

WSR 15-12-072
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed May 29, 2015, 11:37 a.m., effective June 1, 2015]

Effective Date of Rule: June 1, 2015.

Purpose: Specific sections within chapter 388-845 WAC are being amended due to the 2014 operating supplemental budget directing the developmental disabilities administration (DDA) to move the state funded individual and family services (IFS) program into a 1915(C) Home and Community Based Services (HCBS) waiver on May 1, 2015. The requirement is to mirror the current IFS program as much as possible in the new HCBS waiver.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA?, 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?, 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different ((waiver)) DDA HCBS waiver?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0200 What waiver services are available to me?, 388-845-0210 What is the scope of services for the Basic Plus waiver ((services-))?, 388-845-0215 What is the scope of services for the CORE waiver ((services-))?, 388-845-0220 What is the scope of services for the community protection waiver ((services-))?, 388-845-0225 What is the scope of services for the children's intensive in-home behavioral support (CIIBS) waiver ((services-))?, 388-845-0415 What is assistive technology?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology I can receive?, 388-845-0505 Who is a qualified provider of behavior support and consultation?, 388-845-0510 Are there limits to the behavior support and consultation I can receive?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental ((accessibility)) adaptations?, 388-845-0905 Who is a qualified provider for ((building these)) environmental ((accessibility)) adaptations?, 388-845-0910 What limitations apply to environmental ((accessibility)) adaptations?, 388-845-1015 Are there limits to the extended state plan services I can receive?, 388-845-1040 Are there limits to the individualized technical assistance services I can receive?, 388-845-1110 What are the limits of behavioral health crisis diversion bed services?, 388-845-1150 What are behavioral health stabilization services?, 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?, 388-845-1170 What is nurse delega-

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Statutory Authority for Adoption: SSB 6387 of the 63rd legislature, 2014 regular session.

Other Authority: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: Once SSB 6387 of the 63rd legislature 2014 regular session was passed, DDA has worked on a new required IFS Waiver requiring approval of the waiver from the Center for Medicaid Services (CMS) while concurrently identifying, and having programmed, enhancements to our statewide assessment tool "CARE" and updates to related rules so that all three are ready for May 1, 2015, as required in SSB 6387. However, CMS did not approve the IFS waiver until May 27 with an effective date of June 1, 2015. While we have filed the CR-101 making our intentions known and the CR-102 with the proposed changes at the time of filing, we are unable to complete the regular rule-making process prior to the June 1, 2015, implementation date. Therefore DDA is filing this CR-103 emergency rule-making order while completing the regular rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 16, Amended 68, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 16, Amended 68, Repealed 0.

Date Adopted: May 28, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0001 Definitions. "Aggregate services" means a combination of services subject to the dollar limitations in the Basic Plus waivers.

"Allocation" means the amount of IFS waiver funding available to the client for a maximum of twelve months.

"CARE" means comprehensive assessment and reporting evaluation.

"CIIBS" means children's intensive in-home behavioral support waiver.

"Client or person" means a person who has a developmental disability as defined in RCW ((71A.10.020(3))) 71A.10.020(5) and has been determined eligible to receive services by the administration under chapter 71A.16 RCW.

"Community crisis stabilization services" or "CCSS" means a state operated program that provides short term supports to participants who meet specific criteria and who are in crisis and/or who are at risk of hospitalization or institutional placement.

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDA to measure the support needs of persons with developmental disabilities.

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

"EPSDT" means early and periodic screening, diagnosis, and treatment, medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one as defined in WAC 182-534-0100.

"Enhanced respite services" means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means the following relatives: ((who live in the same home with the eligible client. Relatives include)) spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relative(s) live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means present or intended place of residence.

"ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

"IFS waiver" means the individual and family services waiver.

((Individual support plan (ISP) is a document that authorizes and identifies the DDA paid services and unpaid supports to meet a client's assessed needs.))

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a per-

son's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community based services waiver program.

"Person-centered service plan/individual support plan (ISP)" is a document that authorizes and identifies the DDA paid services and unpaid supports to meet a client's assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic Plus, children's intensive in-home behavioral support, or Core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State funded services" means services that are funded entirely with state dollars.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)? DDA provides services through ~~((four))~~ five HCBS waivers:

- (1) Basic Plus waiver;
- (2) Core waiver;
- (3) Community protection (CP) waiver; ~~((and))~~
- (4) Children's intensive in-home behavioral support waiver (CIIBS); and
- (5) Individual and family services (IFS) waiver.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0020 When were the HCBS waivers effective? Basic Plus, children's intensive in-home behav-

ioral support, Core and community protection waivers were effective September 1, 2012.

Individual and family services waiver was effective June 1, 2015.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

(1) You have been determined eligible for DDA services per RCW 71A.10.020.

(2) You have been determined to meet ICF/ID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(3) You meet disability criteria established in the Social Security Act.

(4) You meet financial eligibility requirements as defined in WAC ~~((388-515-1510))~~ 182-515-1510.

(5) You choose to receive services in the community rather than in an ICF/ID facility.

(6) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan/individual support plan.

(7) You are not residing in hospital, jail, prison, nursing facility, ICF/ID, or other institution.

(8) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:

(a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(c) You live with your family; and

(d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

(9) Additionally, for the individual and family services waiver funded services:

(a) You live in your family home; and

(b) You are age three or older.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA? If you are enrolled in an HCBS waiver administered by ~~((DDA))~~ DDA.

(1) DDA will provide an annual comprehensive assessment to evaluate your health and welfare needs. Your person-centered service plan/individual support plan, as specified in WAC 388-845-3055, will document:

(a) Your identified health and welfare needs; and

(b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.

(2) You have access to DDA paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDA will provide waiver services you need and qualify for within your waiver.

(4) DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDA may enroll people from the statewide data base in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDA has determined to be in immediate risk of ICF/ID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(i).

(3) (~~For the Basic Plus waiver only,~~) DDA may consider persons who need the waiver services available in the Basic Plus or IFS waivers to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different ((waiver)) DDA HCBS waiver? (1) If you are already enrolled in a DDA HCBS waiver and you request to be enrolled in a different waiver DDA will do the following:

(a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.

(b) If DDA determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.

(c) If DDA determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your person-centered service plan/ISP.

(d) If DDA determines there is capacity on the waiver that is determined to meet your needs, DDA will place you on that waiver.

(2) You will be notified in writing of DDA's decision under subsection (1)(a) of this section and if your health and welfare needs cannot be met on your current waiver, DDA will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capacity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide data base.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0055 How do I remain eligible for the waiver? Once you are enrolled in a DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(1) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320(3)((~~b~~)), or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

(3) You complete an in-person DDA assessment/reassessment interview (~~(administered in your home)~~) per WAC 388-828-1520.

(4) In addition, for the children's intensive in-home behavioral supports waiver, you must:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

(5) In addition, for the individual and family services waiver, you must live in the family home.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0060 Can my waiver enrollment be terminated? DDA may terminate your waiver enrollment if DDA determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual person-centered service plan/individual support plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program.

(e) You choose to disenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) You refuse to participate with DDA in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your person-centered service plan/individual support plan as necessary to meet your health and welfare needs.

(i) You are residing in a hospital, jail, prison, nursing facility, ICF/ID, or other institution and remain in residence at least one full calendar month, and are still in residence:

(i) At the end of that full calendar month, there is no immediate plan for you to return to the community; or

(ii) At the end of the twelfth month following the effective date of your current person-centered service plan/individual support plan, as described in WAC 388-845-3060; or

(iii) The end of the waiver fiscal year, whichever date occurs first.

(j) Your needs exceed the maximum funding level or scope of services under the Basic Plus waiver as specified in WAC 388-845-3080; or

(k) Your needs exceed what can be provided under WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0100 What determines which waiver I am assigned to? DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDA assessment as described in chapter 388-828 WAC and the following criteria:

(1) For the individual and family services waiver, you:

(a) Are age three or older;

(b) Live in your family home;

(c) Are assessed to need a waiver service to remain in the family home.

(2) For the Basic Plus waiver your health and welfare needs require a waiver service to remain in the community.

~~((2))~~ (3) For the Core waiver:

(a) You are at immediate risk of out-of-home placement; and/or

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

~~((3))~~ (4) For the community protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

~~((4))~~ (5) For the children's intensive in-home behavioral support waiver, you:

(a) Are age eight or older and under age eighteen;

(b) Live with your family;

(c) Are assessed at high or severe risk of out of home placement due to challenging behavior per chapter 388-828 WAC; and

(d) You have a signed participation agreement from your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDA may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDA as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent offense, as defined in RCW 9.94A.030.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) Person-centered service plan/individual support plan;

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDA approved certified individuals and agencies.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. ~~((In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply))~~ Those are:

(1) A service must be ~~((offered))~~ available in your waiver.

(2) The need for a service must be identified and authorized in your person-centered service plan/individual support plan.

~~((2))~~ (3) Behavioral health stabilization services may be added to your person-centered service plan/individual support plan after the services are provided.

~~((3))~~ (4) Waiver services are limited to services required to prevent ICF/ID placement.

~~((4))~~ (5) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/ID.

~~((5))~~ (6) Waiver services cannot replace or duplicate other available paid or unpaid supports or services. Participants must first pursue benefits available to them through private insurance and the medicaid state plan.

~~((6))~~ (7) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

~~((7-The))~~ (8) For IFS and Basic Plus waivers, (has) services must not exceed the yearly limits ((on some)) specified in these programs for specific services and/or combinations of services. ((The combination of services is referred to as aggregate services.))

~~((8))~~ (9) Your choice of qualified providers and services is limited to the most cost effective option that meets your health and welfare needs.

~~((9))~~ (10) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations of not more than thirty consecutive days.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities per WAC 182-501-0175 are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

~~((10))~~ (11) Other out-of-state waiver services require an approved exception to rule before DDA can authorize payment.

~~((11))~~ (12) Waiver services do not cover co-pays, deductibles, dues, membership fees or subscriptions.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0200 What waiver services are available to me? Each of the DDA HCBS waivers has a different scope of service and your person-centered service plan/individual support plan defines the waiver services available to you.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0210 What is the scope of services for the Basic Plus waiver ((services))?

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior support and consultation Community guide Environmental ((ees-ability)) adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	<u>Vehicle modifications (you must be living in your family home)</u> EMPLOYMENT SERVICES: Prevocational services Supported employment Individual technical assistance	Limits are determined by DDA assessment and employment status
	Community access Adult foster care (adult family home) Adult residential care (assisted living facility)	Limits are determined by DDA assessment Determined per department rate structure
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavior support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	Personal care	Limits determined by the CARE tool used as part of the DDA assessment
	Respite care	Limits are determined by the DDA assessment
	Sexual deviancy evaluation	Limits are determined by DDA
	Emergency assistance is only for Basic Plus waiver aggregate services	\$6000 per year; preauthorization required

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0215 What is the scope of services for the CORE waiver ((services:))?

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior support and consultation	Determined by the <u>person-centered service plan</u> /individual support plan, not to exceed the average cost of an ICF/ID for any combination of services
	Community guide	
	Community transition	
	Environmental ((accessibility)) adaptations	
	Occupational therapy	
	Physical therapy	
	Sexual deviancy evaluation	
	Skilled nursing	
	Specialized medical equipment/supplies	
	Specialized psychiatric services	
	Speech, hearing and language services	
	Staff/family consultation and training	
Transportation	Limits are determined by DDA assessment	
Residential habilitation		
Community access		

CORE WAIVER	SERVICES	YEARLY LIMIT
	Employment services	Limits are determined by DDA assessment and employment status
	Prevocational services	
	Supported employment	
	Individualized technical assistance	
	<u>Vehicle modifications (you must be living in your family home)</u>	
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavior support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA
	Personal care	Limits determined by the CARE tool used as part of the DDA assessment
	Respite care	Limits are determined by the DDA assessment

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0220 What is the scope of services for the community protection waiver ((services:))?

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior support and consultation Community transition Environmental ((accessibility)) adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the <u>person-centered service plan</u> /individual support plan, not to exceed the average cost of an ICF/ID for any combination of services
	Residential habilitation	
	Employment Services: Prevocational services Supported employment Individual technical assistance	Limits determined by DDA assessment and employment status
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavioral support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0225 What is the scope of services for the children's intensive in-home behavioral support (CIIBS) waiver ((~~services~~))?

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> • Behavior support and consultation • Staff/family consultation and training • Environmental ((accessibility)) adaptations • Occupational therapy • Physical therapy • Sexual deviancy evaluation • Nurse delegation • Specialized medical equipment/supplies • Specialized psychiatric services • Speech, hearing and language services • Transportation • Assistive technology • Therapeutic equipment and supplies • Specialized nutrition and clothing • Vehicle modifications 	Determined by the <u>person-centered service plan</u> /individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.
	Personal care	Limits determined by the DDA assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Respite care	Limits determined by the DDA assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.

CIIBS Waiver	Services	Yearly Limit
	Behavioral health Stabilization services: Behavioral support and consultation Crisis diversion bed services Specialized psychiatric services	Limits determined by behavioral health specialist

NEW SECTION

WAC 388-845-0230 What is the scope of services for the individual and family services waiver? (1) IFS waiver services include:

- (a) Assistive technology;
- (b) Behavioral health stabilization services (paid for outside of annual allocation):
 - (i) Behavioral support and consultation; and
 - (ii) Specialized psychiatric service.
- (c) Behavioral support and consultation;
- (d) Community engagement;
- (e) Environmental adaptations;
- (f) Nurse delegation;
- (g) Occupational therapy;
- (h) Person-centered plan facilitation;
- (i) Peer mentoring;
- (j) Physical therapy;
- (k) Speech, hearing and language services;
- (l) Respite Care;
- (m) Psychosexual evaluation (paid for outside of annual allocation);
- (n) Skilled nursing;
- (o) Specialized clothing;
- (p) Specialized medical equipment and supplies;
- (q) Specialized nutrition;
- (r) Supported parenting services;
- (s) Staff/Family consultation and training;
- (t) Therapeutic equipment and supplies;
- (u) Transportation; and
- (v) Vehicle modification.

(2) Your IFS waiver services annual allocation is based upon the DDA assessment described in chapter 388-828 WAC. The DDA assessment determines your service level & annual allocation based on your assessed need. Annual allocations are:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars;
- (d) Level 4 = three thousand six hundred dollars.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0415 What is assistive technology? Assistive technology consists of items, equipment, or product

systems used to increase, maintain, or improve functional capabilities of waiver participants, as well as services to directly assist the participant and caregivers to select, acquire, and use the technology. Assistive technology is available in the CIIBS and IFS waivers, and includes the following:

- (1) The evaluation of the needs of the waiver participant, including a functional evaluation of the ~~((child))~~ participant in the ~~((child's))~~ participant's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for the participant and/or if appropriate, the ~~((child's))~~ participant's family; and
- (6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of ~~((children))~~ individuals with disabilities.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0420 Who is a qualified provider of assistive technology? The provider of assistive technology must be an ~~((assistive technology vendor))~~ entity contracted with DDA to provide assistive technology, or one of the following professionals contracted with DDA and duly licensed, registered or certified to provide this service:

- (1) Occupational therapist;
- (2) Physical therapist;
- (3) Speech and language pathologist;
- (4) Certified music therapist;
- (5) ~~((Certified recreation therapist))~~ Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;
- (6) Audiologist; ~~((or))~~
- (7) Behavior specialist~~(-);~~ or
- (8) Rehabilitation counselor.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0425 Are there limits to the assistive technology I can receive? (1) ~~((Providers of assistive technology services must be certified, registered or licensed therapists as required by law and contracted with DDA for the therapy they are providing.))~~ Clinical and support needs for assistive technology are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) ~~((Vendors of assistive technology must maintain a business license required by law and be contracted with DDA to provide this service.~~

~~(3))~~ Assistive technology may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the technology is not covered by medicaid or private insurance.

~~((4))~~ (3) The department does not pay for experimental technology.

~~((5))~~ (4) The department requires your treating professional's written recommendation regarding your need for the technology over \$500. This recommendation must take into account that:

(a) The treating professional has personal knowledge of and experience with the requested and ~~((alternative))~~ assistive technology; and

(b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

~~((6))~~ (5) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection ~~((5))~~ (4) above.

