactions or the application of accounting methods which circumvent the principles of the prospective cost-related reimbursement system.

(3) DSHS does not allow increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and leaseback, successive sales or leases of a single facility or piece of equipment).

(4) When a provider requests a rate adjustment according to WAC 388-835-0900 or 388-835-0905, any cost audited previously and not disallowed is subject to DSHS review and reconsideration according to the criteria in this section.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0405 What are unallowable costs? (1)

Costs are unallowable if they are not documented, necessary, or ordinary and do not relate to providing services to ICF/ ~~((MR))~~ ID residents.

(2) Examples of unallowable costs include, but are not limited to, the following:

(a) Costs of items or services not covered by the medic-aid program. Costs of nonprogram items or services will not

be allowed even if indirectly reimbursed by DSHS as a result of an authorized reduction in resident contribution.

(b) Costs of services and items provided to ICF/((MR))ID residents covered by DSHS's medical care program but not included in ICF/((MR))ID services.

(c) Costs associated with a capital expenditure subject to Section 1122 approval (part 100, Title 42 C.F.R.) if DSHS found the expenditure was not consistent with applicable standards, criteria, or plans. If DSHS was not given timely notice of a proposed capital expenditure, all associated costs will not be allowed as of the date the costs were determined to be nonreimbursable under applicable federal regulations.

(d) Costs associated with a construction or acquisition project that requires certificate of need approval according to chapter 70.38 RCW and that approval was not obtained.

(e) Costs associated with outside activities (e.g., costs allocable to the use of a vehicle for personal purposes, or related to the part of a facility leased out for office space).

(f) All salaries or other compensation of officers, directors, stockholders, and others associated with the provider or home office, except compensation paid for services related to resident care and training.

(g) Costs in excess of limits set in this chapter or costs violating principles contained in this chapter.

(h) Costs resulting from transactions or the application of accounting methods used to circumvent the principles of the prospective cost-related reimbursement system.

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of cost to the related organization or market meaning the price paid for comparable services, facilities or supplies when purchased in an arms length transaction.

(j) Balances of accounts that cannot be collected (bad debts or uncollectable accounts).

(k) Charity and courtesy allowances.

(l) Cash, assessments, or other contributions to political parties, and cost incurred to improve community or public relations. Dues to charitable organizations, professional organizations and trade associations are allowable costs.

(m) Any portion of trade association dues for legal and consultant fees and costs related to lawsuits or other legal action against DSHS.

(n) Travel expenses for trade association boards of directors in excess of the twelve allowable meetings per calendar year.

(o) Vending machine expenses.

(p) Expenses for barber or beautician services not included in routine care.

(q) Funeral and burial expenses.

(r) Costs of gift shop operations and inventory.

(s) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except items used in resident activity programs or in ICF/((MR))ID programs where clothing is a part of routine care.

(t) Fund-raising expenses except those directly related to the resident activity program.

(u) Penalties and fines.

(v) Expenses related to telephones, televisions, radios, and similar appliances in a resident's private accommodations.

(w) Federal, state, and other income taxes.

(x) Costs of special care services, except where authorized by DSHS.

(y) Expenses for "key-person" insurance and other insurance or retirement plans not available to all employees.

(z) Expenses of profit-sharing plans.

(aa) Expenses related to the purchase and/or use of private or commercial aircraft that exceed what a prudent provider would spend for ordinary and economical transportation when conducting resident care business.

(bb) Personal expenses and allowances of owners or relatives.

(cc) All expenses of maintaining professional licenses or membership in professional organizations.

(dd) Costs related to agreements not to compete.

(ee) Goodwill and the amortization of goodwill.

(ff) Expenses related to vehicles in excess of what a prudent provider would expend for the ordinary and economic provision of transportation needs related to resident care.

(gg) Legal and consultant fees related to a fair hearing against DSHS. Including but not limited to, fees for accounting services used to prepare for an administrative judicial review resulting in a final administrative decision favorable to DSHS or where DSHS's decision is allowed to stand.

(hh) Legal and consultant fees related to a lawsuit against DSHS, including suits appealing administrative decisions.

(ii) Lease acquisition costs and other intangibles not related to resident care and training.

(jj) Interest charges assessed by the state of Washington for failure to make timely refund of overpayments and interest expenses incurred for loans obtained to make such refunds.

(kk) Travel expenses outside the states of Idaho, Oregon, and Washington and the Province of British Columbia except travel to and from the home and central office of a chain organization operation outside those areas if the travel is necessary, ordinary, and related to resident care and training.

(ll) Moving expenses of employees when a demonstrated, good-faith effort has not been made to recruit employees within the states of Idaho, Oregon, and Washington and Province of British Columbia.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0410 Can a provider offset miscellaneous revenues against allowable costs? (1) A provider must reduce allowable costs whenever the item, service, or activity covered by the costs generate revenue or financial benefits (e.g., purchase discounts or rebates) other than through the provider's normal billing for ICF/((MR))ID services.

(2) A provider must not deduct unrestricted grants, gifts, endowments, and interest earned from them from the allowable costs of a nonprofit facility.

(3) When goods or services are sold, the reduction in allowable costs must be the actual cost of the item, service, or activity. If actual cost cannot be accurately determined, the reduction must be the full amount of the revenue received.

When financial benefits such as purchase discounts or rebates are received, the reduction must be the amount of the discount or rebate.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0415 Are the costs of meeting required standards allowable costs? (1) All necessary and ordinary expenses incurred by a provider to meet required standards associated with providing ICF/((MR))ID services are allowable costs.

(2) Examples are the cost of:

- (a) Meeting licensing and certification standards;
- (b) Fulfilling accounting and reporting requirements imposed by this chapter; and
- (c) Performing any resident assessment activity required by DSHS.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0435 Are education and training costs allowable costs? (1) DSHS allows ordinary expenses associated with on-the-job and in-service training required for employee orientation and certification when those expenses directly relate to performing an employee's assigned duties.

(2) Ordinary expenses for staff training are allowable costs.

(3) Necessary and ordinary expenses for recreational and social activity training conducted by a provider for volunteers are allowable costs.

(4) Training program expenses for other nonemployees are not allowable costs, except the costs associated with training county-contracted training program employees by an ICF/((MR))ID as a condition of the ICF/((MR))ID's agreement with the county-contracted training program.

(5) DSHS must allow expenses for travel in the states of Idaho, Oregon, and Washington and Province of British Columbia associated with education and training if the expenses meet the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0535 What is depreciation expense? (1) Depreciation expense on tangible assets used to provide ICF/((MR))ID services is an allowable cost.

(2) Depreciation expense must be:

- (a) Identifiable and recorded in the provider's accounting records; and
 - (b) Computed using the depreciation base, useful lives and methods specified in this chapter.
- (3) If a provider reports annual depreciation expense that includes depreciation on assets unrelated to resident care and training, the annual reported expense must be reduced accordingly.

(4) Once a tangible asset is fully depreciated, no additional depreciation can be claimed unless a new depreciation base is established according to the rules of this chapter.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0570 Can DSHS recover reimbursements for depreciation expense? If a provider terminates their contract without selling or otherwise retiring equipment that was depreciated using an accelerated method, depreciation schedules for this equipment for those periods when the provider participated in the ICF/((MR))ID program must be adjusted. DSHS will recover any difference between reimbursement actually paid for depreciation and the reimbursement that would have been paid if the straight-line method had been used.