(6) The dollar amounts for the waiver participant's IFS waiver annual allocation limit the amount of assistive technology you are authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0505 Who is a qualified provider of behavior support and consultation? Under the Basic Plus, Core, ~~((and community protection))~~ CP and IFS waivers, the provider of behavior support and consultation must be one of the following professionals contracted with DDA and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (11) Polygrapher; or
- (12) State operated behavior support agency limited to behavioral health stabilization services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0510 Are there limits to the behavior support and consultation I can receive? ~~((The following limits apply to your receipt of))~~ (1) Clinical and support needs for behavior support and consultation are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

~~((1))~~ (2) DDA and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection ~~((2))~~ (3) below.

~~((2))~~ (3) The dollar ~~((limitations))~~ amounts for aggregate services in your Basic Plus waiver or the dollar amounts in the annual allocation for the IFS waiver limit the amount of service unless provided as a behavioral health stabilization service.

~~((3))~~ (4) DDA reserves the right to require a second opinion from a department-selected provider.

~~((4) Behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the DDA regional administrator or designee.)~~

NEW SECTION

WAC 388-845-0650 What are community engagement services? (1) Community engagement services are services designed to increase a waiver participant's connection to and engagement in formal and informal community supports.

(2) Services are designed to develop creative, flexible and supportive community resources and relationships for individuals with developmental disabilities.

(3) Waiver participants are introduced to the community resources and supports that are available in their area.

(4) Participants are supported to develop skills that will facilitate integration into their community.

(5) Outcomes for this service include skill development, positive relationships, valued community roles and involvement in community activities/organizations/groups/projects/other resources.

(6) This service is available in IFS waiver.

NEW SECTION

WAC 388-845-0655 Who is a qualified provider of community engagement service? Any individual or agency contracted with DDA as a "community engagement service provider" is qualified to provide this service as evidenced by:

(1) Two years of community engagement experience with the community in which the participant lives; and

(2) Organizations that provide peer support to individuals with developmental disabilities or families that have a member with a developmental disability and are contracted with DDA to provide this service.

NEW SECTION

WAC 388-845-0660 Are there limitations to the community engagement services I can receive? (1) Support needs for community engagement services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) The dollar amounts in the annual allocation for the IFS waiver limit the amount of service you can receive.

(3) Community engagement services do not pay for the following costs:

- (a) Membership fees or dues; and/or
- (b) Equipment related to activities; and/or
- (c) The cost of any activities.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

(1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service plan/individual support plan to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current ~~((plan of care or))~~ person-centered service plan/individual support plan;

(3) Emergency assistance services are limited to the Basic Plus waiver aggregate services;

(4) Emergency assistance may be used for interim services until:

(a) The emergency situation has been resolved; or

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0900 What are environmental ~~((accessibility))~~ adaptations? (1) Environmental ~~((accessibility))~~ adaptations are available in all of the DDA HCBS waivers. Environmental adaptations ~~((and))~~ provide ~~((the))~~ physical adaptations within the physical structure of the home, or outside the home to provide access to the home. The need must be identified by the DDA assessment and the participant's person-centered service plan/~~((required by the individual's))~~ individual support plan. ~~((needed to))~~ The following criteria must be met:

(a) Ensure the health, welfare and safety of the individual and/or caregiver; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental ~~((accessibility))~~ adaptations may include the purchase and installation of ~~((ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.))~~ the following:

(a) Portable and fixed ramps;

(b) Grab bars and handrails;

(c) Widening of doorways, addition of pocket doors, or removal of nonweight bearing walls for accessibility;

(d) Prefabricated roll-in showers and bathtubs;

(e) Automatic touchless or other adaptive faucets and switches;

(f) Automatic turn-on and shut-off adaptations for appliances in the home;

(g) Adaptive toilets, bidets, and sinks;

(h) Specialized electrical and/or plumbing systems necessary for the approved modification or medical equipment and supplies that are necessary for the welfare of the individual and/or safety of the caregiver;

(i) Repairs to environmental adaptations due to wear and tear if necessary for client safety and more cost-effective than replacement of the adaptation;

(j) Debris removal necessary due to hoarding behavior addressed in the participant's positive behavior support plan (PBSP);

(k) Lowering or raising of counters, sinks, cabinets, or other modifications for accessibility;

(l) Reinforcement of walls and replacement of hollow doors with solid core doors;

(m) Replacement of windows with non-breakable glass;

(n) Adaptive hardware and switches;

(o) Ceiling mounted lift systems or portable lift systems; and

(p) Other adaptations that meet identified needs.

(3) For the CIIBS and IFS waivers only, adaptations ~~((include repairs))~~ to the home necessary ~~((due to))~~ to prevent property destruction caused by the participant's behavior, as addressed in the participant's positive behavior support plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0905 Who is a qualified provider for ~~((building these))~~ environmental ~~((accessibility))~~ adaptations? (1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.

(2) For adaptations requiring installation, qualified ~~((The))~~ providers ~~((making these environmental accessibility adaptations))~~ must be a registered contractor per chapter 18.27 RCW and contracted with DDA. The contractor or subcontractor must be licensed and bonded to perform the specific type of work they are providing.

(3) For debris removal, qualified providers must be contracted with DDA.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0910 What limitations apply to environmental ~~((accessibility))~~ adaptations? The following service limitations apply to environmental ~~((accessibility))~~ adaptations:

(1) Clinical and support needs for environmental adaptations are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Environmental ~~((accessibility))~~ adaptations that involve installation require prior approval by the DDA regional administrator or designee~~((:))~~ supported by written bids from licensed contractors:

(a) One bid is required for adaptations costing one thousand five hundred dollars or less;

(b) Two bids are required for adaptations costing more than one thousand five hundred dollars and equal to or less than five thousand dollars;

(c) Three bids are required for adaptations costing more than five thousand dollars:

(d) All bids must include the cost of all required permits and sales tax:

(e) Bids must be itemized and clearly outline the scope of work.

(3) DDA may require an occupational therapist, physical therapist or construction consultant to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(4) Environmental adaptations that do not involve installation require prior approval by the DDA regional administrator or designee unless they cost five hundred dollars or less per waiver plan year.

~~((2 With the exception of damage repairs under the CHBS waiver, e))~~ (5) Environmental ((aecessibility)) adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

(6) Environmental adaptations must meet all local and state building codes and evidence of any required completed inspections must be submitted to DDA prior to authorizing payment for work.

(7) Deteriorated condition of the dwelling or other remodeling projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA.

(8) Location of the dwelling in a flood plain, landslide zone or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

(9) Written consent from the dwelling landlord is required prior to any environmental adaptations being started for a rental property. The landlord shall not require that the environmental adaptations be removed at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

~~((3))~~ (10) Environmental ((aecessibility)) adaptations cannot add to the total square footage of the home.

~~((4))~~ (11) The dollar ((limitations)) amounts for aggregate services in your Basic Plus waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

~~((5))~~ (12) Damage repairs under the CHBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original condition((-):

(b) Limited to the dollar amounts of the IFS waiver participant's annual allocation:

(c) Behaviors of waiver participants that resulted in damage to the dwelling must be addressed in a positive behavior support plan prior to the repair of damages:

~~((b))~~ (d) Repairs to personal property such as furniture and appliances and normal wear and tear are excluded.

(13) The following adaptations are not included in this service:

(a) Building fences and fence repairs:

(b) Carpet or carpet replacement.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1015 Are there limits to the extended state plan services I can receive? (1) Clinical and support needs for extended state plan services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

~~((+))~~ (2) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan;

~~((2))~~ (3) The department does not pay for treatment determined by DSHS to be experimental;

~~((3))~~ (4) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department may require a second opinion from a department selected provider.

(b) The department will require evidence that you have accessed your full benefits through medicaid before authorizing this waiver service.

~~((4))~~ (5) The dollar ((limitations)) amount for Basic Plus waiver aggregate services limit the amount of service you may receive.

(6) The dollar amount for your annual allocation on the IFS waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1040 Are there limits to the individualized technical assistance services I can receive? (1) Individualized technical assistance service cannot exceed three months in an individual's plan year.

(2) These services are available on the Basic Plus, Core and ((community protection)) CP waivers.

(3) Individual must be receiving supported employment or prevocational services.

(4) Services are limited to additional hours per WAC 388-828-9355 and 388-828-9360.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1110 What are the limits of behavioral health crisis diversion bed services? (1) Clinical and support needs for behavioral health crisis diversion bed services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

~~((+))~~ (2) Behavioral health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.

~~((2))~~ (3) These services are available in the CIIBS, Basic Plus, Core~~(7)~~ and community protection waivers administered by DDA as behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

~~((3))~~ (4) The costs of behavioral health crisis diversion bed services do not count toward the dollar ~~((limits))~~ amounts for aggregate services in the Basic Plus waiver.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1150 What are behavioral health stabilization services? Behavioral health stabilization services assist persons who are experiencing a behavioral health crisis or meet criteria for enhanced respite or community crisis stabilization services. These services are available in the Basic Plus, Core, CIIBS, IFS and community protection waivers to individuals determined by behavioral health professionals or DDA to be at risk of institutionalization or hospitalization who need one or more of the following services:

- (1) Behavior support and consultation;
- (2) Specialized psychiatric services; or
- (3) Behavioral health crisis diversion bed services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?

(1) Clinical and support needs for behavioral health stabilization services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Behavioral health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.

~~((2))~~ (3) The costs of behavioral health stabilization services do not count toward the dollar ~~((limitations))~~ amounts for aggregate services in the Basic Plus waiver or the annual allocation in the IFS waiver.

~~((3))~~ (4) Behavioral health stabilization services require prior approval by DDA or its designee.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1170 What is nurse delegation? (1) Nurse delegation services are services in compliance with WAC 246-840-910 through 246-840-970 by a registered nurse to provide training and nursing management for nursing assistants who perform delegated nursing tasks.

(2) Delegated nursing tasks include, but are not limited to, administration of noninjectable medications except for insulin, blood glucose testing, and tube feedings.

(3) Services include the initial visit, care planning, competency testing of the nursing assistant, consent of the client, additional instruction and supervisory visits.

(4) Clients who receive nurse delegation services must be considered "stable and predictable" by the delegated nurse.

(5) Nurse delegation services are available on all DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1180 Are there limitations to the nurse delegation services that I receive? The following limitations apply to receipt of nurse delegation services:

(1) Clinical and support needs for nurse delegation are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) The department requires the delegating nurse's written recommendation regarding your need for the service. This recommendation must take into account that the nurse has recently examined you, reviewed your medical records, and conducted a nursing assessment.

~~((2))~~ (3) The department may require a written second opinion from a department selected nurse delegator that meets the same criteria in subsection ~~((+))~~ (2) of this section.

~~((3))~~ (4) The following tasks must not be delegated:

- (a) Injections, other than insulin;
- (b) Central lines;
- (c) Sterile procedures; and
- (d) Tasks that require nursing judgment.

(5) The dollar amounts for aggregate services in your Basic Plus waiver or the dollar amounts for your annual allocation in your IFS waiver limit the amount of nurse delegation service you are authorized to receive.

NEW SECTION

WAC 388-845-1190 What is peer mentoring? (1) Peer mentoring is a form of mentorship that takes place between a person who is living through the experience of having a developmental disability or being the family member of a person who has a developmental disability (peer mentor) and a person who is new to that experience (the peer mentee).

(2) Peer mentors utilize their personal experiences to provide support and guidance to a waiver participant and family members of a waiver participant.

(3) Peer mentors may orient a waiver participant to local community services, programs and resources and provide answers to participants' questions or suggest other sources of support.

(4) Peer mentoring is available in the IFS waiver.

NEW SECTION

WAC 388-845-1191 Who are qualified providers of peer mentoring? Qualified providers include organizations who:

(1) Provide peer mentoring support and training to individuals with developmental disabilities or to families with a member with a developmental disability; and

(2) Are contracted with DDA to provide this service.

NEW SECTION

WAC 388-845-1192 What limitations are there for peer mentoring? (1) Support needs for peer mentoring are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Peer mentors cannot mentor their own family members.

(3) The dollar amounts for the waiver participant's annual allocation in the IFS waiver limit the amount of peer mentoring service that the participant is authorized to receive.

NEW SECTION

WAC 388-845-1195 What is person-centered planning facilitation? (1) Person-centered planning facilitation is an approach to forming life plans that is centered on the individual. It is used as a life planning process to enable individuals with disabilities to increase personal self-determination. Person-centered planning facilitation is available in the IFS waiver.

(2) Person-centered planning facilitation typically includes:

(a) Identifying and developing a potential circle of people who know and care about the individual;

(b) Exploring what matters to the waiver participant by listening to and learning from the person;

(c) Developing a vision for a meaningful life, as defined by the waiver participant, which may include goals for education, employment, housing, relationships and recreation;

(d) Discovering capacities and assets of the waiver participant and her or his family, neighborhood, and support network;

(e) Generating an action plan; and

(f) Facilitating follow-up meetings to track progress towards goals.

NEW SECTION

WAC 388-845-1196 Who are qualified providers of person-centered planning facilitation? Qualified providers include organizations and individuals who:

(1) Provide person-centered planning facilitation to individuals with developmental disabilities; and

(2) Are contracted with DDA to provide this service.

NEW SECTION

WAC 388-845-1197 What limitations are there for person-centered planning facilitation? (1) Support needs for person-centered planning facilitation are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Person-centered planning facilitation may include follow up contacts with the waiver participant and his or her family to consult on plan implementation.

(3) The dollar amounts for the waiver participants' annual allocation in the IFS waiver limit the amount of person-centered planning facilitation service the individual is authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) Clinical and support needs for personal care services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) You must meet the programmatic eligibility for medicaid personal care in chapter 388-106 WAC governing medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE).

~~((2))~~ (3) The maximum hours of personal care you may receive are determined by the CARE tool used as part of the DDA assessment.

(a) Provider rates are limited to the department established hourly rates for in-home medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with DSHS.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1410 Are there limits to the prevocational services I can receive? The following limitations apply to your receipt of prevocational services:

(1) Clinical and support needs for prevocational services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

~~((2))~~ (3) New referrals for prevocational services require prior approval by the DDA regional administrator and county coordinator or their designees.

~~((3))~~ (4) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual employment plan will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals;

(c) Recommendation by your individual support plan team.

~~((4))~~ (5) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

~~((5))~~ (6) Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1600 What is respite care? Respite care is short-term intermittent relief for persons who:

(1) Live with you and are your primary care providers; and

(2) Are either:

(a) Your family members (paid or unpaid care providers); or

(b) Nonfamily members who are not paid to provide care for you; or

(3) You live with a caregiver who is paid by DDA to provide supports as:

(a) A contracted companion home provider; or

(b) A licensed children's foster home provider.

This service is available in the Basic Plus, CIIBS, ~~(and)~~ Core and IFS waivers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1605 Who is eligible to receive respite care? You are eligible to receive respite care if you are in the Basic Plus, CIIBS, ~~(or)~~ Core or IFS waiver and meet the criteria in WAC 388-845-1600.~~(=)~~

~~((1) You live in a private home and no person living with you is contracted by [DSHS] to provide you with a service; or~~

~~(2) You are age eighteen or older and:~~

~~(a) You live with your natural, step or adoptive parent(s) who is also contracted by [DSHS] to provide you with a service; and~~

~~(b) No one else living with you is contracted by DSHS to provide you with a service; or~~

~~(3) You are under the age of eighteen and:~~

~~(a) You live with your natural, step or adoptive parent(s); and~~

~~(b) There is a person living with you who is contracted by DSHS to provide you with a service; or~~

~~(4) You live with a caregiver who is paid by DDA to provide supports as:~~

~~(a) A contracted companion home provider; or~~

~~(b) A licensed children's foster home provider.))~~

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1607 Can someone who lives with me be my respite provider? Someone who lives with you may be your respite provider as long as he or she is not ~~((the person who normally provides care for you))~~ your primary care provider and is not contracted to provide any other DSHS paid service to you. The limitations listed in WAC 388-845-0111 also apply.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

(1) For Basic Plus, core and CIIBS waivers, the DDA assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) For the IFS waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.

~~((2))~~ (3) Respite cannot replace daycare while your parent or guardian is at work.

~~((a) Day care while your parent or guardian is at work; and/or~~

~~(b) Personal care hours available to you. When determining your unmet need, DDA will first consider the personal care hours available to you.))~~

~~((3))~~ (4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

~~((4))~~ (5) Your ~~(caregiver)~~ individual respite provider may not provide:

(a) Other DDA services for you ~~((or other persons))~~ during your respite care hours~~(=)~~; or

(b) DDA paid services to other persons during your respite care hours.

~~((5) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.))~~

(6) If your personal care provider is your parent and you live in your parent's adult family home you may not receive respite.

(7) DDA may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the IFS or Basic Plus waiver, skilled nursing services are limited to the dollar ~~((limits))~~ amounts of your basic plus aggregate services or IFS annual allocation per WAC 388-845-0210 and WAC 388-845-0230.

(9) Respite cannot be accessed for more than fourteen days in a given month.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive? (1) Clinical and

support needs for sexual deviancy evaluations are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan. Sexual deviancy evaluations must meet the standards contained in WAC 246-930-320.

(2) Sexual deviancy evaluations require prior approval by the DDA regional administrator or designee.

(3) The costs of sexual deviancy evaluations do not count toward the dollar limits for aggregate services in the Basic Plus waivers or the annual allocation in the IFS waiver.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1700 What is skilled nursing? (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, Core, IFS and ~~((Community Protection))~~ CP waivers.

(2) Services include nurse delegation services, per WAC 388-845-1170, provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive? The following limitations apply to your receipt of skilled nursing services:

(1) Clinical and support needs for skilled nursing services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Skilled nursing services with the exception of nurse delegation and nursing evaluations require prior approval by the DDA regional administrator or designee.

(3) DDA and the treating professional determine the need for and amount of service.

(4) DDA reserves the right to require a second opinion by a department-selected provider.

(5) The dollar ~~((limitation))~~ amount for aggregate services in your Basic Plus waiver or the dollar amount of your annual allocation in your IFS waiver limits the amount of skilled nursing services you may receive.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are durable and nondurable medical equipment not available through medicaid or the state plan (or are in excess of what is available through your medicaid state plan benefit) which enables individuals to:

(a) Increase their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500 respectively.

(3) Also included are items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies include the maintenance and repair of specialized medical equipment not covered through the medicaid state plan.

(5) Specialized medical equipment and supplies are available in all DDA HCBS waivers.

(6) Specialized medical equipment and supplies costing less than \$500 per waiver plan year do not require prior approval, such as:

(a) Diapers and briefs;

(b) Gloves and wipes;

(c) Shower or bath chair or bench;

(d) Commode; and

(e) Hand-held showerhead.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies? The following limitations apply to your receipt of specialized medical equipment and supplies:

(1) Clinical and support needs for specialized medical equipment and supplies are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Specialized medical equipment and supplies not listed in WAC 388-845-1800(6) require prior approval by the DDA regional administrator or designee for each authorization.

(3) DDA ~~((reserves the right to))~~ may require a second opinion by a department-selected provider.

(4) Items ~~((reimbursed))~~ purchased with waiver funds shall be in addition to any medical equipment and supplies furnished under the medicaid state plan.

(5) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(6) Medications, prescribed or nonprescribed, and vitamins are excluded.

(7) The dollar ~~((limitations))~~ amounts for aggregate services in your Basic Plus waiver limit the amount of service you may receive.

(8) The dollar amounts for your annual allocation in your IFS waiver limit the amount of service you may receive.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1840 What is specialized nutrition ~~((and specialized clothing))~~? ~~(((+)))~~ Specialized nutrition is available to you in the CIIBS and IFS waivers and is defined as:

(1) Assessment, intervention, and monitoring services from a certified dietitian; and/or

(2) Specially prepared food, or purchase of particular types of food, needed to sustain you in the family home. Specialized nutrition is in addition to meals a parent would provide and specific to your medical condition or diagnosis.

~~(((2) Specialized clothing is available to you in the CIIBS waiver and defined as nonrestrictive clothing adapted to the participant's individual needs and related to his/her disability. Specialized clothing can include weighted clothing, clothing designed for tactile defensiveness, specialized footwear, or reinforced clothing.))~~

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1845 Who are qualified providers of specialized nutrition ~~((and specialized clothing))~~? ~~(((+)))~~ Providers of specialized nutrition are:

(1) Certified dietitians contracted with DDA to provide this service or employed by an agency contracted with DDA to provide this service; and

(2) Specialized nutrition vendors contracted with DDA to provide this service.

~~(((2) Providers of specialized clothing are specialized clothing vendors contracted with DDA to provide this service.))~~

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition ~~((and specialized clothing))~~? (1) The following limitations apply to your receipt of specialized nutrition services:

(a) Clinical and support needs for specialized nutrition are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(b) Specialized nutrition may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available;

(c) Services must be safe, effective, and individualized;

(d) Services must be ordered by a physician licensed to practice in the state of Washington;

(e) Specialized diets must be periodically monitored by a certified dietitian;

(f) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

(g) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

(h) DDA ~~((reserves the right to))~~ may require a second opinion by a department selected provider; and

(i) Prior approval by regional administrator or designee is required for participants on the CIIBS waiver.

(2) The ~~((following limitations apply to your receipt of specialized clothing.))~~ dollar amounts for your annual allocation in your IFS waiver limit the amount of service you may receive.

~~(((a) Specialized clothing may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.~~

~~(b) The department requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.~~

~~(c) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (b) of this section.~~

~~(d) Prior approval by regional administrator or designee is required.))~~

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

NEW SECTION

WAC 388-845-1855 What is specialized clothing? Specialized clothing is available to you in the CIIBS and IFS waivers and is defined as nonrestrictive clothing adapted to the participant's individual needs and related to his/her disability, such as weighted clothing, clothing designed for tactile defensiveness, specialized footwear, or reinforced clothing.

NEW SECTION

WAC 388-845-1860 Who are qualified providers of specialized clothing? Providers of specialized clothing are specialized clothing vendors contracted with DDA to provide this service.

NEW SECTION

WAC 388-845-1865 Are there limitations to my receipt of specialized clothing? (1) The following limitations apply to your receipt of specialized clothing:

(a) Clinical and support needs for specialized clothing are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(b) Specialized clothing may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.

(c) The department requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

(d) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (1)(c) of this section.

(2) For IFS waiver participants, the dollar amounts for your annual allocation in your IFS waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive? (1) Clinical and support needs for specialized psychiatric services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Specialized psychiatric services are excluded if they are available through other medicaid programs.

(3) DDA and the treating professional will determine the need and amount of service you will receive in the IFS, Basic Plus, Core, CIIBS and CP waivers, subject to the limitations in subsection (4) below.

(4) The dollar (~~limitations~~) amounts for aggregate service in your Basic Plus waiver or the dollar amount of your annual allocation in your IFS waiver limit the amount of specialized psychiatric services you are authorized to receive, unless provided as a behavioral health stabilization service.

(5) Specialized psychiatric services require prior approval by the DDA regional administrator or designee.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all DDA HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the (~~individual's~~) person-centered service plan/individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support;

- (e) Augmentative communication systems;
- (f) Diet and nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental consultation; and
- (j) For the IFS and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDA:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only); (~~or~~)
- (19) Psychiatrist; or
- (20) Professional advocacy organization.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive? (1) Clinical and support needs for staff/family consultation and training are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

(3) (~~Staff/family consultation and training require prior approval by the DDA regional administrator or designee.~~) The dollar amounts for aggregate service in your Basic Plus waiver or the dollar amount of the annual allocation in your IFS waiver limit the amount of staff/family consultation and training you may receive.

~~((4))~~ The dollar limitations for aggregate services in your Basic Plus waiver limit the amount of service you may receive.)

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

NEW SECTION

WAC 388-845-2130 What are supported parenting services? (1) Supported parenting services are professional services offered to participants who are parents or expectant parents.

(2) Services may include teaching, parent coaching and other supportive strategies in areas critical to parenting, including child development, nutrition and health, safety, childcare, money management, time and household management and housing.

(3) Supported parenting services are designed to build parental skills around the child's developmental domains of cognition, language, motor, social-emotional and self-help.

(4) Supported parenting services are offered in the IFS waiver.

NEW SECTION

WAC 388-845-2135 Who are qualified providers of supported parenting services? Qualified providers of supported parenting services must have an understanding of the manner in which persons with intellectual/developmental disabilities best learn in addition to skills in child development and family dynamics and be one of the following licensed, registered or certified professionals and be contracted with DDA:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse or licensed practical nurse;
- (8) Speech/language pathologist;
- (9) Social worker;
- (10) Psychologist;
- (11) Certified American Sign Language instructor;
- (12) Nutritionist;
- (13) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (14) Certified dietician;
- (15) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;
- (16) Psychiatrist; or
- (17) Professional advocacy organization.

NEW SECTION

WAC 388-845-2140 Are there any limitations on my receipt of supported parenting services? The following limitations apply to your receipt of supported parenting services:

(1) Clinical and support needs for supported parenting services are identified in your DDA assessment and documented in your person-centered service plan/individual support plan;

(2) The dollar amount of your annual allocation in your IFS waiver limit the amount of supported parenting service you are authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2160 What is therapeutic equipment and supplies? (1) Therapeutic equipment and supplies are only available in the CIIBS and IFS waivers.

(2) Therapeutic equipment and supplies are equipment and supplies that are necessary to implement a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the ~~((child))~~ individual to a constructive activity, or a vestibular swing.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies? The following limitations apply to your receipt of therapeutic equipment and supplies under the CIIBS and IFS waivers:

(1) Therapeutic equipment and supplies may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.

(2) The department does not pay for experimental equipment and supplies.

(3) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(4) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (3) of this section.

(5) The dollar amount of your annual allocation in your IFS waiver limits the amount of therapeutic equipment and supplies you are authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Support needs for transportation services are identified in your DDA assessment and documented in your person-centered service plan/individual support plan.

(2) Transportation to/from medical or medically related appointments is a medicaid transportation service and is to be considered and used first.

(3) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

(4) Transportation is limited to travel to and from a waiver service. When the waiver service is supported employment, transportation is limited to days when the participant receives employment support services.

(5) Transportation does not include the purchase of a bus pass.

(6) Reimbursement for provider mileage requires prior approval by DDA and is paid according to contract.

(7) This service does not cover the purchase or lease of vehicles.

(8) Reimbursement for provider travel time is not included in this service.

(9) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(10) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(11) The dollar limitations for aggregate services in your Basic Plus waiver or the dollar amount of your annual allocation in the IFS waiver limit the amount of service you may receive.

~~((11) Transportation services require prior approval by the DDA regional administrator or designee.))~~

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the Basic Plus waiver.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2260 What are vehicle modifications? ~~((This service is only available in the CHBS waiver.))~~ Vehicle modifications are adaptations or alterations to a vehicle required in order to accommodate the unique needs of the individual, enable full integration into the community, and ensure the health, welfare, and safety of the ~~((individual))~~ participant and/or ((family members)) caregiver.

(1) The following vehicle modifications do not require a prior approval:

(a) Manual hitch-mounted carrier and hitch for all wheelchair types:

(b) Wheelchair cover:

(c) Wheelchair strap-downs:

(d) Portable wheelchair ramp:

(e) Accessible running boards and steps:

(f) Assist poles and/or grab handles.

(2) The following vehicle modifications require prior approval by the DDA regional administrator or designee:

(a) Power activated carrier for all wheelchair types:

(b) Permanently installed wheelchair ramps:

(c) Repairs and maintenance to vehicular modifications as needed for client safety:

(d) Other access modifications.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2270 Are there limitations to my receipt of vehicle modification services? Vehicle modification services are only available to you if you live in your family home and you are on the CIIBS or IFS waiver. The following limitations apply ~~((to your receipt of vehicle modifications under the CHBS waiver))~~:

(1) ~~((Prior approval by the regional administrator or designee is required.))~~ Clinical and support needs for vehicle modification services are identified in the participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to the ~~((individual))~~ participant or caregiver.

(3) Participants who are enrolled with Division of Vocational Rehabilitation (DVR) must pursue this benefit through DVR first.

(4) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDA.

(5) Modifications will only be approved for a vehicle that serves as the participant's primary means of transportation and is owned by the participant and/or family.

(6) For modifications requiring prior approvals, the department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(7) The department may require a second opinion from a department selected provider that meets the same criteria as subsection ~~((5))~~ (6) of this section.

(8) The dollar amounts for aggregate services in your Basic Plus waiver or the dollar amount for your annual allocation in your IFS waiver limit the amount of vehicle modification service you are authorized to receive.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the DDA assessment and the service planning

process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ((ISP)) person-centered service plan/individual support plan.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ICF/ID level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the Basic Plus, CIIBS, or Core waiver, the DDA assessment will determine the amount of respite care available to you.

(2) From the assessment, DDA develops your waiver person-centered service plan/individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3055 What is a waiver person-centered service plan/individual support plan (ISP)? (1) The person-centered service plan/individual support plan (ISP) is the primary tool DDA uses to determine and document your needs and to identify the services to meet those needs.

(2) Your person-centered service plan/ISP must include:

(a) Your identified health and welfare needs;

(b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and

(c) How often you will receive each waiver service; how long you will need it; and who will provide it.

(3) For an initial person-centered service plan/ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(4) For a reassessment or review of your person-centered service plan/ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(5) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3056 What if I need assistance to understand my person-centered service plan/individual support plan? If you are unable to understand your person-centered service plan/individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable

to assist you with understanding your individual support plan, DDA will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your individual support plan.

(2) Continue your current waiver services.

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDA will continue to try to provide necessary supplemental accommodations in order to help you understand your person-centered service plan/individual support plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3060 When is my person-centered service plan/individual support plan effective? Your person-centered service plan/individual support plan is effective the last day of the month in which DDA signs it after a signature or consent is obtained from the participant.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3061 Can a change in my person-centered service plan/individual support plan be effective before I sign it? If you verbally request a change in service to occur immediately, DDA can sign the person-centered service plan/individual support plan and approve it prior to receiving your signature.

(1) Your person-centered service plan/individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the person-centered service plan/individual support plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3062 Who is required to sign or give verbal consent to the person-centered service plan/individual support plan? (1) If you do not have a legal representative, you must sign or give verbal consent to the person-centered service plan/individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the person-centered service plan/individual support plan.

(3) If you need assistance to understand your person-centered service plan/individual support plan, DDA will follow the steps outlined in WAC 388-845-3056 (1) and (3).

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3063 Can my person-centered service plan/individual support plan be effective before the end of the month? You may request to DDA to have your person-centered service plan/individual support plan effective prior to the end of the month. The effective date will be the date DDA signs it after receiving your signature or verbal consent.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3065 How long is my plan effective?

Your person-centered service plan/individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3070 What happens if I do not sign or verbally consent to my person-centered service plan/individual support plan (ISP)? If DDA is unable to obtain the necessary signature or verbal consent for an initial, reassessment or review of your person-centered service plan/individual support plan (ISP), DDA will take one or more of the following actions:

(1) If this person-centered service plan/individual support plan is an initial plan, DDA will be unable to provide waiver services. DDA will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3).

(2) If this person-centered service plan/individual support plan is a reassessment or review and you are able to understand your ISP:

(a) DDA will continue providing services as identified in your most current ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, DDA will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above.

(3) If this person-centered service plan/individual support plan is a reassessment or review and you are not able to understand your ISP, DDA will continue your existing services and take the steps described in WAC 388-845-3056.

(4) You will be provided written notification and appeal rights to this action to implement the new ISP.

(5) Your appeal rights are in WAC 388-845-4000 and 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3075 What if my needs change? You may request a review of your person-centered service plan/individual support plan at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDA must reassess your person-centered service plan/individual support plan with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual person-centered service plan/individual support plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3085 What if my needs exceed what can be provided under the IFS, CIIBS, Core or Community

Protection waiver? (1) If you are on the IFS, CIIBS, Core or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDA will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the IFS, CIIBS, Core or Community Protection waiver other than natural supports;

(c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;

(d) Offer you placement in an ICF/ID.

(2) If none of the above options is successful in meeting your health and welfare needs, DDA may terminate your waiver eligibility.

(3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDA services but access to state-only funded DDA services is limited by availability of funding.

WSR 15-14-009

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-182—Filed June 18, 2015, 1:16 p.m., effective June 18, 2015, 1:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500H; and amending WAC 220-52-045.

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

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

Reasons for this Finding: Test results from the Washington department of health show that crab tested in the area between the Washington/Oregon border and Point Chehalis are not safe for human consumption. Levels of domoic acid, detected through routine testing have exceeded the federally established action level. The extension of the deadline for removing commercial crab gear from the closed area is to address ocean conditions and allow gear to be recovered safely and does not affect the closure date or compromise public health. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 18, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

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

(1) The area from Point Chehalis (46°53.18), Washington to the U.S./Canada Border, including Grays Harbor: Open.