AMENDATORY SECTION (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

WAC 388-835-0575 What requirements apply to calculating ICF/((MR))ID reimbursement rates? (1) Medicaid program reimbursement rates established according to this chapter apply only to facilities holding appropriate state licenses and certified to provide ICF/((MR))ID services according to state and federal laws and regulations.

(2) All rates must be reasonable and adequate to meet the costs incurred by economically and efficiently operated facilities providing ICF/((MR))ID services according to state and federal laws and regulations.

(3) For private facilities:

(a) Final payments must be the lower of the facility's prospective rate or allowable costs.

(b) Prospective rates must be determined according to WAC 388-835-0845, 388-835-0850, 388-835-0860, 388-835-0865, 388-835-0870, 388-835-0875, and 388-835-0880.

(c) Final payments must be determined according to WAC 388-835-0880.

(4) For state facilities:

(a) Final payments must be the facility's allowable costs.

(b) Interim rates must be calculated using the most recent annual reported costs (see WAC 388-835-0845) divided by the total resident days during the reporting period. These costs may be adjusted to incorporate federal, state, or department changes in program standards or services.

(c) Final payments must be determined according to WAC 388-835-0880.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0580 What program services are not covered by DSHS prospective reimbursement rates? Medical services that are part of DSHS's medical care program but not included in ICF/((MR))ID services are not covered by prospective reimbursement rates. Payments are made directly to the service provider according to WAC 388-835-0835 requirements.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0590 How are reimbursement rates calculated? (1) Each provider's reimbursement rate must be

recalculated once each calendar year. The recalculated rate will be implemented prospectively. The recalculated rate will be effective on July 1 of the calendar year in which it was computed. Rates may be recalculated to reflect legislative inflation adjustments or to comply with the requirements of WAC 388-835-0900.

(2) If a provider participated in the ICF/((MR))ID program for at least six months during the previous calendar year, their rates must be based on the prior period's allowable costs. If the provider participated in the program for less than six months in the previous calendar year, their rates must be calculated according to WAC 388-835-0840 requirements.

(3) Unless circumstances beyond DSHS's control interfere, all providers submitting correct and complete cost reports by March 31 must receive notification of their new rates by July 1.

(4) When calculating a provider's rate, DSHS must use data from the most recent and complete cost report submitted by the provider and reviewed by DSHS as described in WAC 388-835-0700.

(5) Inflation factor adjustments are based on the Implicit Price Deflator for Personal Consumption from the state of Washington, Economic and Revenue Forecast prepared by the Office of the Forecast Council.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0615 What are component rates and cost centers? (1) A provider's overall ICF/((MR))ID resident reimbursement rate consists of five component rates within three cost centers.

(2) The five component rates are:

- (a) Resident care and habilitative services;
- (b) Food;
- (c) Administration and operations;
- (d) Property; and
- (e) Return on equity.

(3) The three cost centers are:

- (a) Resident care and habilitation;
- (b) Administration, operations, and property; and
- (c) Return on equity.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0635 Is there a limit to the allowable cost for administrative personnel? Compensation for administrative personnel is an allowable cost within the limits contained in this section:

(1) For purposes of this section "compensation" means gross salaries, wages, and the applicable cost of fringe benefits made available to all employees. Compensation does not include payroll taxes paid by the provider.

(2) A licensed administrator's total compensation for actual services rendered to an ICF/((MR))ID facility on a full-time basis (at least forty hours per week, including reasonable vacation, holiday, and sick time) is allowable at the lower of:

- (a) Actual compensation received; or

(b) For calendar year 2000, the amount specified in the following table that corresponds to the number of set-up beds in the facility.

Number of set-up beds	Maximum compensation
15 or less	\$42,886
16 to 79	\$47,739
80 to 159	\$52,832
160 and up	\$56,163

(c) The maximum compensation amounts will be adjusted annually for inflation. Inflation factor adjustments are based on the Implicit Price Deflator for Personal Consumption from the state of Washington, Economic and Revenue Forecast prepared by the Office of the Forecast Council.

(d) A licensed administrator's compensation will be allowed only if DSHS is notified in writing within ten days following the start of their employment.

(3) Total compensation of not more than one full-time licensed assistant administrator will be allowed if there are at least eighty set-up beds in the ICF/((MR))ID facility. Compensation is allowable at the lower of:

(a) Actual compensation received; or

(b) Seventy-five percent of the amount specified in the above table.

(4) Total compensation of not more than one full-time registered administrator-in-training is allowed at the lower of:

(a) Actual compensation received; or

(b) Sixty percent of the amount specified by ((DDD)) DDA in the above table.

(5) The cost of a licensed administrator, assistant administrator, or administrator-in-training is not an allowable expense in ICF/((MR))ID facilities with fifteen beds or less. The facility's qualified ((mental retardation)) intellectual disability professional (((QMRP)) QIDP) will provide administrative services.

(6) A ((QMRP)) QIDP's total compensation of wages and/or salary is allowable at the lower of:

(a) Actual compensation received; or

(b) The amount specified in ((DDD)) DDA in the above table.

(7) If a licensed administrator, licensed assistant administrator, registered administrator-in-training, or ((QMRP)) QIDP are employed on a less than full-time basis, allowable compensation must be the lower of:

(a) Actual compensation received; or

(b) The maximum amount allowed multiplied by the percentage derived from dividing actual hours worked plus reasonable vacation, holiday and sick time, by two thousand and eighty hours.

(8) A provider must maintain time records for any licensed administrators, assistant administrators, administrators-in-training, or ((QMRP)) QIDPs they employ.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0640 Can a provider hire an individual or firm to manage their ICF/((MR))ID facility? (1) A provider can enter into an agreement with an individual or firm to manage their ICF/((MR))ID facility as the provider's agent, however, the provider must submit a copy of the agreement to DSHS at least sixty days before it becomes effective.

(2) Copies of any amendments to a management agreement must be received by DSHS at least thirty days before the amendment become effective.

(3) Management fees for periods before DSHS receives a copy of the agreement are not allowable costs.

(4) The department may waive the sixty-day notice requirement to protect the health and safety of facility residents. Any waiver of the sixty-day notice requirement by DSHS must be in writing.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0650 Are all management fee's allowable? Providers must limit the amount of allowable fees for general management services (including corporate management fees, business entity management fees, board of director fees and overhead and indirect costs associated with providing general management services) to:

(1) The maximum allowable compensation for a licensed administrator and, if the facility has at least eighty set-up beds, an assistant administrator even if one is not employed minus the actual compensation received by the licensed administrator and assistant administrator.

(2) The maximum allowable compensation for a ((QMRP)) QIDP at a ICF/((MR))ID facilities with fifteen beds or fewer, minus the actual compensation received by the ((QMRP)) QIDP.

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 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0665 Are travel and housing expenses of nonresident staff working at a provider's ICF/((MR))ID facility allowable costs? (1) All necessary travel and housing expenses of nonresident staff working at a provider's ICF/((MR))ID facility are allowable costs if their visit does not exceed three weeks.

(2) If the nonresident staff visit extends beyond three weeks, any travel and housing expenses are subject to the management fee limits established in WAC 388-835-0405.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0670 Are bonuses paid to a provider's employees allowable costs? (1) Bonuses paid to employees at a provider's ICF/((MR))ID facility are compensation.