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

(3) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab from the area shoreward of a line approximating the 27-fathom depth curve between Split Rock (47°24.50) and the mouth of the Joe Creek (47°12.11). This area is closed until further notice. The legal modified SSMA is defined by the following coordinates:

(a) Northeast Corner (Split Rock):	47°24.50 N. Lat.	124°20.00 W. Lon.
(b) Northwest Corner:	47°24.50 N. Lat.	124°32.40 W. Lon.
(c) Southwest Corner:	47°12.11 N. Lat.	124°27.33 W. Lon.
(d) Southeast Corner (Joe Creek):	47°12.11 N. Lat.	124°12.28 W. Lon.

(4) Notwithstanding the provisions of WAC 220-52-045, effective immediately, it is unlawful to:

(a) Fish for Dungeness crab in the coastal waters of the Pacific Ocean between the Washington/Oregon border (46°15.00) and Point Chehalis (46°53.18), Washington;

(b) Fish for Dungeness crab in Willapa Bay and the Columbia River;

(c) Effective immediately it is unlawful to set, maintain, operate, or possess in those waters listed in subsections (4)(a) and (b) of this section, any baited or unbaited shellfish pots or ring nets for any reason; and

(d) Possess, transport or deliver Dungeness crab within the waters closed in this section unless the following conditions are met:

(i) Vessels that participate in the coastal Dungeness crab fishery from north of Point Chehalis (46°53.18) or south of the WA/OR border may possess crab for delivery into Washington ports south of Point Chehalis (46°53.18), provided the crab were taken north of Point Chehalis (46°53.18) or south of the WA/OR border.

(ii) Prior to entering Washington coastal waters of the Pacific Ocean between the WA/OR border (46°15.00) and Point Chehalis, Washington (46°53.18), including Willapa Bay and the Columbia River, the vessel operator must call 360-581-3337 and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04500H Coastal crab seasons. (15-168)

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

WSR 15-14-010 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-179—Filed June 18, 2015, 2:12 p.m., effective July 10, 2015]

Effective Date of Rule: July 10, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-19000B; amending WAC 220-310-190.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: June 18, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000B Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Baker Lake (Whatcom Co.) Effective July 10 through September 7, 2015, the daily limit for sockeye salmon is four.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 8, 2015:

WAC 220-310-19000B Freshwater exceptions to statewide rules—Puget Sound.

WSR 15-14-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-183—Filed June 18, 2015, 4:30 p.m., effective June 19, 2015]

Effective Date of Rule: June 19, 2015.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000U; and amending WAC 220-24-040.

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

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

Reasons for this Finding: Small amount[s] of the quota for Areas 1, 3 and 4 remain available for the fishery. Smaller than expected catches in Area 1 allows us to increase the landing and possession limit. A large harvestable quota of salmon remains available for the troll fleet in Area 2. These rules are adopted at the recommendation of the Pacific Fisheries Management Council and the National Marine Fisheries Service, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 18, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-24-04000V All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective 12:01 a.m. June 19, 2015, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Area 1 open:

June 19 - 23, 2015,

June 26 - 30, 2015.

(2) Salmon Management and Catch Reporting Area 2 open through June 30, 2015.

(3) That portion of Salmon Management and Catch Reporting Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

June 19 - 23, 2015,

June 26 - 30, 2015.

(4) All fish from Area 1 must be landed before crossing into the area north of Leadbetter point. All fish from Area 1 must be landed before fishing any other Area. No fish from other Areas may be in possession with fish from Area 1. Landing and possession limit of 80 Chinook in Area 1 per vessel per entire open period.

(5) All fishers intending to fish Area 4 must declare that intention before fishing by notifying WDFW at 360-902-2739 with boat name and approximate time they intend to fish in Area 4 and destination at the end of the trip. All fish from Area 4 must be landed before fishing any other Area. No fish from other Areas may be in possession with fish from Area 4. Landing and possession limit of 20 Chinook in Area 4 per vessel per entire open period.

(6) Cape Flattery and Columbia River Control Zones are closed.

(7) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(8) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(9) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of fish from Area 2 must stay in the closed areas to transit through Areas 3 and 4 to land in La Push or Neah Bay. All fish must be landed in Areas 1, 2, 3 or 4. Vessels in possession of salmon north or south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination.

Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(10) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(11) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09' N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(12) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2 or 4 must be landed before fishing south of Cape Falcon, Oregon.

(13) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 19, 2015:

WAC 220-24-04000U All-citizen commercial salmon troll.
(15-160)

WSR 15-14-014 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-181—Filed June 19, 2015, 3:00 p.m., effective June 19, 2015, 3:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To prevent new and multiple wildfires during this period of extreme fire danger; and to prevent the severe deterioration of air quality, which exacerbates the risk to life, health and property.

Citation of Existing Rules Affected by this Order: Amending WAC 232-13-050, 232-13-070, and 232-13-150.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.32.470.

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

Reasons for this Finding: Addresses an emergency need to prevent new and multiple wildfires during this period of extreme fire danger, and reduces the risk to life, health and property. Provides fire protection consistency with department of natural resources burn ban enacted June 16, 2015.

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

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

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

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

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

Date Adopted: June 19, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 232-13-05000B Operating chainsaws, welding, or operating an acetylene or other torch with open flame.

(1) Effective immediately until further notice, in wildlife areas and access sites in eastern Washington owned or controlled by the department, it is unlawful to:

(a) Operate a chainsaw without a permit or approval from the director; or

(b) Weld or operate an acetylene torch or other open flame without a permit or approval from the director.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 232-13-0700D Fires, campfires and smoking.

(1) Notwithstanding the provisions of WAC 232-13-070, effective immediately until further notice, it is unlawful to build, start, or maintain fires or campfires in wildlife areas and access sites owned or controlled by the department in eastern Washington without a permit or approval from the director. However, it is permissible to use personal camp stoves or lanterns fueled by liquid petroleum, liquid petroleum gas, or propane.

(2) Effective immediately until further notice, it is unlawful to smoke in wildlife areas and access sites owned or controlled by the department in eastern Washington, except in an enclosed vehicle.

(3) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

NEW SECTION

WAC 232-13-15000C Operating a motor vehicle off developed roadways. (1) Effective immediately until further notice, it is unlawful to operate a motor vehicle off developed roadways in wildlife areas and access sites owned or controlled by the department in eastern Washington. However, it is permissible to park in an area devoid of vegetation within 10 feet of the roadway, and to park overnight in developed campgrounds and at trailheads.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

**WSR 15-14-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-184—Filed June 22, 2015, 10:15 a.m., effective June 22, 2015,
10:15 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To assist landowners with minimizing ungulate caused property damage during growing seasons for high value agriculture crops, the emergency rule would change damage permit hunt start dates as follows:

- Statewide deer/elk: From August 1 to July 1.
- Elk Area 3721 spike and antlerless elk: From August 1 to July 1.

Additionally, Elk Area 3721 branch bull would change to any bull and the closing date changes from July 31 to June

30; to align with the changes outlined above. This will allow the department to utilize hunters to remove animals and increase pressure on animals causing damage to crops in July.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-266.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.150, 77.36.30 [77.36.030].

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

Reasons for this Finding: The department continues to receive escalating reports of ungulate caused crop damage during the month of July; particularly in areas where deer and elk populations have met or exceed current management objectives. The department has been effective in using damage prevention permits, from August 1 - March 31, to provide landowners opportunities to utilize licensed hunters for mitigating and minimizing damage to their crops. The inclusion of July in the damage prevention permit season provides an opportunity to increase pressure on those animals causing damage, thereby discouraging them from frequenting the crop lands, and remove individuals that are causing damage. These efforts will assist in minimizing damage to crops and mitigate potential claims for compensation. Therefore, it is in the interest of general welfare that an emergency rule be enacted. The department has initiated rule development for this WAC.

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

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

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

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

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

Date Adopted: June 22, 2014 [2015].

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-26600A Damage prevention permit hunts. Notwithstanding the provisions of WAC 232-28-266, effective immediately until further notice:

(1) Landowners who violate this section are subject to prosecution under RCW 77.15.750(1). Hunters who violate this section are subject to prosecution under RCW 77.15.400 or 77.15.410, depending on the species hunted.

(2) **Deer:**

Tag Required: Deer hunter must have a current valid, unaltered, unnotched deer tag on his/her person.

Hunting Method: Any legal weapon
 Season Framework: July 1 - March 31
 Location: Statewide
 Legal Deer: Antlerless Only
 Kill Quota: 300 per license year
 Location: Region One
 Legal Deer: Antlerless Only
 Kill Quota: 300 per license year
 Location: GMUs 105-124
 Legal Deer: Whitetail Antlerless Only
 Kill Quota: 300 per license year

(3) Elk:

Tag Required: Elk hunter must have a current valid, unnotched elk tag on his/her person.

Hunting Method: Any legal weapon
 Season Framework: July 1 - March 31
 Location: Statewide
 Legal Elk: Antlerless Only
 Kill Quota: 200 per license year
 Location: Hanford Area - GMUs 372 and 379
 Legal Elk: Antlerless Only
 Kill Quota: 60 per license year
 Location: Elk Area 3721

Legal Elk: Spike or antlerless during July 1 - March 31; any bull during May 15 - June 30, except spike and antlerless only July 1-31

Kill Quota: 50 Spike or antlerless per license year; 30 bulls per license year.

Location: GMU 501 - 578
 Legal Elk: Antlerless Only
 Kill Quota: 50 per license year

Special Note: Access in Elk Area 3721 may not be sold as a condition of use of these permits. The director may consider damage claims from landowners in Elk Areas 3721 and 3722 who accept these permits and do not charge for access.

WSR 15-14-031

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed June 23, 2015, 9:09 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: This order will extend suspension of fees in an effort to maintain a balanced budget for the architect licensing program. The current temporary suspension expires on July 1, 2015.

Citation of Existing Rules Affected by this Order: Amending WAC 308-12-205 Architect fees.

Statutory Authority for Adoption: RCW 43.24.086.

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

Reasons for this Finding: The temporary suspension of architect fees expires on July 1, 2015. This emergency rule is

necessary to avoid an audit exception or a disruption to the architect program.

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

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

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

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

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

Date Adopted: June 23, 2015.

Damon Monroe
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-018, filed 7/26/13, effective 8/26/13)

WAC 308-12-205 Architect fees. (1) Suspension of fees. Effective July 1, (~~2013~~) 2015, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Title of Fee	Fee
Individuals:	
Examination application	\$50.00
Reciprocity application	250.00
Initial licensure	75.00
License renewal (2 years)	75.00
Late renewal penalty	25.00
Duplicate license	15.00
Business entities:	
Certificate of authorization	100.00
Certificate of authorization renewal	50.00

The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, (~~2015~~) 2017.

(2) The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Examination application	\$100.00
Reciprocity application	390.00
Initial licensure	99.00
License renewal (2 years)	99.00
Late renewal penalty	33.00

Title of Fee	Fee
Duplicate license	15.00
Business entities:	
Certificate of authorization	278.00
Certificate of authorization renewal	139.00

WAC 220-310-19500X Freshwater exceptions to statewide rules—Snake River. (15-153)

**WSR 15-14-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-188—Filed June 24, 2015, 11:39 a.m., effective June 30, 2015]

Effective Date of Rule: June 30, 2015.
Purpose: Amend recreational fishing rules.
Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-19500X.
Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Under the current *United States vs. Oregon* management agreement spring Chinook fisheries on the Washington portion of the Snake River are not allowed to extend into July. This action will facilitate an orderly closure to the 2015 Snake River spring Chinook fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 24, 2015.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective one hour after official sunset June 30, 2015:

**WSR 15-14-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-186—Filed June 24, 2015, 2:02 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.
Purpose: Amend recreational fishing rules.
Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-235.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The fish and wildlife commission adopted this rule at the June 12-13, 2015, meeting to provide additional recreational angling opportunity while meeting conservation objectives for those species. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 24, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-23500B Possession limits—Bottomfish. Notwithstanding the provisions of WAC 220-56-235 and WAC 220-56-230, effective July 1, 2015, until further notice:

(1) It is permissible to fish for and possess flatfish (except halibut) in the waters of Marine Area 12 north of a true east line from the mouth of Turner Creek to the Toandos Peninsula in waters shallower than 120 feet. (20 fathoms).

(2) Daily limit of 15 flatfish.

(3) Closed waters: North of a true east line from Whitney Point to the Toandos Peninsula: Waters shallower than 120 feet (20 fathoms).

WSR 15-14-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-185—Filed June 24, 2015, 2:16 p.m., effective June 30, 2015, 11:59 a.m.]

Effective Date of Rule: June 30, 2015, 11:59 a.m.

Purpose: Amend commercial fishing rules for Puget Sound commercial shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100C; and amending WAC 220-52-051.

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

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

Reasons for this Finding: The 2015 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the pot fishery season for spot shrimp; (2) implements a spot shrimp biweekly limit for all areas; and (3) implements a minimum mesh size restriction for spot shrimp. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 24, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100D Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until fur-

ther notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 2W, 3 and 6 are open to the harvest of all shrimp species, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District are closed.

ii) All waters of Shrimp Management Areas 2W and 6 are closed to the harvest of spot shrimp.

iii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all species other than spot shrimp.

(b) The spot shrimp catch accounting biweekly management periods are as follows:

i) July 1-14, July 15-28 and July 29-August 11.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 1,200 pounds per biweekly management period, with the following exceptions:

i) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per biweekly management period in Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E.

(d) It is unlawful to pull shellfish pots in more than one catch area per day.

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(2) Shrimp beam trawl gear:

(a) Effective immediately until further notice, Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Effective immediately until further notice, those portions of Catch Areas 20B, 21A and 22A within SMA 1B are open.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. June 30, 2015:

WAC 220-52-05100C Puget Sound shrimp pot and beam trawl fishery—Season. (15-169)

WSR 15-14-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-187—Filed June 25, 2015, 10:29 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-310-18500B; and amending WAC 220-310-185.

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

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

Reasons for this Finding: The Washington department of fish and wildlife commission adopted this rule proposal during the recent 2015-2016 permanent rule process. It was modified from the original proposal that used the mouth of the river as the lower boundary. The modified boundary was inadvertently left out of the permanent WAC. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 25, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-18500B Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-310-185, effective July 1 through July 31, 2015, in the waters of the Cowlitz River from the mouth upstream to the Lexington Drive Bridge (Sparks Road Bridge) barbless hooks are required while angling for hatchery salmon and hatchery trout.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2015:

WAC 220-310-18500B Freshwater exceptions to statewide rules—Southwest.

WSR 15-14-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-190—Filed June 25, 2015, 10:54 a.m., effective July 5, 2015]

Effective Date of Rule: July 5, 2015.

Purpose: Amend commercial fishing rules.

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

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

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

Reasons for this Finding: The weekly landing limit and period is necessary to mitigate handling mortality from sorting soft shelled crab and provide for an orderly fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 25, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-52-04000E Coastal crab fishery—Weekly trip limits Notwithstanding the provisions of WAC 220-52-040:

(1) Effective immediately until further notice, it is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 2,500 pounds taken during each of the following coastal crab accounting periods:

July 5 - July 11, 2015

July 12 - July 18, 2015

July 19 - July 25, 2015
 July 26 - August 1, 2015
 August 2 - August 8, 2015
 August 9 - August 15, 2015
 August 16 - August 22, 2015
 August 23 - August 29, 2015
 August 30 - September 5, 2015
 September 6 - September 12, 2015
 September 13 - September 15, 2014

(2) Any crab taken prior to July 5, 2015, and not landed before 11:59 p.m. July 4, 2015, become part of the July 5 through July 11, 2015 accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

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

WSR 15-14-055
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 25, 2015, 2:31 p.m., effective June 25, 2015, 2:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amended rule assigns to the office of administrative hearings (OAH) the authority to hear appeals of enforcement actions withholding or recovering federal funds.

Continuation of CR-103E filed on February 27, 2015 (WSR 15-06-042). Public hearing is July 7, 2015 (see WSR 15-12-118).

Citation of Existing Rules Affected by this Order: Amending WAC 392-101-010.

Statutory Authority for Adoption: RCW 34.05.220.

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

Reasons for this Finding: A federal regulation, 34 C.F.R. § 80.43(b), requires state education agencies that award federal funds to subgrantees to provide subgrantees an opportunity for a hearing, appeal, or other administrative proceeding to which the subgrantee is entitled under the law. This proposed change to WAC 392-101-010 will assign to OAH the authority to hear cases and issue final decisions on behalf of the office of superintendent of public instruction (OSPI) related to the withholding or recovering of federal funds as a result of school consolidated program reviews of school district programs conducted in accordance with 34 C.F.R. § 80.40. Assigning these appeals to OAH will protect school districts' right to challenge OSPI's determinations, and will

help ensure school district and OSPI compliance with federal law.

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

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

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

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

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

Date Adopted: June 25, 2015.