(2) Bonuses paid to central office employees are management costs that are subject to the management fee limits established in WAC 388-835-0405.

(3) Bonuses paid to other employees not located at an ICF/((MR))ID facility and performing managerial services are management costs that are subject to the management fee limits established in WAC 388-835-0405.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0675 Are fees paid to members of the board of directors or corporations allowable costs? Fees paid to board of director members or corporations operating ICF/((MR))ID facilities are management costs subject to the management fee limits established in WAC 388-835-0405.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0680 How is the administration and operations rate component computed? (1) The administration and operations rate component includes reimbursement for the necessary and ordinary costs of:

- (a) Overall administration and management of the facility;
- (b) Operations and maintenance of the physical plant;
- (c) Resident transportation;
- (d) Dietary service (other than the cost of food and beverages);
- (e) Laundry service;
- (f) Medical and habilitative supplies;
- (g) Taxes; and
- (h) Insurance.

(2) An ICF/((MR))ID facility's administration and operations rate component is the lesser of:

- (a) It's most recent reported cost per resident day adjusted for inflation; or
- (b) The calculated rate that is at or above eighty-five percent of state and private facilities' most recent reported cost per resident day adjusted for inflation. This ranking must be based on cost reports used to determine rates for facilities with an occupancy level of at least eighty-five percent during the cost report period.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0685 How is the property rate component computed? (1) The property rate component reimburses an ICF/((MR))ID facility for the necessary and ordinary costs of leases, depreciation, and interest.

(2) It is the facility's most recent desk-reviewed cost per resident day.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0825 What is DSHS' public disclosure responsibility regarding rate setting methodology? Without identifying individual ICF/((MR))ID facilities and in

compliance with public disclosure statute and rule requirements, DSHS will provide the public with full and complete information regarding its rate setting methodology.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0830 How does a provider bill DSHS for services provided? (1) A provider must bill DSHS each month, from the first through the last day, for care provided to medical care recipients by completing and returning (~~(an ICF/((MR))ID~~) a statement filed according to department instructions.

(2) A provider cannot bill DSHS for services provided to a resident until they receive a DSHS resident award letter. When the provider receives the award letter, they can bill for services provided since the resident's admission or eligibility date.

(3) A provider cannot bill DSHS for the day of a resident's death, discharge, or transfer from the ICF/((MR))ID facility.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0835 How does DSHS pay a provider? (1) DSHS will reimburse a provider for billed service rendered under the ICF/((MR))ID contract according to the appropriate rate assigned to the provider.

(2) For each resident, DSHS will pay an amount equal to the appropriate rates multiplied by the number of resident days each rate was in effect, less any amount a resident is required to pay (see WAC 388-835-0940).

(3) A provider must accept DSHS's reimbursement rates as full compensation for all services the provider is obligated to provide under their contract. The provider must not seek or accept additional compensation any contracted services from or on behalf of a resident.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0855 What if a resident's circumstances change causing a provider to contribute more to the resident's care? (1) If a provider receives documentation verifying a change in a resident's income or resources that will reduce the resident's ability to contribute to the cost of their care, the provider must report this information in writing to the (~~(DDD))~~ DDA regional services office within seventy-two hours.

(2) Any necessary corrections should be made in the next ICF/((MR))ID statement and a copy of the supporting documentation should be attached.

(3) If a provider receives increased funds for a resident, the normal amount must be allowed for clothing, personal, and incidental expenses and the balance must be applied to the cost of care.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0860 What is the role of a receiver when an ICF/((MR))ID facility is placed in receivership? If an ICF/((MR))ID facility is providing care to state medical assistance recipients and is placed under receivership, the receiver:

- (1) Becomes the medicaid provider during the receivership period;
- (2) Assumes all new provider reporting responsibilities;
- (3) Assumes all other new provider responsibilities established in this chapter; and
- (4) Is responsible, during the receivership period, for refunding any medicaid rate payments received that exceed cost of services provided.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0870 What if the court asks DSHS to recommend a receiver's compensation? If asked for a recommendation regarding receiver compensation by the court, DSHS must consider the:

- (1) Range of compensation for private ICF/((MR))ID facility managers;
- (2) Experience and training of the receiver;
- (3) Size, location, and current condition of the facility; and
- (4) Additional factors considered appropriate.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0900 How does a provider request an administrative review? (1) A provider challenging an audit or settlement determination has a maximum of thirty days after receiving the finding or decision to file a written request for an administrative review.

- (2) Written requests must be filed with the:
 - (a) Office of financial recovery services when the provider challenges an audit finding (adjusting journal entries or AJEs) or other audit determination; or
 - (b) (~~(DDD director))~~ DDA assistant secretary when the provider challenges a rate, desk review, or other settlement determination.
- (3) The written request must:
 - (a) Be signed by the provider or facility administrator;
 - (b) Identify the specific determination being challenged and the date it was issued;
 - (c) State, as specifically as possible, the issues and regulations involved and why the provider claims the determination was erroneous; and
 - (d) Be accompanied by any documentation that will be used to support the provider's position.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0915 Can DSHS withhold an undisputed overpayment amount from a current ICF/((MR))

ID payment? DSHS is authorized to withhold from an ICF/((MR))ID's current payment all amounts found by a preliminary or final settlement to be overpayments if they are not identified by the ICF/((MR))ID as overpayments and challenged in an administrative or judicial review.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0920 Can DSHS withhold a disputed overpayment amount from a current ICF/((MR))ID payment? Once administrative and judicial review processes are complete, contested overpayments retained by an ICF/((MR))ID may be withheld from the ICF/((MR))ID's current payment but only to the extent DSHS's position or claims are upheld.

AMENDATORY SECTION (Amending WSR 01-10-013, filed 4/20/01, effective 5/21/01)

WAC 388-835-0925 What is the purpose of this section? The purpose of this chapter is to regulate the costs of care of ((mentally)) intellectually/physically deficient persons.

Reasons Supporting Proposal: The statute requires that OFM annually update and publish state pay dates.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Statute Being Implemented: RCW 42.16.010(1) and 42.16.017.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Nielson, 1110 Capitol Way S.E., Olympia, (360) 725-0226; Implementation and Enforcement: Wendy Jarrett, 1110 Capitol Way S.E., Olympia, (360) 725-0185.

January 26, 2015
Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-12-007, filed 5/22/14, effective 6/22/14)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years ((2014 and)) 2015 and 2016:

((CALENDAR YEAR 2014	CALENDAR YEAR 2015
Friday, January 10, 2014	Friday—January 9, 2015
Friday, January 24, 2014	Monday—January 26, 2015
Monday February 10, 2014	Tuesday—February 10, 2015
Tuesday, February 25, 2014	Wednesday—February 25, 2015
Monday, March 10, 2014	Tuesday—March 10, 2015
Tuesday, March 25, 2014	Wednesday—March 25, 2015
Thursday, April 10, 2014	Friday—April 10, 2015
Friday, April 25, 2014	Friday—April 24, 2015
Friday, May 9, 2014	Monday—May 11, 2015
Friday, May 23, 2014	Friday—May 22, 2015
Tuesday, June 10, 2014	Wednesday—June 10, 2015
Wednesday, June 25, 2014	Thursday—June 25, 2015
Thursday, July 10, 2014	Friday—July 10, 2015
Friday, July 25, 2014	Friday—July 24, 2015
Monday, August 11, 2014	Monday—August 10, 2015
Monday, August 25, 2014	Tuesday—August 25, 2015
Wednesday, September 10, 2014	Thursday—September 10, 2015
Thursday, September 25, 2014	Friday—September 25, 2015
Friday, October 10, 2014	Friday—October 9, 2015
Friday, October 24, 2014	Monday—October 26, 2015
Monday, November 10, 2014	Tuesday—November 10, 2015
Tuesday, November 25, 2014	Wednesday—November 25, 2015
Wednesday, December 10, 2014	Thursday—December 10, 2015
Wednesday, December 24, 2014	Thursday—December 24, 2015))

WSR 15-04-022

EXPEDITED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed January 26, 2015, 10:59 a.m.]

Title of Rule and Other Identifying Information: WAC 82-50-021 Official state lagged semimonthly pay dates established.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Roselyn Marcus, Office of Financial Management (OFM), P.O. Box 43113, Olympia, WA 98504-3113, AND RECEIVED BY April 7, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 82-50-021 publishes the official lagged, semimonthly pay dates for state officers and employees. This WAC, which provides pay dates for the current and ensuing calendar years, is amended each year to add pay dates for the ensuing year and delete the pay dates for the previous year. The purpose of this filing is to establish official pay dates for state officers and employees for calendar year 2016 and delete the obsolete pay dates for calendar year 2014.

<u>CALENDAR YEAR 2015</u>	<u>CALENDAR YEAR 2016</u>
<u>Friday, January 9, 2015</u>	<u>Monday, January 11, 2016</u>
<u>Monday, January 26, 2015</u>	<u>Monday, January 25, 2016</u>
<u>Tuesday, February 10, 2015</u>	<u>Wednesday, February 10, 2016</u>
<u>Wednesday, February 25, 2015</u>	<u>Thursday, February 25, 2016</u>
<u>Tuesday, March 10, 2015</u>	<u>Thursday, March 10, 2016</u>
<u>Wednesday, March 25, 2015</u>	<u>Friday, March 25, 2016</u>
<u>Friday, April 10, 2015</u>	<u>Monday, April 11, 2016</u>
<u>Friday, April 24, 2015</u>	<u>Monday, April 25, 2016</u>
<u>Monday, May 11, 2015</u>	<u>Tuesday, May 10, 2016</u>
<u>Friday, May 22, 2015</u>	<u>Wednesday, May 25, 2016</u>
<u>Wednesday, June 10, 2015</u>	<u>Friday, June 10, 2016</u>
<u>Thursday, June 25, 2015</u>	<u>Friday, June 24, 2016</u>
<u>Friday, July 10, 2015</u>	<u>Monday, July 11, 2016</u>
<u>Friday, July 24, 2015</u>	<u>Monday, July 25, 2016</u>
<u>Monday - August 10, 2015</u>	<u>Wednesday - August 10, 2016</u>
<u>Tuesday - August 25, 2015</u>	<u>Thursday - August 25, 2016</u>
<u>Thursday - September 10, 2015</u>	<u>Friday - September 9, 2016</u>
<u>Friday - September 25, 2015</u>	<u>Monday - September 26, 2016</u>
<u>Friday - October 9, 2015</u>	<u>Friday - October 7, 2016</u>
<u>Monday - October 26, 2015</u>	<u>Tuesday - October 25, 2016</u>
<u>Tuesday - November 10, 2015</u>	<u>Thursday - November 10, 2016</u>
<u>Wednesday, November 25, 2015</u>	<u>Wednesday, November 23, 2016</u>
<u>Thursday, December 10, 2015</u>	<u>Friday, December 9, 2016</u>
<u>Thursday, December 24, 2015</u>	<u>Friday, December 23, 2016</u>

WSR 15-04-048**EXPEDITED RULES****CHARTER SCHOOL COMMISSION**

[Filed January 29, 2015, 8:38 a.m.]

Title of Rule and Other Identifying Information: WAC 108-20-030 (4)(a) Application submission, regarding the submission of ten charter school application hardcopies to the commission.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Colin Pippin-Timco, Rules Coordinator, Charter School Commission, P.O. Box 40996, Olympia, WA 98504-0996, AND RECEIVED BY April 30, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal reduces the number of hardcopy applications charter school applicants need deliver to the commission during the com-

mission's annual request for proposals (RFP) from ten to five application hardcopies, and increases the number of days said hardcopies are to be delivered to the commission offices from five to ten business days. The rule, as currently written, requires applicants to deliver ten hardcopies to the commission offices by 5:00 p.m. on the fifth business [day] after an electronic version of the application is deemed complete.

Reasons Supporting Proposal: The proposed rule change relates to internal governmental operations as described in RCW 34.05.353 (1)(a). In originally adopting the rule, the commission believed that ten hard copies of charter school applications would be needed for the application review process. After two RFP processes, the commission has found that the rule, as currently written, is wasteful in that the commission has not found a use for all ten hardcopies of the application in the application review process, and that it places an unneeded administrative burden on charter school applicants in producing so many hardcopies of the application. Further, the amount of time it takes to deliver said hardcopies places undue stress on applicants, and as such the commission has extended the time for applicants to deliver hard copies of the applications.

Statutory Authority for Adoption: RCW 28A.710.070.

Statute Being Implemented: RCW 28A.710.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Charter school commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Colin Pippin-Timco, 1068 Washington Street, Olympia, WA 98501, (360) 725-5511.

January 29, 2015

Colin Pippin-Timco

Executive Assistant

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-20-030 Application submission. (1) All applications, whether for an original charter, a modification of a charter, or the renewal of a charter shall be made on forms approved by the commission or through the online platform.

(2) An electronic version of the application through the online platform must be received by the commission by the application dead-line in order for the application to be considered.

(3) After receipt of the electronic application, the commission or its designee will review the application for completeness. If the review reveals that information is missing, the applicant will be contacted and granted twenty-four hours to provide the missing information.

(4)(a) Once an application is deemed complete, the applicant will be notified via e-mail and will be required to submit (~~ten~~) five hard copies of the application. The hard copies of the application shall be identical in all respects to the content found in the application submitted through the online platform.

January 29, 2015

Dylan Waits

Rules Coordinator

(b) The hard copies of the application must be submitted in person or through the U.S. Postal Service within ~~((five))~~ ten business days of the application being deemed complete. In-person delivery will be due by 5:00 p.m. Pacific time on the fifth business day. Mailed applications must be post-marked by the fifth business day.

(5) In order for an application to be eligible for review, it must be received by the commission by the stated deadline and pass the completeness check or timely satisfy any completeness requests. Applications that are not received by the deadline or do not pass the completeness check or do not satisfy completeness requests will not be evaluated.

WSR 15-04-052
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed January 29, 2015, 1:58 p.m.]

Title of Rule and Other Identifying Information: WAC 458-17-101 Assessment and taxation of ships and vessels.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jay M. Jetter, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JayJ@dor.wa.gov, AND RECEIVED BY April 6, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being amended to incorporate legislation from the 2014 legislative session (2SSHB [2SHB] 2457) that imposes a new annual derelict vessel removal fee for commercial vessels subject to state property tax.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Reasons Supporting Proposal: To keep rule current with recent legislation.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.36.865.