Randy Dorn
 State Superintendent
 of Public Instruction

AMENDATORY SECTION (Amending WSR 13-18-077, filed 9/3/13, effective 10/4/13)

WAC 392-101-010 Conduct of administrative hearings. The superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to render the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals pursuant to WAC 392-137-055(2).

(2) Special education hearings pursuant to chapter 392-172A WAC or as amended.

(3) Equal educational opportunity complaints pursuant to WAC 392-190-075.

(4) Professional certification appeals pursuant to WAC 181-86-150.

(5) National school lunch program, special milk program for children, school breakfast program, summer food service program, and child and adult care food program appeals pursuant to 7 C.F.R. Parts 210, 215, 220, 225 and 226.

(6) Traffic safety education appeals pursuant to WAC 392-153-001 through 392-153-070.

(7) Bus driver authorization appeals pursuant to chapter 392-144 WAC.

(8) Audit resolution appeals of agency management decisions regarding resolution of state and federal audit findings pursuant to chapter 392-115 WAC.

(9) Appeals of enforcement actions withholding or recovering funds, in whole or in part, taken as a result of consolidated program reviews of federal programs conducted in accordance with 34 C.F.R. Sections 80.40 and 80.43.

WSR 15-14-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-192—Filed June 25, 2015, 3:24 p.m., effective June 26, 2015, 12:01 a.m.]

Effective Date of Rule: June 26, 2015, 12:01 a.m.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-24-04000V and 220-24-04000W; and amending WAC 220-24-040.

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

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

Reasons for this Finding: A small amount of the quota for Area 4 remains available for the fishery. Catch estimates for Areas 1 and 2 show that the overall quota may have been taken. These rules are adopted at the recommendation of the Pacific Fisheries Management Council and the National Marine Fisheries Service, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 25, 2015.

Joe Stohr
 for J. W. Unsworth
 Director

NEW SECTION

WAC 220-24-04000W All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective 12:01 a.m. June 26, 2015, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) That portion of Salmon Management and Catch Reporting Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

June 26 - 27, 2015.

(2) All fish from Area 1 must be landed by 11:59 p.m. June 26, 2015. All fish from Area 1 must be landed before crossing into the area north of Leadbetter point. All fish from Area 1 must be landed before fishing any other Area. No fish from other Areas may be in possession with fish from Area 1. Landing and possession limit of 80 Chinook in Area 1 per vessel per entire open period.

(3) All fishers intending to fish Area 4 must declare that intention before fishing by notifying WDFW at 360-902-2739 with boat name and approximate time they intend to fish in Area 4 and destination at the end of the trip. All fish from Area 4 must be landed before fishing any other Area. No fish from other Areas may be in possession with fish from Area 4. Landing and possession limit of 12 Chinook in Area 4 per vessel per entire open period.

(4) Cape Flattery and Columbia River Control Zones are closed.

(5) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(6) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(7) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of fish from Area 2 must stay in the closed areas to transit through Areas 3 and 4 to land in La Push or Neah Bay. All fish must be landed in Areas 1, 2, 3 or 4. Vessels in possession of salmon north or south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination.

Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(8) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(9) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2 or 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 26, 2015:

WAC 220-24-04000V All-citizen commercial salmon troll.
(15-183)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 29, 2015:

WAC 220-24-04000W All-citizen commercial salmon troll.

WSR 15-14-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-128—Filed June 25, 2015, 3:40 p.m., effective June 25, 2015,
3:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-310-195.

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

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

Reasons for this Finding: This emergency rule is needed to make technical changes to clarify, correct and update Washington Administrative Code language for the eastside region. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 25, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500V Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Lost River (Okanogan County): The catch and release restriction is rescinded.

(2) Rufus Woods Lake (Douglas/Okanogan counties): It is permissible to fish from Grand Coulee Dam downstream to State Road 155 Bridge.

(3) White River (Chelan County): Closed from the mouth to White River Falls.

(4) Long Lake (Ferry County): Landlocked salmon rules apply.

WSR 15-14-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-191—Filed June 25, 2015, 4:04 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-20000P and 220-310-19500W; and amending WAC 220-310-200 and 220-310-195.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: June 25, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000P Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective July 1 through July 13, 2015, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) In those waters from Priest Rapids Dam to Rock Island Dam it is permissible to retain six sockeye in the daily limit when open for salmon fishing.

(2) Closed waters: Rock Island Dam, between the upstream line of Rock Island Dam to boundary markers 400 feet downstream of the fish ladders.

NEW SECTION

WAC 220-310-19500W Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Chelan River (Chelan County): From the railroad bridge to the Chelan P.U.D. safety barrier below the power house:

(a) Salmon: Open July 1, 2015, until further notice.

(b) Limit 8; no more than 2 adult hatchery Chinook and no more than 6 sockeye may be retained.

(c) Release coho and wild adult Chinook.

(d) Anti-snagging rule and night closure in effect.

(e) Barbless hooks are required for salmon and steelhead.

(2) Okanogan River (Okanogan County):

(a) In waters of the Okanogan River open for salmon fishing it is permissible to retain 6 sockeye salmon in the daily limit.

(3) Similkameen River (Okanogan County):

(a) In waters of the Similkameen River open for salmon fishing it is permissible to retain 6 sockeye salmon in the daily limit.

(b) Closed waters: From Enloe Dam downstream 400 feet.

REPEALER

The following sections of the Washington Administrative Code are repealed effective July 14, 2014:

WAC 220-310-20000P Freshwater exceptions to statewide rules—Columbia River.

WAC 220-310-19500W Freshwater exceptions to statewide rules—Eastside.

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

WSR 15-14-064

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed June 26, 2015, 8:36 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: This rule is established to provide regulatory guidance to marijuana processing or extraction facilities. This new industry in Washington state produces marijuana for sale in specially licensed retail stores throughout the state. At this time there are no specific regulations in place to ensure safety in the processing plants or extraction facilities. This rule will establish specific requirements for handling hazardous materials, establish inspection standards, and provide construction and permit requirements to ensure the life/safety of occupants, first responders, and the general public.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54A-0105; and new section WAC 51-54A-3800.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

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

Reasons for this Finding: These emergency rules provide operational and construction permit requirements for marijuana extraction. Marijuana extraction can involve explosive materials and dangerous process that pose serious risks to public health, safety and welfare, as illustrated by the 2013 explosion, fire and fatality in Bellevue. These rules provide administrative direction, establish definitions, create requirements for engineering reports and inspections, identify con-

struction requirements and electrical systems, and direct other administrative oversight to protect public safety. The state liquor and cannabis board's WAC 314-55-104 looks to state fire safety and building codes implemented by local fire officials to provide these protections. Given the serious risks posed by activities regulated by this rule, observing permanent rule timing requirements would be contrary to the public interest.

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

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

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

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

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

Date Adopted: June 12, 2015.

David F. Kokot
Chair

NEW SECTION

WAC 51-54A-3800 Marijuana processing or extraction facilities.

SECTION 3801—ADMINISTRATION

3801.1 Scope. Marijuana processing or extraction facilities shall comply with this chapter and the International Building Code. The extraction process includes the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter, other applicable provisions of this code and the International Building Code.

3801.2 Application. The requirements set forth in this chapter are requirements specific only to marijuana processing and extraction facilities and shall be applied as exceptions or additions to applicable requirements set forth elsewhere in this code.

3801.3 Multiple hazards. Where a material, its use or the process it is associated with poses multiple hazards, all hazards shall be addressed in accordance with Section 5001.1 and other material specific chapters.

3801.4 Existing building or facilities. Existing buildings or facilities used for the processing of marijuana shall comply with this chapter. Existing buildings or facilities used for marijuana extraction shall comply with the requirements of this chapter by July 1, 2016.

3801.5 Permits. Permits shall be required as set forth in Section 105.6 and 105.7.

SECTION 3802—DEFINITIONS

Marijuana extraction facility (MEF): A building used for the solvent-based extraction process of marijuana.

Marijuana extraction equipment (MEE): Equipment or appliances used for the extraction of botanical material such as essential oils, from marijuana.

Marijuana extraction room (MER): The room or space in which the solvent-based extractions occur.

Finding: The results of an inspection, examination, analysis or review.

Observation: A practice or condition not technically non-compliant with other regulations or requirements, but could lead to noncompliance if left unaddressed.

Desolventizing: The act of removing a solvent from a material.

Miscella: A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

Transfilling: The process of taking a gas source, either compressed or in liquid form (usually in bulk containers), and transferring it into a different container (usually a smaller compressed cylinder).

SECTION 3802—PROCESSING OR EXTRACTION OF MARIJUANA

3802.1 Location. Marijuana processing shall be located in a building complying with the International Building Code and this code. The marijuana extraction process shall be located in a room dedicated to the extraction process. The extraction room shall not be used for any other purpose including storage.

3802.2 Staffing. The extraction process shall be continuously staffed by personnel trained in the extraction process, the transfer of LP-gas where applicable, and all emergency procedures. All staff training records shall be maintained on-site by the owner and made available upon request from the fire code official.

3802.3 Systems, equipment and processes. Systems, equipment, and processes shall be in accordance with Sections 3802.3.1 through 3802.3.3.7.

3802.3.1 Application. Systems, equipment and processes shall include, but are not limited to, vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps.

3802.3.2 General requirements. In addition to the requirements in Section 3802, systems, equipment and processes shall also comply with Section 5003.2, other applicable provisions of this code, the International Building Code, and the International Mechanical Code.

3802.3.3 Additional requirements for marijuana extraction. In addition to the requirements of Section 3802.3,

marijuana extraction systems, equipment and process shall comply with this section.

3802.3.3.1 General requirements. The requirements set forth in Section 5003.2 shall apply to vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps used in the extraction process. The use of ovens in post-process purification or winterization shall comply with Section 3802.3.3.7.

3802.3.3.2 Systems and equipment. Systems or equipment used for the extraction of marijuana/cannabis oils from plant material shall be listed for the specific use. If the system used for extraction of marijuana/cannabis oils and products from plant material is not listed, then the system shall have a designer of record. If the designer of record is not a licensed Washington professional engineer, then the system shall be peer reviewed by a licensed Washington professional engineer. In reviewing the system, the licensed professional engineer shall review and consider any information provided by the system's designer or manufacturer. For systems and equipment not listed for the specific use, a technical report documenting the design or peer review as outlined in Section 3802.3.3.4.2 shall be prepared and submitted to the fire code official for review and approval for systems and equipment used for the extraction of marijuana/cannabis oils and products from plant material. The firm or individual performing the engineering analysis for the technical report shall be approved by the fire code official prior to performing the analysis.

3802.3.3.3 Change of extraction medium. Where the medium of extraction or solvent is changed from the material indicated in the technical report or as required by the manufacturer, the technical report shall be revised at the cost of the facility owner, submitted for review and approval by the fire code official prior to the use of the equipment with the new medium or solvent. If the original engineer of record is not available, then new engineer of record shall comply with Section 3802.3.3.4.1.

3802.3.3.4 Required technical report. The technical report documenting the design or peer review shall be submitted for review and approval by the fire code official prior to the equipment being located or installed at the facility.

3802.3.3.4.1 Approval of the engineer of record. Where a technical report is required to be submitted for review and approval by the fire code official to meet the requirements of 3802.3.3.2, the following actions shall occur:

1. Prior to submittal of the technical report, the engineer shall submit educational background and professional experience specific to the review and approval of system, equipment and processes with like hazards of those associated with the marijuana extraction system to the fire code official.

2. Once the proof of qualifications are found acceptable by the fire code official, the engineer of record shall produce the technical report and the report shall be signed and sealed in accordance with Washington state requirements.

The proof of qualifications shall include documentation indicating the person is a professional engineer licensed in Washington state.

3802.3.3.4.2 Content of technical report and engineering analysis. All, but not limited to, the items listed below shall be included in the technical report.

1. Manufacturer information.
2. Engineer of record information.
3. Date of review and report revision history.
4. Signature page shall include:
 - a. Author of the report;
 - b. Date of report;
 - c. Seal, date and signature of engineer of record performing the design or peer review; and
 - d. Date, signature, and stamp of the professional engineer performing the engineering document review of the report. The engineering document review cannot be performed by the authoring engineer.

5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at time of site inspection.

6. Methodology of the design or peer review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate the reason as to why specific code or standards are applicable or not.

7. Equipment description. A list of every component and subassembly (clamp, fittings, hose, quick disconnects, gauges, site glass, gaskets, valves, pumps, vessels, containers, switches, etc.) of the system or equipment, indicating the manufacturer, model number, material, and solvent compatibility. Vendor cut sheets shall be provided.

8. A general flow schematic or general process flow diagram (PFD) of the process. Post-processing or winterization may be included in this diagram. All primary components of the process equipment shall be identified and match the aforementioned list. Operating temperatures, pressures, and solvent state of matter shall be identified in each primary step or component. A piping and instrumentation diagram (PID or PI&D) may be provided but is not required.

9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.

10. Structural analysis for the frame system supporting the equipment.

11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.

12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. This portion of the review should include review of emergency procedure information provided by the manufacturer of the equipment or process and not that of the facility, building or room.

13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.

14. Report shall include findings and observations of the analysis.

15. List of references used in the analysis.

3802.3.3.5 Building analysis. If the technical report, or manufacturers literature indicate specific requirements for the location, room, space or building, where the extraction process is to occur, the engineer of record, as approved in

3802.3.3.4.1 shall review the construction documents of such location, room, space or building and provide a report of their findings and observations to the fire code official.

Analysis shall include:

1. Process safety analysis of the entire process from raw material to finished product.

2. Comprehensive process hazard analysis considering failure modes and points throughout the process. Should include review of emergency procedures as related to the equipment or process, and the facility.

3802.3.3.6 Site inspection. Prior to operation of the extraction equipment, if required by the fire code official, the engineer of record, as approved in 3802.3.3.4.1 shall inspect the site of the extraction process once equipment has been installed for compliance with the technical report and the building analysis. The engineer of record shall provide a report of findings and observations of the site inspection to the fire code official prior to the approval of the extraction process. The field inspection report authored by engineer of record shall include the serial number of the equipment used in the process and shall confirm the equipment installed is the same model and type of equipment identified in the technical report.

3802.3.3.7 Post-process purification and winterization. Post-processing and winterization involving the heating or pressurizing of the miscella to other than normal pressure or temperature shall be approved and performed in an appliance listed for such use. Domestic or commercial cooking appliances shall not be used. The use of industrial ovens shall comply with Chapter 30.

EXCEPTION: An automatic fire extinguishing system shall not be required for batch-type Class A ovens having less than 3.0 cubic feet of work space.

3802.4 Construction requirements.

3802.4.1 Location. Marijuana extraction shall not be located in any building containing a Group A, E, I or R occupancy.

3802.4.1.1 Extraction room. The extraction equipment and extraction process shall be located in a room dedicated to extraction.

3802.4.2 Egress. Each marijuana extraction room shall be provided with at least one exit, swinging in the direction of travel provided with an automatic closer and panic hardware.

3802.4.2.1 Facility egress. The marijuana extraction room shall not enter directly into an exit, exit passageway, horizontal exit or along the sole egress path from another portion of the building.

3802.4.3 Ventilation. Each marijuana extraction room shall be provided with a dedicated hazardous exhaust system complying with Section 5004.3 for all solvents other than water. The operation of the hazardous exhaust system shall be continuous.

3802.4.4 Control area. Each marijuana extraction room shall be considered a single control area and comply with Section 5003.8.3.

3802.4.5 Ignition source control. Extraction equipment and extraction processes using a hydrocarbon-based liquid or gas solvent shall be provided with ventilation rates for the room to maintain the concentration of flammable constituents in air below 25% of the lower flammability limit of the respective solvent. If not provided with the required ventilation rate, then Class I Division II electrical requirements shall apply to the entire room.

3802.4.6 Interlocks. All electrical components within the extraction room shall be interlocked with the hazardous exhaust system and when provided, the gas detection system. When the hazardous exhaust system is not operational, then light switches and electrical outlets shall be disabled. Activation of the gas detection system shall disable all light switches and electrical outlets.

3802.4.7 Emergency power.

3802.4.7.1 Emergency power for extraction process. Where power is required for the operation of the extraction process, an automatic emergency power source shall be provided. The emergency power source shall have sufficient capacity to allow safe shutdown of the extraction process plus an additional 2 hours of capacity beyond the shutdown process.

3802.4.7.2 Emergency power for other than extraction process. An automatic emergency power system shall be provided for the following items when installed.