Statute Being Implemented: RCW 84.36.080, 84.40.065, and 84.56.440.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay Jetter, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1575; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Kathy Beith, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 534-1403.

AMENDATORY SECTION (Amending WSR 03-16-028, filed 7/29/03, effective 8/29/03)

WAC 458-17-101 Assessment and taxation of ships and vessels. (1) **Introduction.** This rule explains the application of the ~~((personal))~~ state property tax to ships and vessels. Ships and vessels that are not subject to the excise tax imposed by chapter 82.49 RCW are either subject to the state property tax ~~((levy))~~ or are ~~((completely))~~ exempt from both the property tax and the excise tax. This rule covers only those ships and vessels subject to the property tax. See chapter 308-93 WAC for information regarding ships and vessels subject to the excise tax, which is administered by the department of licensing. This rule also discusses the annual derelict vessel removal fee that is imposed upon all persons required by RCW 84.40.065 to list any ship or vessel with the department of revenue for state property tax purposes (see RCW 79.100.180).

(2) **Which ships and vessels are subject to property taxation?** ~~((Under RCW 84.36.080,))~~ A ship or vessel is subject to the state ~~((portion of the))~~ property tax if the ship or vessel is:

- (a) Used exclusively for commercial fishing purposes; or
- (b) Primarily engaged in commerce and has or is required to have a valid marine document as a vessel of the United States. (See RCW 84.36.080).

Accordingly, such a ship or vessel is subject to assessment by the department of revenue for that portion of the property tax levied by the state for state purposes.

(3) **Which ships and vessels are exempt from property taxation?** The following are exempt from all property ~~((taxation))~~ taxes, including the state levy:

- (a) A ship or vessel listed in the state or federal register of historical places (see RCW 84.36.080);
- (b) A ship or vessel with an assessed value of less than five hundred dollars (see RCW 84.36.015); and
- (c) A ship or vessel that is not within the scope of subsection (2) of this rule (see RCW 84.36.090).

(4) **What is the annual derelict vessel removal fee?** Except as otherwise provided in (a) of this subsection, an annual derelict vessel removal fee is imposed upon all persons required by RCW 84.40.065 to list any ship or vessel with the department of revenue for state property tax purposes.

(a) The derelict vessel removal fee does not apply in any year that a person required to list a ship or vessel does not owe the state property tax levied for collection in that year with respect to that ship or vessel.

(b) The annual derelict vessel removal fee is equal to one dollar per vessel foot measured by extreme length of the vessel, rounded up to the nearest whole foot.

(c) Each year the amount of the derelict vessel removal fee due for that calendar year will be provided in the tax statement required in RCW 84.40.065.

(d) The person listing a ship or vessel and the owner of the ship or vessel, if not the same person, are jointly and severally liable for the fee.

(e) The department of revenue will collect the derelict vessel removal fee and all property taxes upon ships and vessels listed with the department in accordance with RCW 84.40.065, and all applicable interest and penalties on such taxes and fees. The taxes and derelict vessel removal fee are due and payable to the department on or before the thirtieth day of April and shall be delinquent after that date.

(5) What happens if the property taxes and derelict vessel removal fees are delinquent or not paid?

(a)(i) If payment of the tax, derelict vessel removal fee, or both, is not received by the department by the due date, a penalty of five percent of the amount of the unpaid tax and fee will be imposed:

(ii) If the tax and fee are not received within thirty days after the due date, a total penalty of ten percent of the amount of the unpaid tax and fee will be imposed:

(iii) If the tax and fee are not received within sixty days after the due date, a total penalty of twenty percent of the amount of the unpaid tax and fee will be imposed; and

(iv) No penalty listed in this subsection will be less than five dollars.

(b) Delinquent taxes under this section are subject to interest at the rate set forth in RCW 82.32.050 from the date of delinquency until paid. Delinquent derelict vessel removal fees are also subject to interest at the same rate and in the same manner as provided for delinquent taxes under RCW 82.32.050.

(c) If upon information obtained by the department it appears that any ship or vessel required to be listed according to the provisions of RCW 84.40.065 is not listed, the department will value the ship or vessel and assess against the owner of the vessel the taxes and derelict vessel removal fees found to be due and shall add thereto interest at the rate set forth in RCW 82.32.050 from the original due date of the tax and fee until the date of payment. The department will notify the vessel owner by mail of the amount, and it becomes due and payable by the vessel owner within thirty days of the date of the notice. If payment is not received by the department by the due date specified in the notice, the department will add a penalty of ten percent of the tax and fee found due. A person who willfully gives a false listing or willfully fails to list a ship or vessel as required by RCW 84.40.065 will be subject to the penalty imposed by RCW 84.40.130(2), which will be assessed and collected by the department.

(6) What are a ship or vessel owner's obligations? Under RCW 84.40.065, every individual, corporation, partnership, trust, and estate must list with the department ~~((of revenue))~~ any ship or vessel subject to that person's ownership, possession, or control ~~((and))~~ that is subject to property taxation under RCW 84.36.080. ~~((This listing is subject to the same))~~ The requirements, penalties, and liens provided in chapters 84.40 and 84.60 RCW for all other personal property apply to ships and vessels listed with the department.

The listed owner of a ship or vessel as of January 1st of the assessment year is responsible for payment of the property tax for that vessel in the following year.

Delinquent taxes and fees, along with all penalties and interest, will be collected by the department according to the procedures set forth in chapter 82.32 RCW for the filing and execution of tax warrants, including the imposition of warrant interest. In the event a warrant is issued by the department for the collection of taxes, derelict vessel removal fees, or both, the department will add a penalty of five percent of the amount of the delinquent tax and fee, but not less than ten dollars.

The department will also withhold the decals required under RCW 88.02.570(10) for failure to pay the state property tax or derelict vessel removal fee.

A ship or vessel is subject to property taxation even if it is temporarily not within the limits of the state on January 1st of the year in which the vessel is to be assessed. If ownership of a taxable ship or vessel is transferred after January 1st, the listed owner as of January 1st remains liable for payment of the full amount of tax payable in the following year. The full year's property tax may be abated only if the ship or vessel is damaged or destroyed and qualifies for a reduction in value under RCW 84.70.010.

For example, Seller A sells a taxable charter boat to Buyer B on August 14, ~~((2002))~~ 2013. Because Seller A was the listed owner as of January 1, ~~((2002))~~ 2013, Seller A is responsible for the entire year's property tax for the ~~((2002))~~ 2013 assessment year. That tax is due by April 30, ~~((2003))~~ 2014. Buyer B will be the listed owner for ~~((2003))~~ 2014 and responsible for the property tax for assessment year ~~((2003))~~ 2014, which is due by April 30, ~~((2004))~~ 2015.

~~((5))~~ **(7) What happens if my ship or vessel is out of the state or being repaired during part of the year?** A qualifying ship or vessel, referred to as an "apportionable vessel," may have its assessed value reduced ~~((to reflect))~~ in certain circumstances. A reduction in assessed value ~~((also))~~ will reduce ~~((s))~~ the amount of tax due.