3802.4.7.2.1 Required electrical systems.

1. Extraction room lighting;
2. Extraction room ventilation system;
3. Solvent gas detection system;
4. Emergency alarm systems;
5. Automatic fire extinguishing systems.

3802.4.8 Continuous gas detection system. For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall be no greater than 25% of the LEL/LFL limit of the materials.

3802.4.9 Liquefied-petroleum gases shall not be released to the atmosphere.

3802.5 Carbon dioxide enrichment or extraction. Extraction processes using carbon dioxide shall comply with the section.

3802.5.1 Scope. Carbon dioxide systems with more than 100 pounds of carbon dioxide shall comply with Sections 3802.5 through 3802.5.8. This section is applicable to carbon dioxide systems utilizing compressed gas systems, liquefied-gas system, dry ice, or on-site carbon dioxide generation.

3802.5.2 Permits. Permits shall be required as set forth in Section 105.6 and 105.7.

3802.5.3 Equipment. The storage, use, and handling of liquid carbon dioxide shall be in accordance with Chapter 54 and the applicable requirements of NFPA 55, Chapter 13. Insulated liquid carbon dioxide system shall have pressure relief devices in accordance with NFPA 55.

3802.5.5 Protection from damage. Carbon dioxide systems shall be installed so the storage tanks, cylinders, piping and fittings are protected from damage by occupants or equipment during normal facility operations.

3802.5.7 Signage. At the entrance to each area using or storing carbon dioxide, signage shall be posted indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the "skull and crossbones" emblem with the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE." NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored.

3802.5.8 Ventilation. Mechanical ventilation shall be in accordance with the International Mechanical Code and shall comply with all of the following:

1. Mechanical ventilation in the room or area shall be at a rate of not less than 1 cubic foot per minute per square foot.
2. The exhaust system intake shall be taken from a point within 12 inches of the floor.
3. The ventilation system shall be designed to operate at a negative pressure in relation to the surrounding area.

3802.6 Flammable or combustible liquid. The use of a flammable or combustible liquid for the extraction of oils and fats from marijuana shall comply with this section.

3802.6.1 Scope. The use of flammable and combustible liquids for liquid extraction process where the liquid is boiled, distilled, or evaporated shall comply with this section and NFPA 30.

3802.6.2 Location. The process using a flammable or combustible liquid shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be rated for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited.

Exception: The use of a heating element not rated for flammable atmospheres may be approved where documentation from the manufacturer or an approved testing laboratory indicates it is rated for heating of flammable liquids.

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

WAC 51-54A-0105 Permits.

SECTION 105 SCOPE AND GENERAL REQUIREMENTS

105.1.1 Permits required. Any property owner or authorized agent who intends to conduct an operation or business, or install or modify systems and equipment, which is regulated by this code, or to cause any such work to be done shall first make application to the fire code official and obtain the required permit.

105.6.49 Marijuana extraction systems. An operational permit is required to use a marijuana/cannabis extraction system regulated under WAC 314-55-104.

105.7.19 Marijuana extraction systems. A construction permit is required to install a marijuana/cannabis extraction system regulated under WAC 314-55-104.

WSR 15-14-066

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed June 26, 2015, 10:14 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: Move recordkeeping requirements for interstate motor carriers set forth in chapter 46.87 RCW to chapter 308-91 WAC, Reciprocity and proration, with an effective date of July 1, 2015. Prevents a lapse in recordkeeping requirements due to passage of SB 5297 passed by legislature during 2015 session.

Statutory Authority for Adoption: RCW 46.87.010(2).

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

Reasons for this Finding: Existing statutory language related to interstate motor carrier recordkeeping was repealed by SB 5297. Emergency rules are necessary to ensure recordkeeping requirements are adopted in chapter 308-91 WAC on July 1, 2015.

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

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

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

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

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

Date Adopted: June 26, 2015.

Damon Monroe
Rules Coordinator

NEW SECTION

WAC 308-91-055 Application records—Preservation—Content. An owner must preserve the records on which the owner's application for apportioned registration is based for a period of three years following the close of the registration year. These records shall be complete and shall include, but not be limited to, the following: Copies of proportional registration applications and supplements for all jurisdictions in which the fleet is prorated; proof of propor-

tional or full registration with other jurisdictions; vehicle license or trip permits; temporary authorization permits; documents establishing the latest purchase year and cost of each fleet vehicle in ready-for-the-road condition; weight certificates indicating the unladen, ready-for-the-road, weight of each vehicle in the fleet; periodic summaries of mileage by fleet and by individual vehicles; individual trip reports, driver's daily logs, or other source documents maintained for each individual trip that provide trip dates, points of origin and destinations, total miles traveled, miles traveled in each jurisdiction, routes traveled, vehicle equipment number, driver's full name, and all other information pertinent to each trip.

WSR 15-14-076**EMERGENCY RULES****OFFICE OF****INSURANCE COMMISSIONER**

[Filed June 29, 2015, 10:13 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: This emergency rule repeals some sections of the WAC that were to become effective on July 1, 2015, but will potentially be in conflict with recently enacted legislation.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-17-800, 284-17-820, and 284-17-830.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.005.

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

Reasons for this Finding: In August 2014 the commissioner adopted rules providing guidance to licensed insurance producers as to what may or may not constitute sharing commissions with nonlicensed persons. These rules are to become effective on July 1, 2015. However, during the 2015 legislative session, legislation was enacted that amended some of the statutes regarding what constitutes rebates and inducements, which in turn impacts these rules. Therefore, the commissioner is repealing some of these rules that potentially will be in conflict with this new legislation.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 3.

Date Adopted: June 29, 2015.

Mike Kreidler
Insurance Commissioner

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-17-800 Charitable contributions.

WAC 284-17-820 Referrals.

WAC 284-17-830 Promotional games of chance.

WSR 15-14-082**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed June 29, 2015, 1:55 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The change to requiring lockable doors needs to go into effect July 1, 2015, when WAC 388-110-222 and 388-110-242 go into effect. This is the only way that Medicaid clients can stay in these facilities and receive payment through community first choice which the legislature directed the department to implement. It is necessary for the immediate, health, safety and welfare for those residents so that they can remain in the facility and not have to move.

Statutory Authority for Adoption: RCW 74.39A.010.

Other Authority: RCW 74.39A.010.

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

Reasons for this Finding: To comply with federal rules, these rules are necessary so that Medicaid clients can continue receiving Medicaid assistance to pay for their long-term care past July 1, 2015.

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

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

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

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

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

Date Adopted: June 25, 2015.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-110-222 Enhanced adult residential care physical requirements Effective July 1, 2015, the contractor must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

NEW SECTION

WAC 388-110-242 Adult residential care physical requirements Effective July 1, 2015, the contractor must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

**WSR 15-14-083
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 29, 2015, 2:03 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The addition of a definition for psychopharmacologic medications and the addition of a new section describing the use of psychopharmacologic medications, and the language clarifying the use of physical restraints needs to go into effect July 1, 2015. This is the only way that medicaid clients can stay in these facilities and receive payment through community first choice which the legislature directed the department to implement. It is necessary for the immediate health, safety and welfare for those residents so that they can remain in the facility and not have to move.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-11000, 388-76-11004, 388-76-11005, 388-76-11010, 388-76-11015, 388-76-11020, 388-76-11025, 388-76-11030, 388-76-11035 and 388-76-11040; and amending WAC 388-76-10000, 388-76-10655, 388-76-10660, and 388-76-10685.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Other Authority: Chapter 70.128 RCW.

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

manent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: To comply with federal rules, so medicaid recipients can continue receiving medicaid assistance to pay for their long-term care.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 4, Repealed 10.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 10.

Date Adopted: June 25, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse

includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condi-

tion, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable

rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Assisted living facilities), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order and/or 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 (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same prob-

lem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

- (1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;
- (2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and
- (3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

- (1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.
- (2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

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

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

- (1) Another employee or volunteer from the same business or organization; or
- (2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules; and
- (6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

NEW SECTION

WAC 388-76-10463 Medication—Psychopharmacologic For residents who are given psychopharmacologic medications, the adult family home must ensure:

- (1) The resident assessment indicates that a psychopharmacologic medication is necessary to treat the resident's medical symptoms;
- (2) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:
 - (a) Drug is prescribed by a physician or health care professional with prescriptive authority;
 - (b) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;
 - (c) Changes in medication only occur when the prescriber decides it is medically necessary; and
 - (d) Resident has given informed consent for its use.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10655 Physical restraints. The adult family home must ensure:

(1) Each resident's right to be free from physical restraints used for discipline or convenience;

(2) ~~((Less))~~ Prior to the use of a physical restraint, less restrictive alternatives have been tried and are documented in the resident's negotiated care plan; and

(3) That physical restraints used have been assessed as necessary to treat the resident's medical symptoms and addressed on the resident's negotiated care plan; and

(4) That if physical restraints are used to treat a resident's medical symptoms that the restraints are applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

(d) For the purposes of this subsection, immediate supervised means that the licensed person is in the home and quickly and easily available.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10660 Chemical restraints. (1) For the purposes of this section "chemical restraint" means a ~~((psycho-pharmacologic))~~ drug that is ~~((used))~~ given for discipline or convenience and not required to treat the resident's medical symptoms.

(2) The adult family home must ensure that each resident is free from chemical restraints~~((:~~

~~(a) Each resident is free from chemical restraints used for discipline or convenience;~~

~~(b) The resident assessment indicates that a chemical restraint is necessary to treat the resident's medical symptoms;~~

~~(c) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:~~

~~(i) Drug is prescribed by a physician or health care professional with prescriptive authority;~~

~~(ii) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;~~

~~(iii) Changes in medication only occur when the prescriber decides it is medically necessary; and~~

~~(iv) Resident has given informed consent for its use).~~

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10685 Bedrooms. The adult family home must:

(1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

(3) Ensure each resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted,

and free access from the bedroom through doors, hallways and corridors to common use areas and other rooms used for care and services including bathrooms;

(4) Make separate bedrooms available for each sex;

(5) Make reasonable efforts to accommodate residents wanting to share the room;

(6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

(7) Give each resident the opportunity to have a lock on their door if they chose to unless having a locked door would be unsafe for the resident and this is documented in the resident's negotiated careplan.

(8) Ensure each bedroom has a closet or a wardrobe, armoire or reasonable facsimile thereof. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.

~~((8))~~ (9) Ensure no more than two residents to a bedroom;

~~((9))~~ (10) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:

(a) A clean, comfortable mattress;

(b) A waterproof cover for use when needed or requested by the resident;

(c) Clean sheets and pillow cases;

(d) Adequate clean blankets to meet the needs of each resident; and

(e) Clean pillows.

~~((10))~~ (11) Not use the upper bunk of double-deck beds for a resident's bed;

~~((11))~~ (12) Provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom and the system is required by the department;

~~((12))~~ (13) Ensure that members of the household, other than residents, do not share bedrooms with residents; and

~~((13))~~ (14) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-11000 Resident protection program—Investigation of reports.

WAC 388-76-11004 Resident protection program—Individual defined.

WAC 388-76-11005 Resident protection program—Notice to individual of preliminary finding.

WAC 388-76-11010 Resident protection program—Notice to others of preliminary finding.

WAC 388-76-11015 Resident protection program—Disputing a preliminary finding.

- WAC 388-76-11020 Resident protection program—Hearing procedures to dispute preliminary finding.
- WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding.
- WAC 388-76-11030 Resident protection program—Appeal of the initial order or finding.
- WAC 388-76-11035 Resident protection program—Reporting final findings.
- WAC 388-76-11040 Resident protection program—Disclosure of investigative and finding information.

WSR 15-14-085**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed June 29, 2015, 2:10 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The department is amending and adding new sections to chapter 388-106 WAC to implement the new community first choice option (CFCO) program effective July 1, 2015. In accordance with ESHB 2746, which mandated the department to refinance medicaid personal care services under the community first choice option, the department is establishing and implementing a new 1915(k) state plan program. The purpose of this WAC is to define the scope and eligibility for the new 1915(k) services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0015, 388-106-0020, 388-106-0033, 388-106-0045, 388-106-0047, 388-106-0050, 388-106-0055, 388-106-0070, and 388-106-0120.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: ESHB 2746, SSB 6387.

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

Reasons for this Finding: The department is proceeding with the permanent rule process. The department filed a CR-101 as WSR 14-20-116 on October 1, 2014, and working on filing the CR-102.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 8, Amended 9, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 9, Repealed 0.

Date Adopted: June 25, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home, adult family home, or in ((#)) an adult residential facility, as defined in WAC 388-110-0020.

(2) **Community options program entry system (COPEs)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Community first choice (CFC) is a medicaid state plan program authorized under RCW 74.39A.400. Clients eligible for this program may receive services in their own home or in a residential setting, as defined in WAC 388-110-0020.**

(4) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

((4)) (5) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

((5)) (6) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

((6)) (7) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

((7)) (8) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

((8)) (9) **Medical care services** is a state-funded program authorized under RCW 74.09.035. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

~~((9))~~ (10) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

~~((10))~~ (11) **Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

~~((11))~~ (12) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

~~((12))~~ (13) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

~~((13))~~ (14) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-850 WAC.

~~((14))~~ (15) **Nursing facility.**

~~((15))~~ (16) **New Freedom consumer directed services (NFCDS)** is a medicaid waiver program authorized under RCW 74.39A.030.

~~((16))~~ (17) **Residential support** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in a licensed and contracted enhanced services facility or in a licensed adult family home with a contract to provide specialized behavior services.

AMENDATORY SECTION (Amending WSR 12-16-026, filed 7/25/12, effective 8/25/12)

WAC 388-106-0020 Under the MPC, CFC, COPES, and chore programs, what services are not covered? The following types of services are not covered under MPC, CFC, COPES, and chore:

- (1) Child care.
- (2) Individual providers must not provide:
 - (a) Sterile procedures unless the provider is a family member or the client self directs the procedure;
 - (b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.
- (3) Agency providers must not provide:
 - (a) Sterile procedures;
 - (b) Self-directed care;
 - (c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.
- (4) Services provided over the telephone.
- (5) Services to assist other household members not eligible for services.
- (6) Development of social, behavioral, recreational, communication, or other types of community living skills.
- (7) Nursing care.
- (8) Pet care.
- (9) Assistance with managing finances.
- (10) Respite.

- (11) Yard care.

AMENDATORY SECTION (Amending WSR 14-15-071, filed 7/15/14, effective 8/15/14)

WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services? (1) You may be eligible to receive services in a licensed assisted living facility that has a DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC")," which is defined in WAC 388-110-220. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in ~~((COPES))~~ CFC, as defined in WAC 388-106-0015;

(b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance score of 3 or above; and any one or more of the following:

- (i) An unmet need for assistance with supervision, limited, extensive or total dependence with eating/drinking;
- (ii) Inappropriate toileting/menses activities;
- (iii) Rummages/takes others belongings;
- (iv) Up at night when others are sleeping and requires intervention(s);
- (v) Wanders/exit seeking;
- (vi) Wanders/not exit seeking;
- (vii) Has left home and gotten lost;
- (viii) Spitting;
- (ix) Disrobes in public;
- (x) Eats non-edible substances;
- (xi) Sexual acting out;
- (xii) Delusions;
- (xiii) Hallucinations;
- (xiv) Assaultive;
- (xv) Breaks, throws items;
- (xvi) Combative during personal care;
- (xvii) Easily irritable/agitated;
- (xviii) Obsessive regarding health/body functions;
- (xix) Repetitive movement/pacing;
- (xx) Unrealistic fears or suspicions;
- (xxi) Repetitive complaints/questions;
- (xxii) Resistive to care;
- (xxiii) Verbally abusive;
- (xxiv) Yelling/screaming;
- (xxv) Inappropriate verbal noises; or
- (xxvi) Accuses others of stealing.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0045 When will the department authorize my long-term care services? The department will authorize long-term care services when you:

- (1) Are assessed using CARE;
- (2) Are found financially and functionally eligible for services including, if applicable, the determination of the amount of participation toward the cost of your care and/or the amount of room and board that you must pay;
- (3) Have given written consent for services and approved your plan of care; and
- (4) Have chosen a provider(s), qualified for payment.

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

WAC 388-106-0047 When can the department terminate or deny long-term care services to me? (1) The department will deny or terminate long-term care services if you are not eligible for long-term care services pursuant to WAC 388-106-0210, 388-106-0310, or 388-106-0610.

(2) The department may deny or terminate long-term care services to you if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, any of the following conditions exist:

(a) After a department representative reviews with you your rights and responsibilities as a client of the department, per WAC 388-106-1300 and 388-106-1303, you refuse to accept those long-term care services identified in your plan of care that are vital to your health, welfare or safety;

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider;

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

- (i) Threatening, uncontrolled animals (e.g., dogs);
- (ii) The manufacture, sale, or use of illegal drugs;
- (iii) The presence of hazardous materials (e.g., exposed sewage, evidence of a methamphetamine lab).

(d) You do not approve the plan of care by signing and returning your service summary document within sixty days of when your assessment is finalized.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, ~~((or your place of))~~ current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least ~~((annually))~~ every twelve months, or more often when there are significant changes ~~((to your abil-~~

~~ity to care for yourself))~~ necessitating revisions to your CARE plan, or at your request. If the assessment is not completed in the residence where your services will be provided, a visit to that residence will be made to evaluate your living situation and environment.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

- (a) Errors made by department staff in coding the information from your in-person interview;
- (b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);
- (c) Changes in the level of informal support available to you; or
- (d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, goals, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional and cognitive abilities;
- (5) Determine availability of informal supports, shared benefits, and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.

(11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0070 Will I be assessed in CARE? You will be assessed in CARE if you are applying for or receiving DDA services, CFC, COPEs, MPC, chore, respite, adult day health, medical care services, PACE, private duty nursing, residential support, and new freedom.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0120 What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility? The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility.

(1) For CFC, COPEs, MPC, medical care services, RCL, and new freedom programs, the department assigns payment rates to the CARE classification group. Under these programs, payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

(2) The enhanced services facility rate is determined by legislative action and appropriation.

(3) The rate for adult family homes with a specialized behavior support contract is based on the CARE classification group and an add-on amount, which is negotiated through the collective bargaining process.

Community First Choice

NEW SECTION

WAC 388-106-0270 What services are available under community first choice (CFC)? The services you may receive under the community first choice program include:

(1) Personal care services, as defined in WAC 388-106-0010, in your own home, in an adult family home (AFH), or in an assisted living facility (ALF), and, as applicable, while you are out of the home accessing the community or working.

(2) Relief care, which provides personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.

(3) Skills acquisition training which is defined as training that allows you to:

(a) Acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are defined as specific tasks related to the needs of an individual, which under state law licensed health professionals can delegate or assign to a qualified health care practitioner;

(b) Skills acquisition training does not replace any training or therapy otherwise provided under medicaid, medicare, or any private insurance; and

(c) Skills acquisition training for children must be related to the child's disability and will not be provided for tasks that are determined to be age appropriate as described in WAC 388-106-0130(7).

(4) Personal emergency response systems (PERS):

(a) A standard PERS, if the service is necessary and appropriate to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A fall detection system, if:

(i) You are eligible for a standard PERS unit; and

(ii) You have a recent documented history of falls.

(c) A global positioning system (GPS) tracking device with locator capabilities if:

(i) You have a recent documented history of short-term memory loss; and

(ii) A recent documented history of wandering with exit seeking behavior; or

(iii) A recent documented history of leaving your residence and getting lost.

(d) A medication reminder if:

(i) You are eligible for a standard PERS unit;

(ii) You do not have a caregiver available to provide the service; and

(iii) You are able to use the reminder to take your medications.

(5) Assistive technology:

(a) If the item increases your independence or substitutes for human assistance, including but not limited to:

(i) Additions to the standard PERS unit such as fall detection, GPS, or medication delivery and/or reminder systems. Any amount above the cost of the standard PERS unit will be considered assistive technology.

(ii) Devices that monitor or sense movement and react in a prescribed manner such as turning off an appliance or detecting an individual's specific location;

(iii) Computing devices that can, or have an application that can, increase independence or substitute for human assistance specifically with ADL, IADL, or health related tasks to the extent that the expenditure would otherwise be made for human assistance.

(b) Excludes:

(i) Any purchase that is solely for recreational purposes;

(ii) Applications for devices, subscriptions, and data plan charges, or items that require a monthly recurring fee;

(iii) Medical supplies and medical equipment;

(iv) Home modifications; and

(v) Any item that would otherwise be covered under any other payment source, including but not limited to, medicare, medicaid, and private insurance.

(6) Nurse delegation services, when:

(a) You are receiving personal care services from a certified home care aide or a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(7) Nursing services, when you are not already receiving this type of service from another source. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case man-

ager. A registered nurse may visit you and perform any of the following activities:

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

- (e) File review; and
- (f) Evaluation of health-related care needs affecting service plan and delivery.

(8) Community transition services, if you are being discharged from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, and if services are necessary for you to set up your own home. Services may include:

(a) Security deposits that are required to obtain a lease on an apartment or home, including first month's rent;

(b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and linen supplies;

(c) Set-up fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;

(d) Services necessary for the participant's health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Activities to assess need, arrange for, and procure needed resources.

Community transition services do not include recreational or diverting items, such as a television, cable or VCR and are limited to one per discharge and may not exceed eight hundred fifty dollars per occurrence;

(9) Caregiver management training on how to select, manage and dismiss personal care providers. Training is provided in written, DVD, and web-based formats.

NEW SECTION

WAC 388-106-0275 Where can I receive CFC services? You may receive CFC services;

- (1) In your own home; or
- (2) In a residential facility, which include licensed and contracted:

(a) Adult family homes, as defined in RCW 70.128.010; or

(b) Assisted living facilities as defined in RCW 18.20.020.

NEW SECTION

WAC 388-106-0277 Am I eligible for CFC services? You are eligible for CFC-funded services if you meet all of the following criteria:

(1) Your CARE assessment shows you need the level of care provided in a hospital, nursing facility, an intermediate care facility for the intellectually disabled (ICF/ID), an institution providing psychiatric services for individuals under age twenty-one, or an institution for mental diseases for individuals age sixty-five or over (or will likely need the level of care within thirty days unless CFC services are provided); and

(2) You are eligible for a categorically needy (CN) or the alternative benefit plan (ABP) Washington apple health program. Financial eligibility rules for CFC are described in WAC 182-513-1210 through WAC 182-513-1220.

(3) If you are not financially eligible for a non-institutional CN or ABP program, but are financially eligible for a home and community based waiver, you are eligible for CFC as long as you continue to receive at least one monthly waiver service.

NEW SECTION

WAC 388-106-0280 When do CFC services begin?

Your services begin on the date the department authorizes services.

NEW SECTION

WAC 388-106-0283 How do I remain eligible for CFC services?

(1) In order to remain eligible for CFC, you must remain financially eligible and be in need of services in accordance with WAC 388-106-0310 as determined through a CARE assessment. The assessment in CARE must be completed at least annually or more often when there are significant changes in your functional or financial circumstances; or

(2) If you receive services through DDA, you must remain financially eligible and eligible for ICF/MR or nursing facility level of care as described in WAC 388-828-4400, 388-828-3080 and 388-106-0355.

(3) When your eligibility is dependent on your eligibility for a home and community based waiver, you must receive at least one waiver service every month. If you do not receive a waiver service for more than thirty calendar days, you will no longer be eligible for CFC and the department will terminate your CFC services.

(4) If eligibility laws, regulations, or rules for CFC change, and if you do not meet the changed eligibility requirements, the department will terminate your CFC services, even if your functional or financial circumstances have not changed.

NEW SECTION

WAC 388-106-0285 What do I pay for if I receive CFC services?

(1) If you are receiving services through CFC only, you may be required to pay toward the cost of your care as outlined in WAC 182-513-1215. If you are receiving services in:

(a) Your own home, you will not have to pay toward the cost of your care.

(b) A residential facility, you must use your income to pay for your room and board. You are allowed to keep some of your income for personal needs allowance (PNA).

Depending on your financial eligibility group and income, you may also be responsible to pay an additional amount towards the cost of your care.

(2) If you are receiving services through CFC and a home and community based waiver, you may be required to pay toward the cost of your care as outlined in WAC 182-515-1509. If you are receiving services in:

(a) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(b) If you are living in a residential facility, you must use your income to pay for your room and board and may have to pay an additional amount towards the cost of services. You are allowed to keep some of your income for PNA.

NEW SECTION

WAC 388-106-0290 What does the department pay towards the cost of care when you are receiving CFC services and live in a residential facility? When you receive CFC services and live in a residential facility, the department pays the facility the difference between what you pay the facility and the department-set rate for the facility. The department pays the residential facility from the first day of service through the:

- (1) The day before your discharge date; or
- (2) The last day of service if you die while living at the facility.

NEW SECTION

WAC 388-106-0295 May I be employed and receive CFC services? You may be employed and continue to receive CFC services as long as you remain medicaid eligible under the categorically needy (CN) or alternative benefit plan (ABP) program.

**WSR 15-14-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-193—Filed June 29, 2015, 2:42 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-23500B; and amending WAC 220-56-235.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The fish and wildlife commission adopted this rule at the June 12-13, 2015, meeting to provide additional recreational angling opportunity while meet-

ing conservation objectives for those species. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 29, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-23500C Possession limits—Bottomfish. Notwithstanding the provisions of WAC 220-56-235, effective July 1, 2015, until further notice:

(1) It is permissible to fish for and possess flatfish (except halibut) in the waters of Marine Area 12 north of a true east line from the mouth of Turner Creek to the Toandos Peninsula in waters shallower than 120 feet. (20 fathoms).

(2) Daily limit of 15 flatfish.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-23500B Possession limits—Bottomfish.

**WSR 15-14-088
EMERGENCY RULES
DEPARTMENT OF HEALTH**

[Filed June 29, 2015, 3:48 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Rules must be effective by July 1, 2015, for Washington state to receive the enhanced medicaid match rate (federal funding).

Purpose: WAC 246-980-140 Home care aide (HCA), amending rules to add skills acquisition training to HCAs' scope of practice to align with the department of social and health services' (DSHS) rule that implements the Centers for Medicaid and Medicare Services' (CMS) community first choice option (CFCO) program. The CFCO program provides person-centered services at an enhanced medicaid match rate for participating states. Rules must be effective by

July 1, 2015, for Washington state to receive the enhanced medicaid match rate.

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-140.

Statutory Authority for Adoption: Chapter 18.88B RCW.

Other Authority: 42 C.F.R. 441.510, ESHB 2746 (2014), SSB 6387 (2014), DSHS state work plan.

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

Reasons for this Finding: Under RCW 34.05.350, an agency must find good cause for implementing an emergency rule or amendment. The statutory criteria this rule amendment meets is found under RCW 34.05.350 (1)(b) that states, "That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of rule." This emergency rule amendment meets the criteria per the following:

This emergency rule amendment is in response to a federal deadline for state receipt of federal funds from CMS for Washington state to receive an enhanced medicaid match rate of fifty-six percent beginning July 1, 2015, for state implementation of its CFCO program.

Federal deadline for state receipt of federal funds - the CFCO program is a medicaid Title XIX entitlement program that is a part of the Affordable Care Act. The federal program provides person-centered services within in-home and community-based settings. Services provided - including the skills acquisition services - must be provided in a manner that is prescribed by 42 C.F.R. 441.510 for states choosing to participate in this federal program. The CFCO program allows the state to receive a higher federal medicaid match rate of fifty-six percent versus fifty percent, and based on state legislation passed in 2014 requiring DSHS to participate in the CFCO program, DSHS submitted a formal state plan to CMS outlining all federal objectives that will be met starting July 1, 2015. DSHS' state plan under Title XIX of the Social Security Act for the CFCO services goes into effect July 1, 2015, at which time the medicaid match enhancement rate to Washington state begins.

The department of health (DOH) and DSHS jointly administer the home care aide program, also known as long-term care workers in both statute and rules, under chapters 18.88B and 74.39A RCW. DOH must amend WAC 246-980-140 to allow home care aides, also known as long-term care workers, to provide skills acquisition training to elderly and vulnerable clients to align with DSHS rule amendments to meet the federal objectives in Washington's formal state plan. Both DOH and DSHS must revise their home care aide rules by July 1, 2015, for Washington state to qualify for the enhanced federal match.

State laws for state receipt of federal funds requiring immediate adoption of rule - in addition, SSB 6387 (chapter 139, Laws of 2014) requires DSHS to increase the number of people served on the CFCO medicaid program by replacing the individual and family services program through an expansion of client caseload beginning June 30, 2015. To implement SSB 6387, DSHS must administer the federal CFCO

program, which expands HCAs' scope of practice to include skills acquisition training. Amending the DOH home care aide rules supports DSHS' efforts to implement SSB 6387 and the CFCO program.

In addition, ESHB 2746 (chapter 166, Laws of 2014) directed DSHS to refinance its medicaid personal care services for individuals with developmental disabilities and individuals with long-term care needs through the CFCO program by August 30, 2015. DSHS also cites this bill as authorizing their agency to implement the CFCO program, which is to begin by July 1, 2015.

Finally, in the 2015 legislative session and special sessions, the proposed senate and house budget bills include proposed earmarks for the anticipated savings to the state from the CFCO enhanced medicaid match rate to be used to fund other GF-S programs beginning July 1, 2015; however, the final budget bill has not yet passed.

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

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

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

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

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

Date Adopted: June 29, 2015.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

WAC 246-980-140 Scope of practice for long-term care workers. (1) A long-term care worker performs activities of daily living or activities of daily living and instrumental activities of daily living. A person performing only instrumental activities of daily living is not acting under the long-term care worker scope of practice.

(a) "Activities of daily living" means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. This may include fall prevention, skin and body care.

(b) "Instrumental activities of daily living" means activities in the home and community including cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) A long-term care worker documents observations and tasks completed, as well as communicates observations on the day they were performed to clients, family, supervisors, and, if appropriate, health care providers.

(3) A long-term care worker may perform medication assistance as described in chapter 246-888 WAC.

(4) A long-term care worker may perform nurse delegated tasks, to include medication administration, if he or she meets and follows the requirements in WAC 246-980-130.

(5) A long-term care worker may also provide skills acquisition training that allows individuals in their homes, or residential facilities that are licensed and contracted as an adult family home as defined in RCW 70.128.010, or an assisted living facility as defined in RCW 18.20.020, to acquire, maintain, and enhance skills necessary to accomplish ADLs and IADLs more independently.

WSR 15-14-095

EMERGENCY RULES

UNIVERSITY OF WASHINGTON

[Filed June 30, 2015, 8:12 a.m., effective June 30, 2015, 8:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Immediate adoption of the University of Washington's new section WAC 478-120-137 Supplementary provisions regarding sexual misconduct, is necessary to comply with the amendments to the student assistance general provisions regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement the changes made to the Clery Act by the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. L. 113-4). These provisions are also necessary to comply with the state legislature's recent adoption of statutes and amendments related to campus sexual violence, chapter 92, Laws of 2015.

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: UW *Board of Regents Governance*, Standing Orders, Chapter 8.

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

Reasons for this Finding: These amendments (34 C.F.R. Part 668.46) go into effect July 1, 2015, and apply to the University of Washington as a recipient of federal funds. The amendments to state law go into effect July 24, 2015. This new section to chapter 478-120 WAC, Student conduct code for the University of Washington, confirms that the University of Washington prohibits sexual misconduct (sexual assault, sexual harassment, sexual exploitation, stalking, relationship or dating violence, and domestic violence); clearly defines sexual misconduct and "consent"; clarifies the steps under the University of Washington's disciplinary process that apply in cases involving an allegation of sexual misconduct; and makes clear that protective interim measures can be implemented following an allegation of sexual misconduct.

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

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

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

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

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

Date Adopted: June 12, 2015.

Rebecca Goodwin Dearnorff
Director of Rules Coordination

NEW SECTION

WAC 478-120-137 Supplementary provisions regarding sexual misconduct.

(1) By way of clarification only, it is hereby affirmed that sexual assault, sexual harassment, indecent exposure, sexual exploitation, stalking, domestic violence, and relationship violence all as defined herein (collectively "sexual misconduct") are prohibited conduct and any student who has engaged in sexual misconduct may be subject to the imposition of disciplinary sanctions as described in WAC 478-120-040.

(2) Notwithstanding any other provision of this conduct code, a student may be subject to disciplinary proceedings in connection with any allegation of sexual misconduct that occurs off campus if the university reasonably determines that a significant university interest is affected.

(3) Notwithstanding any other provision of this conduct code, "exceptional circumstances" shall be deemed to exist in all cases involving an allegation of sexual misconduct, and such cases shall be subject to the following supplementary provisions:

(a) The initiating officer will concurrently serve both the accused student and any complainant(s) with a copy of the initiating officer's initial order. For the purposes of this section, "complainant" means a student or another member of the university community who believes that an act of sexual misconduct has been committed against him or her in violation of this conduct code.