(a) What is an "apportionable vessel"? Under RCW 84.40.036, an "apportionable vessel" is a ship or vessel that is:

(i) Engaged in interstate commerce, meaning the transporting of persons or property from one state or territory of the United States to another;

(ii) Engaged in foreign commerce, meaning the transporting of persons or property between a state or territory of the United States and a foreign country; or

(iii) Engaged exclusively in fishing, tendering, harvesting and/or processing seafood products on the high seas or waters under the jurisdiction of other states.

(b) How is value apportioned? An apportionable vessel has its value apportioned as provided in this subsection.

(i) The value is apportioned based on the number of days or fractions of days that the vessel was within the limits of the state during the calendar year preceding the calendar year in which the vessel is assessed. No value is apportioned to this state unless the vessel is within the limits of the state for more than one hundred twenty days. Days during which a ship or vessel leaves the limits of the state only while navigating the high seas ~~((in order))~~ to travel between points in this state are considered as days within this state. A ship or vessel that does not qualify as an apportionable vessel under subsection (5)(a) of this rule may not have its value apportioned, regardless of

the number of days the ship or vessel is within or outside the limits of the state.

(A) A "fraction of a day" means more than sixteen hours in a calendar day.

(B) The "limits of the state" means the boundaries of the state of Washington abutting Canada, Oregon, and Idaho and three miles to the west of Washington's coast line.

(ii) Time during which an apportionable vessel is in the state exclusively for one or more of the following purposes is not considered as time within the limits of the state, if the length of time is reasonable to such purpose:

(A) ~~((Undergo))~~ Undergoing maintenance, repair, or alteration;

(B) ~~((Take))~~ Taking on or discharge cargo, passengers, or supplies; or

(C) ~~((Serve))~~ Serving as a tug for a vessel under ~~(b)(ii)(A) or (B) of this subsection ((5)(b)(ii))~~.

A "reasonable length of time" includes a reasonable length of travel time to enter and leave the limits of the state exclusively for one of the purposes listed in ~~(b)(ii)(A) through (C) ((above)) of this subsection~~. A ship or vessel engaging in any activity or use not described in ~~(b)(ii)(A) through (C) ((above)) of this subsection~~, or merely being moored, is not considered to be within the state exclusively for the purposes described in this subsection.

(c) **Examples.** The following examples illustrate the application of the apportionment rules. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(i) Barge A loads cargo in Washington Port Z in eastern Washington. Loaded, Barge A embarks down the Columbia River to Vancouver, Washington and discharges its cargo. This activity does not qualify Barge A as an apportionable vessel because Barge A did not engage in interstate or foreign commerce. The barge would qualify as an apportionable vessel for the following assessment year if it had discharged its cargo at Portland, Oregon.

(ii) Charter Boat operates out of XYZ Charters, based in Anacortes, Washington. The charter begins in Anacortes and sails into Canadian waters for one month before returning to Anacortes to complete the charter. This activity does not qualify Charter Boat as an apportionable vessel because Charter Boat did not engage in foreign or interstate commerce; no persons or property were transported from one country or state to another.

(iii) Charter Boat operates out of XYZ Charters, based in Anacortes, Washington. Charter Boat is delivered to persons who board the vessel in Vancouver, British Columbia. Charter Boat cruises in Canadian waters for one month before returning to Anacortes where the passengers disembark, completing the charter. This transaction involves foreign commerce because persons were transported between another country and the United States. As a result, the vessel qualifies as an apportionable vessel and its value will be apportioned based upon the number of days the vessel is within the limits of the state during that calendar year.

(iv) ~~((Charter Boat carries passengers from Seattle to Juneau, Alaska. Charter Boat then charters out of Alaska during the summer months. Charter Boat returns to Seattle in~~

~~September for mooring and off-season repairs. The vessel qualifies as an apportionable vessel and its value will be apportioned to reflect the days the vessel is within the limits of the state during that calendar year. However, the days in Washington while the vessel is being repaired are not counted as days within the state, if reasonable in amount of time. On the other hand, the vessel's travel time within Washington waters while traveling to and from the state is counted as time within the state because the trip to this state was not exclusively for the purpose of repairs.~~

~~((v))~~ Fishing Boat goes to Alaska each year to fish and returns to Seattle each fall for repair and maintenance. The vessel qualifies as an apportionable vessel and its value will be apportioned to reflect the days the vessel is within the limits of the state during that calendar year. The days in Washington for repair and maintenance are not counted, if the amount of time is reasonable. Travel time to and from Washington is also not counted as time within the state because the trip was exclusively for the purpose of obtaining repair and maintenance services. As a result, none of the vessel's value will be apportioned to Washington in this instance.

~~((vi))~~ ~~((v))~~ Charter Boat Owner A purchases a vessel on November 1, ~~((2004))~~ 2011. The boat had previously been used as a pleasure craft. The boat is first used in interstate commerce as a charter boat in January ~~((2002))~~ 2012 and spends half of the year outside of state waters in calendar year ~~((2002))~~ 2012. The boat is first listed in Owner A's name for tax purposes as of January 1, ~~((2002))~~ 2012. The vessel's entire value is assessed in ~~((2002))~~ 2012 because the vessel did not qualify as an apportionable vessel during calendar year ~~((2004))~~ 2011 (the calendar year preceding the assessment year). Owner A will first pay property taxes in the ~~((2003))~~ 2013 tax year based upon the vessel's value in the ~~((2002))~~ 2012 assessment year. The full amount of tax is due by April 30, ~~((2003))~~ 2013. The value for the ~~((2003))~~ 2013 assessment year will be apportioned based upon the boat's use in calendar year ~~((2002))~~ 2012 (50% of time within state waters). The amount of tax due for tax year ~~((2004))~~ 2014 will be based upon the ~~((2003))~~ 2013 assessed value and is due by April 30, ~~((2004))~~ 2014.

WSR 15-04-053

EXPEDITED RULES

CHARTER SCHOOL COMMISSION

[Filed January 29, 2015, 2:34 p.m.]

Title of Rule and Other Identifying Information: WAC 108-30-020 (3)(a) and (d), academic performance and compliance, student achievement and postsecondary readiness (high school evaluation).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT

LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Colin Pippin-Timco, Rules Coordinator, Charter School Commission, P.O. Box 40996, Olympia, WA 98504-0996, AND RECEIVED BY April 30, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal removes language from WAC 108-03-02 [108-03-020] (3)(a) regarding the charter school commission's (commission) performance framework's evaluation of student academic literacy in history/social studies/civic education, technical subjects, and advanced proficiency measurements in English language arts and literacy in history/social studies/civic education.

This proposal removes language from WAC 108-03-03 [108-03-020] (3)(d) regarding the commission's performance framework's evaluation of student performance and participation on the American college testing (ACT) or scholastic assessment test (SAT).

Reasons Supporting Proposal: In regards to WAC 108-03-02 [108-03-020] (3)(a), while student proficiency levels are currently reported for reading, writing, mathematics, and science via state assessment data, literacy in history/social studies/civic education, technical subjects, and advanced proficiency measurements in English language arts and literacy in history/social studies/civic education are not assessed on a state assessment, thus making proficiency level data unavailable. This would make it difficult for the commission to develop targets and/or compare charter schools to traditional schools.

In regards to WAC 108-03-02 [108-03-020] (3)(d), secondary students in Washington are not required to take the SAT/ACT making comparisons between charter schools and traditional schools difficult.

Statutory Authority for Adoption: RCW 28A.710.070.

Statute Being Implemented: RCW 28A.710.170.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Charter school commission, governmental.

Name of Agency Personnel Responsible for Drafting: Colin Pippin-Timco, 1068 Washington Street, Olympia, WA 98501, (360) 725-5511; Implementation and Enforcement: Joshua Halsey, 1068 Washington Street, Olympia, WA 98501, (360) 725-5511.

January 29, 2015
Colin Pippin-Timco
Executive Assistant

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-30-020 Performance framework. (1) "Performance framework" means the standards that will be used by the commission to evaluate the performance of each charter school. The performance framework will be a source of information used by the commission to make decisions

involving corrective action, renewal, modification, revocation, and/or termination of a charter school.

(2) The performance framework evaluates charter school performance and compliance in the areas of academic, financial, organizational, legal and mission specific performance and compliance. The commission will develop and post performance framework guidance for charter schools on the commission web site.

(3) Academic performance and compliance. Academic performance and compliance measures whether the charter school meets or is making sufficient progress towards academic performance expectations. Academic performance and compliance includes, but is not limited to:

(a) Student achievement. Evaluation of student achievement includes evaluation of student academic proficiency in English language arts (~~((and literacy in history/social studies/civic education))~~), science, and ~~((technical subjects, and))~~ mathematics; ~~((advanced proficiency measurements in English language arts and literacy in history/social studies/civic education, science and technical subjects, and mathematics;))~~ evaluation of student achievement gaps in both proficiency and growth. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(b) Comparative performance. Comparative performance is evaluated by comparing charter school students' performance on required state and federal assessments to performance of students in traditional public schools and charter schools with similar demographics. This is a comparison of overall student performance in English language arts (reading and writing), math, and science, as well as any other subjects that will in the future be tested. To the extent data is available comparison schools may include, but are not limited to, district-of-residence schools and peer or comparable schools whether charter or noncharter. As additional data for comparisons become available, the comparative performance evaluation will be adjusted. In addition to aggregate data, when available, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(c) Student progress. Student progress is evaluated using the school's median student growth percentile in reading and mathematics. As additional growth-related data become available, this evaluation will be adjusted. In addition to aggregate data, when available, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(d) Post secondary readiness (high school evaluation). Evaluation of post secondary readiness includes ~~((evaluation of students' performance and participation on American College Testing (ACT) or Scholastic Assessment Test (SAT);))~~ overall graduation rates in accordance with the state of Washington reporting requirements; comparison of charter school to district-of-residence graduation rates; comparison of charter school to peer or similar school graduation rates; and enrollment in post secondary institutions. As additional com-

parison data such as dual credit accrual, industry certification, 11th grade assessments, or others, become available, this evaluation will be adjusted. In addition to aggregate data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(e) State and federal accountability. Evaluation of the charter school's compliance with state and federal accountability rules, regulations, and laws and whether the school has met the targets set forth by the state accountability system including, but not limited to, provision of basic education, instruction in the essential academic learning requirements, statewide student assessments, performance improvement goals. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(f) Mission specific accountability. Evaluation of whether the charter school has met mission specific goals identified in its contract.

(4) Financial performance and compliance. Financial performance and compliance measures the financial health and viability of a charter school. Financial performance and compliance includes, but is not limited to:

(a) Near term indicators. Evaluation of financial performance and compliance includes evaluation of charter school's assets and liabilities, available cash; actual enrollment as compared to enrollment projection and associated budget; loan and grant status.

(b) Sustainability indicators. Evaluation of sustainability indicators includes evaluation of net income and revenue; debt to asset ratio; cash flow; debt service ratio.

(c) Audit and accounting indicators. Evaluation of audit and accounting indicators includes evaluation of the charter school's compliance with generally accepted accounting principles; audit results and findings, if any.

(5) Organizational performance and compliance. Organizational performance and compliance measures compliance with specific terms and provisions of the charter contract and state and federal legal requirements. Organizational performance and compliance includes, but is not limited to:

(a) Education program. Evaluation of the education program includes evaluation of the charter school's education program in terms of compliance with specific performance expectations set forth in the charter contract; compliance with requirements of local education agencies and public schools under those federal laws and regulations including, but not limited to, compliance with the Individuals With Disabilities Education Act, the Rehabilitation Act, the Federal Educational Rights Privacy Act, the Elementary And Secondary Education Act, McKinney-Vento Act, and any other applicable education laws or regulations.

(b) Charter school law compliance. Evaluation of charter school law compliance includes evaluation of the charter school's compliance with chapter 28A.710 RCW. This includes review of policies and practices related to admissions, waiting lists, recruitment, security and privacy.

(c) Safety and welfare compliance. Evaluation of student and employee compliance includes evaluation of the charter

school's compliance with laws concerning employment of faculty and staff including, but not limited to, certification requirements and background checks; evaluation of student and employee disciplinary policies and procedures and application of associated legal and constitutional protections; evaluation of compliance with health and safety laws and regulations.

(d) Board performance and stewardship. Evaluation of board performance and stewardship will include evaluation of compliance with all applicable laws, rules, and terms of the charter contract as well as willingness and skill in identifying issues with management of the school and taking corrective action and in implementing any corrective actions imposed by the commission.

(e) Student involvement and retention. Evaluation of student involvement and retention will include evaluation of attendance and recurrent enrollment.

(f) Mission specific accountability. Evaluation of whether the charter school has met mission specific goals identified in its contract including, but not limited to, proactive public engagement in student recruitment and demonstrated execution of a mission appropriate enrollment plan.

(6) Other. The commission may also include additional rigorous, valid, and reliable indicators to augment evaluations of the charter school's performance.

WSR 15-04-112

EXPEDITED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 3, 2015, 9:52 a.m.]

Title of Rule and Other Identifying Information: Chapter 388-825 WAC, Division of developmental disabilities services rules, recodification of WAC 388-825-0600 through 388-825-0690, and update of references to correctly identify the recodified sections.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Department of Social and Health Services Rules Coordinator (DSHS), P.O. Box 45850, Olympia, WA 98504-5850, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, AND RECEIVED BY April 7, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to better organize the chapter by recodifying the sections related to background checks to the 600 series of

chapter 388-825 WAC, and amending four references to correctly identify the recodified sections. None of these changes will result in any changes to policy, eligibility, or processes.

Statutory Authority for Adoption: RCW 74.08.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: Alan McMullen, P.O. Box 45310, Olympia, WA 98504, (360) 725-3524; and Enforcement: Not applicable.

January 30, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-0600 What definitions apply to WAC ((388-825-0600)) 388-825-600 through ((388-825-0690)) 388-825-690 of this chapter? The following definitions apply to WAC ((388-825-0600)) 388-825-600 through ((388-825-0690)) 388-825-690 of this chapter:

"**Agency**" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

"**Authorized**" or "**authorization**" means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This term applies to persons who are certified or contracted by the department, allowed to receive payments from department funded programs, or who volunteer with department funded programs.

"**Background check central unit (BCCU)**" means the DSHS program responsible for conducting background checks for DSHS administrations.

"**Certification**" means department approval of an entity that does not legally need to be licensed indicating that the entity nevertheless meets minimum licensing requirements.

"**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.

"**Community residential service businesses**" include all developmental disabilities administration supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home. Community residential service providers also include DDA companion homes, DDA alternative living and licensed residential homes for children.

"**DDA**" means the developmental disabilities administration within the department of social and health services (DSHS).

"**Department**" means the department of social and health services (DSHS).

"**Disqualified**" means that the results of an individual's background check disqualifies him or her from a position which will or may involve unsupervised access to individuals with developmental disabilities.

"**Entity**" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

"**Hire**" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.

"**Individual provider**" has the same meaning as defined in RCW 74.39A.240.

"**Individuals with a developmental disability**" means individuals who meet eligibility requirements in Title 71A RCW as further defined in chapter 388-823 WAC.

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

"**Permanent restraining order**" means a restraining order/order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 1 year), after which it expires.

"**Qualified**" means an individual can be hired into a position that includes unsupervised access to individuals with developmental disabilities because the results of his or her background check are not disqualifying.

"**Temporary restraining order**" means restraining order/order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing."

"**Unsupervised**" means not 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.

(2) Any relative or guardian of the individual with a developmental disability to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"**WSP**" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-0615 What is the process for obtaining a background check? (1) Long-term care workers, including individual providers, undergoing a background check for initial hire or initial contract, after January 7, 2012, will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in ((WAC 388-825-0615)) subsection (1)(a) and (b) in this section. Parents are not exempt from the long-term care background check requirements.

(a) Prior to January 1, 2016, community residential service businesses as defined above will be screened as follows:

(i) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(ii) Individuals who have resided outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.

(b) Beginning January 1, 2016, community residential service businesses as defined above will be screened as described in ~~((WAC 388-825-0615))~~ subsection (1) of this section.

(2) For adult family homes refer to chapter 388-76 WAC, Adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, Assisted living licensing rules.

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-0630 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) DDA requires fingerprint-based background checks as described in WAC ~~((388-825-0615))~~ 388-825-615. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-0645 May an individual work in an unsupervised capacity with individuals with developmental disabilities when his or her background check reveals a conviction, pending charge or negative action that is not considered disqualifying per chapter 388-113 WAC or WAC ~~((388-825-0640))~~ 388-825-640? An individual with convictions, pending charges or negative actions that are not disqualifying per chapter 388-113 WAC or WAC ~~((388-825-0640))~~ 388-825-640 may work in an unsupervised capacity with individuals with developmental disabilities only after a character, competence and suitability review has been conducted as required by WAC 388-825-065.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
388-825-0600	388-825-600
388-825-0605	388-825-605
388-825-0610	388-825-610
388-825-0615	388-825-615
388-825-0620	388-825-620
388-825-0625	388-825-625
388-825-0630	388-825-630
388-825-0635	388-825-635
388-825-0640	388-825-640
388-825-0645	388-825-645
388-825-0650	388-825-650
388-825-0655	388-825-655
388-825-0660	388-825-660
388-825-0665	388-825-665
388-825-0670	388-825-670
388-825-0675	388-825-675
388-825-0680	388-825-680
388-825-0685	388-825-685
388-825-0690	388-825-690

WSR 15-04-113

EXPEDITED RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed February 3, 2015, 10:02 a.m.]

Title of Rule and Other Identifying Information: WAC 246-935-145 through 246-935-255 and 246-935-060, the veterinary board of governors will repeal rules and sections of rules pertaining to issuance of a veterinary technician credential through completion of five years of practical experience with a licensed veterinarian.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Judy Haenke, Program Manager, Department of Health, Veterinary Board of Gover-

nors, 111 Israel Road S.E., Tumwater, WA 998501 [98501], AND RECEIVED BY April 6, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 6745, passed by the 2010 legislature, eliminates the practical experience pathway for veterinary technicians effective July 1, 2015. After July 1, 2015, a veterinary technician applicant must complete a formal education program for animal or veterinary technology approved by the American Veterinary Medical Association. All applicants must also successfully complete the veterinary technician licensing examination. This proposal will repeal all rules and sections of rules related to the practical experience pathway for veterinary technicians that are no longer effective after July 1, 2015.

Reasons Supporting Proposal: Expedited rule making is appropriate because a portion of RCW 18.92.128 statute will expire, and the board must repeal the practical experience pathway in rule due to no statutory authority effective July 1, 2015.

Statutory Authority for Adoption: RCW 18.92.030(2).

Statute Being Implemented: RCW 18.92.128, chapter 123, Laws of 2010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Judy Haenke, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4947.

March 5 [February 3], 2015
Kathy Schmitt
Deputy Director
Office of Health
Professions and Facilities

AMENDATORY SECTION (Amending WSR 09-21-022, filed 10/9/09, effective 11/9/09)

WAC 246-935-060 Eligibility for examination as veterinary technician. Applicants must meet one of the following criteria to be eligible for the examination.

(1) Completion of an approved postsecondary educational program for animal or veterinary technology.

(a) Completion of a program for animal or veterinary technology approved by the Committee on Veterinary Technician Education and Activities (CVTEA) of the American Veterinary Medical Association (AVMA). The board approves all institutions accredited by, and in good standing with, the AVMA.

(b) Completion of a program for animal or veterinary technology approved by the Animal Health Technologist/Veterinary Technician Program Accreditation Committee (AHT/VTPAC) of the Canadian Veterinary Medical Association (CVMA). The board approves all institutions accredited by, and in good standing with, the CVMA.

(c) Other institutions applying for board approval must meet the accreditation standards of the CVTEA. It is the responsibility of the institution to apply for approval and of a

student to ascertain whether or not a school has been approved by the board.

(d) The examination may be taken no sooner than six months before graduation from the approved course of instruction.

(2) Graduation from a two-year curriculum in animal health or veterinary technology which is not accredited by the CVTEA or AHT/VTPAC plus a minimum of thirty-six months of full-time experience under the supervision of a licensed veterinarian(s) who must attest to the completion of that experience.

(3) Award of a D.V.M. or V.M.D. degree or equivalent from an American Veterinary Medical Association accredited or listed college of veterinary medicine.

(4) Registration, certification, or licensure as an animal health or veterinary technician in one or more states and thirty-six months of full-time experience under the supervision of a licensed veterinarian(s).

(5) Completion of a course in veterinary technician education as a member of the United States military and completion of a tour of active duty as a veterinary technician or specialist.

~~((6) Five years full-time experience as an unregistered assistant under the supervision of a licensed veterinarian(s) who must attest to the completion of that experience.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-935-145 Purpose and performance of practical experience standard tasks and procedures.
- WAC 246-935-150 Definitions.
- WAC 246-935-160 Basic veterinary science knowledge.
- WAC 246-935-170 Clinical/pathology and laboratory diagnostics.
- WAC 246-935-180 Hospital standard operating procedures, instruments, and equipment.
- WAC 246-935-190 Anesthesia and emergency procedures.
- WAC 246-935-200 Pharmacy.
- WAC 246-935-210 Public health, infectious diseases, and zoonosis.
- WAC 246-935-220 Dental.
- WAC 246-935-230 Imaging equipment and techniques.
- WAC 246-935-235 Supervised practical experience and unlicensed practice.
- WAC 246-935-240 Trainee.
- WAC 246-935-250 Supervising veterinarian's attestation.
- WAC 246-935-255 Forms.