(b) Either a complainant or the accused student may appeal such initial order in accordance with WAC 478-120-075, and both the accused student and any complainant shall receive notice of any appeal and notice of any hearing before the faculty appeal board.

(c) If a timely appeal of an initial order issued by the initiating officer is submitted and a request for a formal hearing is made, the faculty appeal board shall conduct a formal hearing in accordance with WAC 478-120-100 and 478-120-115 and the following supplementary provisions shall apply:

(i) Both the accused student and any complainant will have the right to participate as a party in the hearing, including to be represented by counsel and/or be accompanied by an advisor, to call witnesses, to cross-examine witnesses, and to submit documentary evidence. A complainant (with or without counsel and/or an advisor) may attend the formal hearing in its entirety, regardless of whether the complainant decides to participate as a party.

(ii) An accused student and the complainant may not ask questions of each other directly, but may submit written questions to the chair, who will ask any relevant and appropriate

questions submitted by these parties. The chair has discretion to accept, reject, or rephrase any question submitted by the accused student or a complainant.

(iii) At the discretion of the chair, and where the rights of the parties will not be prejudiced thereby, all or part of any formal hearing, including the testimony of witnesses, may be conducted by telephone, video, or other electronic means.

(iv) Both the accused student and any complainant shall be concurrently served with all orders issued by the faculty appeal board.

(d) In any matter involving an allegation of sexual misconduct, any complainant shall have the same rights as the accused student to participate as a party in any administrative review under WAC 478-120-105, to appeal a faculty appeal board's initial order to the president of the university under WAC 478-120-125, to participate as a party in any appeal to the president, and to seek reconsideration of a final order under WAC 478-120-135. In the event that a complainant appeals in a timely manner an initial order, such order shall not become final until that appeal is resolved. Any notices or orders issued by the president shall be concurrently served on the accused student and any complainant(s).

(e) Except as otherwise provided in this section, matters involving allegations of sexual misconduct will be subject to all the other applicable provisions of this conduct code.

(4) For the purposes of this section, "sexual misconduct" includes sexual assault, sexual harassment, indecent exposure, sexual exploitation, stalking, domestic violence, and relationship violence, all as defined in subsections (5) through (11) of this section.

(5) For the purposes of this student conduct code "sexual assault" means any sexual contact with another person without (or that exceeds) that person's consent.

(a) For the purposes of this definition, "sexual contact" includes:

(i) Any touching of another person for the purpose of sexual gratification; or

(ii) Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, of another person.

(b) For the purposes of this definition, "consent" means that at the time of and throughout the sexual contact, there are actual words or conduct indicating freely given agreement between the parties to engage in the sexual contact. A determination of whether consent had been given in connection with an incident of sexual contact shall take into account the following:

(i) Past consent does not imply future consent;

(ii) Consent given to one person does not imply consent given to another person;

(iii) Consent to one sexual act does not imply consent to other sexual acts;

(iv) Lack of resistance to sexual contact does not imply consent;

(v) Consent can be withdrawn at any time.

(c) Consent cannot be given by a person who, at the relevant time, cannot understand the facts, nature, extent, or implications of the sexual contact for any reason including, but not limited to, being asleep, unconscious, mentally or physically impaired due to an intellectual or other disability,

or mentally or physically incapacitated due to the effects of drugs or alcohol. Indications that a person may be incapacitated by alcohol or drugs and therefore cannot grant consent include, but are not limited to, stumbling, falling down, an inability to stand or walk on their own, slurred speech or incoherent communication, an inability to focus their eyes or confusion about what is happening around them, blacking out, or vomiting. A failure to exhibit any of these behaviors does not necessarily mean that a person is capable of giving consent or is not incapacitated.

(d) Sexual contact is not consensual when force or coercion is threatened or used to gain acquiescence. Force includes the use of physical violence, physical force, threats, or intimidation to overcome resistance or gain agreement to sexual contact. Coercion includes using pressure, deception, or manipulation to cause someone to agree to sexual contact against his or her will, without the use of physical force. Pressure can mean verbal or emotional pressure.

(e) Sexual assault also includes sexual contact with a person who is under the statutory age of consent in accordance with chapter 9A.44 RCW.

(f) Use of alcohol or other drugs is not a valid defense to an allegation of sexual assault.

(6) For the purposes of this conduct code, "sexual harassment" means unwelcome language or conduct of a sexual nature that is sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance or a person's ability to participate in or benefit from the university's programs, services, opportunities, or activities.

(7) For purposes of this conduct code, "indecent exposure" means the exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm, or is against generally accepted standards of decency. Breast feeding or expressing breast milk is not indecent exposure.

(8) For the purposes of this conduct code, "sexual exploitation" includes:

(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;

(b) Compelling another by threat or force to engage in sexual conduct or activity;

(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);

(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;

(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;

(f) Prostituting another person;

(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or

(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.

(9) For purposes of this conduct code, "stalking" means engaging in a course of conduct that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress. "Course of conduct" means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means (including electronic), follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

(10) For purposes of this conduct code, "domestic violence" means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member, including:

- (a) A current or former spouse or intimate partner;
- (b) A person with whom the person shares a child in common;
- (c) A person with whom one is cohabitating or has cohabitated; or
- (d) A person with whom one resides including a roommate, suitemate or housemate.

Domestic violence also includes sexual assault or stalking as defined herein of one family or household member by another family or household member.

(11) For the purposes of this conduct code, "relationship violence," also referred to as "dating violence," means violence, other than domestic violence as defined in subsection (10) of this section, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, relationship or dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(12) As in all proceedings under this conduct code, the applicable standard of proof in cases involving sexual misconduct shall be the "preponderance of evidence" standard. This means that, in order for a student to be held responsible for a violation, it must be shown, based on all of the evidence in the record, that it is more likely than not that the student engaged in an act or acts of misconduct. The burden of proof in any hearing rests with the party seeking to establish that the violation occurred.

(13) Following receipt of a report of alleged sexual misconduct, the university may implement interim protective measures including, but not limited to:

- (a) A "no-contact directive" prohibiting direct or indirect contact, by any means, with a complainant, an accused student, a reporting student, other specified persons, and/or a specific student organization;

(b) Reassignment of or removal from on-campus housing; or

(c) Changes to class schedules, assignments, or tests.

Interim protective measures will remain in place until an initial order becomes final or a final order is issued. Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for a violation under the student conduct code.

WSR 15-14-108
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-194—Filed June 30, 2015, 1:42 p.m., effective July 1, 2015, 12:01 a.m.]

Effective Date of Rule: July 1, 2015, 12:01 a.m.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-24-040.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 30, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-24-04000X All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to

fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

July 1 through July 7, 2015;
 July 10 through July 14, 2015;
 July 17 through July 21, 2015;
 July 24 through July 28, 2015;
 July 31 through August 4, 2015;
 August 7 through August 11, 2015;
 August 14 through August 18, 2015;
 August 21 through August 25, 2015;
 August 28 through September 1, 2015;
 September 4 through September 8, 2015;
 September 11 through September 15, 2015;
 September 18 through September 22, 2015.

(2) Landing and possession limit of 50 Chinook and 50 coho per boat per each entire open period for the entire Catch Areas 1, 2, 3 and 4. The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single-point, single-shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with area fished, total Chinook and halibut catch on board, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch on board, and destination. Any vessel with fish on board from either Area 3 or 4 may not possess more than 60 Chinook or 60 coho on board.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(7) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green

lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) Mandatory Yelloweye Rockfish Conservation Area - This is defined as the area in Salmon Management and Catch Reporting Area 3 from 48°00.00'N latitude; 125°14.00'W longitude to 48°02.00'N latitude; 125°14.00'W longitude to 48°02.00'N latitude; 125°16.50'W longitude to 48°00.00'N latitude; 125°16.50'W longitude and connecting back to 48°00.00'N latitude; 125°14.00'W longitude.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

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

WSR 15-14-111

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed June 30, 2015, 3:42 p.m., effective July 1, 2015]

Purpose: Clarifying that individual and family services (IFS), and community first choice (CFC) option are subject to estate recovery, and removing Washington medicaid integration partnership (WMIP) because it has been discontinued. The amendments to this rule reflect those changes and restructure the list of services subject to recovery.

Citation of Existing Rules Affected by this Order: Amending WAC 182-527-2742.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The department of social and health services (DSHS) implemented the IFS waiver in June of 2015 and the CFC option, effective July 1, 2015. The Washington state legislature directed DSHS to implement this program under SSB 6387 and ESHB 2746. IFS and CFC option are long-term care services funded in part by federal dollars and under federal law are subject to recovery. The health care authority (HCA) must implement emergency rules to comply with federal law and will amend WAC 182-527-2742 which controls DSHS's and HCA's ability to recoup for services subject to recovery.

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

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

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

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

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

Date Adopted: June 30, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-20-091, filed 9/29/14, effective 10/30/14)

WAC 182-527-2742 Services subject to recovery. ((The medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state-only funded long-term care services (LTC), and subsection (3) of this section covers liability for all other state-only funded services. An estate can be liable under any of these subsections:

(1) The client's estate is liable for:

(a) All medicaid services provided from July 26, 1987, through June 30, 1994;

(b) The following medicaid services provided after June 30, 1994, and before July 1, 1995:

(i) Nursing facility services;

(ii) Home and community-based services; and

(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services;

(c) The following medicaid services provided after June 30, 1995, and before June 1, 2004:

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and long-term support administration (AL TSA) of the department of social and health services (DSHS); and

(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection;

(d) The following services provided on and after June 1, 2004, through December 31, 2009:

(i) All medicaid services, including those services described in subsection (c) of this section;

(ii) Medicare savings programs services for individuals also receiving medicaid;

(iii) Medicare premiums only for individuals also receiving medicaid; and

(iv) Premium payments to managed care organizations;

(e) The following services provided on or after January 1, 2010, through December 31, 2013:

(i) All medicaid services except those described in (d)(ii) and (iii) of this subsection;

(ii) All institutional medicaid services described in (e) of this subsection;

(iii) Premium payments to managed care organizations; and

(iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid; and

(f) The following services provided after December 31, 2013:

(i) Nursing facility services, including those provided in a developmental disabilities administration (DDA) residential habilitation center (RHC);

(ii) Home and community-based services authorized by AL TSA or DDA, as follows:

(A) Community options program entry system (COPES);

(B) New Freedom consumer directed services (NFCDS);

(C) Basic Plus waiver;

(D) CORE waiver;

(E) Community protection waiver;

(F) Children's intensive in-home behavioral support (CHBS) waiver;

(G) Medicaid personal care;

(H) Residential support waiver;

(iii) The portion of the Washington apple health (WAH) managed care premium used to pay for LTC services under the program of all-inclusive care for the elderly (PACE) authorized by AL TSA;

(iv) The portion of the WAH managed care premium used to pay for LTC services under the Washington medicaid integration partnership (WMIP) authorized by AL TSA or DDA;

~~(v) Roads to community living (RCL) demonstration project;~~

~~(vi) Personal care services funded under Title XIX or XXI;~~

~~(vii) Private duty nursing administered by AL TSA or DDA;~~

~~(viii) Intermediate care facility for individuals with intellectual disabilities (ICF/ID) services provided in either a private community setting or in an RHC; and~~

~~(ix) Hospital and prescription drug services provided to a client while receiving services under subsection (1)(f)(i) through (viii) of this section.~~

~~(2) The client's estate is liable for all state-only funded LTC services (excluding the services listed in subsection (3)(a) through (d) of this section) and related hospital and prescription drug services provided to:~~

~~(a) Clients of the home and community services division of DSHS on and after July 1, 1995; and~~

~~(b) Clients of the DDA on and after June 1, 2004.~~

~~(3) The client's estate is liable for all state-only funded services provided regardless of the age of the client at the time the services were provided, with the following exceptions:~~

~~(a) State-only funded adult protective services (APS);~~

~~(b) Supplemental security payment (SSP) authorized by DDA;~~

~~(c) Offender reentry community safety program (ORCSP); and~~

~~(d) Volunteer chore services.) The agency's payment for the following services is subject to recovery:~~

~~(1) State-only funded services, except:~~

~~(a) Adult protective services;~~

~~(b) Offender reentry community safety program services;~~

~~(c) Supplemental security payments authorized by the developmental disabilities administration (DDA); and~~

~~(d) Volunteer chore services.~~

~~(2) For dates of service after December 31, 2013:~~

~~(a) Basic Plus waiver services;~~

~~(b) Community first choice services;~~

~~(c) Community option program entry system services;~~

~~(d) Community protection waiver services;~~

~~(e) CORE waiver services;~~

~~(f) Hospice services;~~

~~(g) Hospital and prescription drug services provided to a client while he or she receives services listed in this subsection;~~

~~(h) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in an RHC;~~

~~(i) Individual and family services;~~

~~(j) Medicaid personal care services;~~

~~(k) New Freedom consumer directed services;~~

~~(l) Nursing facility services;~~

~~(m) Personal care services funded under Title XIX or XXI;~~

~~(n) Private duty nursing administered by aging and long-term support administration (AL TSA) or DDA;~~

~~(o) Residential habilitation center services;~~

~~(p) Residential support waiver services;~~

(q) Roads to community living demonstration project services;

(r) The portion of the managed care premium used to pay for AL TSA-authorized LTC services under the program of all-inclusive care for the elderly.

(3) For dates of service beginning January 1, 2010, through December 31, 2013:

(a) Medicaid services;

(b) Premium payments to managed care organizations; and

(c) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid.

(4) For dates of service beginning June 1, 2004, through December 31, 2009:

(a) Medicaid services;

(b) Medicare premiums only for individuals also receiving medicaid;

(c) Medicare savings programs services for individuals also receiving medicaid; and

(d) Premium payments to managed care organizations.

(5) For dates of service beginning July 1, 1995, through May 31, 2004:

(a) Adult day health services;

(b) Home and community-based services;

(c) Hospital and prescription drug services provided to a client while receiving any of the services in this subsection;

(d) Medicaid personal care services;

(e) Nursing facility services; and

(f) Private duty nursing services.

(6) For dates of service beginning July 1, 1994, through June 30, 1995:

(a) Home and community-based services;

(b) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services; and

(c) Nursing facility services.

(7) For dates of service beginning July 26, 1987, through June 30, 1994: Medicaid services.

(8) For dates of service through December 31, 2009. If a client was eligible for the medicare savings program (MSP), but not otherwise medicaid eligible, his or her estate is liable only for any sum paid to cover medicare premiums and cost-sharing benefits.

(9) For dates of service on or after January 1, 2010. If a client was eligible for medicaid under chapter 182-517 WAC and the MSP, his or her estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.

WSR 15-14-115
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 30, 2015, 5:09 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The amendments under this filing incorporate the benefit level for the state-funded food assistance program (FAP) for legal immigrants under the approved 2015-2016 biennial operating budget. RCW 74.08A.120 provides that the legislature shall set the benefit level for FAP in the biennial operating budget.

Citation of Existing Rules Affected by this Order: Amending WAC 388-400-0050.

Statutory Authority for Adoption: RCW 74.08A.120.

Other Authority: State of Washington 2015-2017 biennial operating budget (ESSB 6052, Section 207), passed the legislature and increased the funding for FAP to one hundred percent of the federal food benefit level beginning July 1, 2015.

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

Reasons for this Finding: RCW 74.08A.120(3) states the legislature shall set the benefit level for the state FAP in the biennial operating budget. The 2015-2017 biennial budget (ESSB 6052) requires the department to provide state-funded FAP benefits at one hundred percent of the SNAP federal benefit level effective July 1. These benefits affect public health and safety.

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

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

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

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

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

Date Adopted: June 30, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-02-037, filed 12/23/13, effective 1/23/14)

WAC 388-400-0050 If I am not eligible for federal benefits through Washington Basic Food program because of my alien status, can I receive benefits through the state-funded food assistance program? (1) If you are not eligible for federally funded Basic Food benefits solely because you do not meet the alien status requirements under WAC 388-424-0020, you may be eligible for the state-funded food assistance program (FAP) if you meet both of the following requirements:

- (a) You are a Washington state resident; and
(b) You meet the alien status requirements under WAC 388-424-0030.

(2) FAP follows the same eligibility rules as federally funded Basic Food except for rules related to alien status. A summary of the rules for Basic Food is found in WAC 388-400-0040.

(3) Benefits for FAP are set by the biennial state operating budget as described in RCW 74.08A.120(3). These benefits are calculated as described in subsections (4) and (5) of this section.

(4) If your assistance unit (AU) includes both people who are eligible for federally funded Basic Food benefits and people who are eligible for state-funded FAP benefits, we determine the amount of your federal and state food benefits by applying the following process:

- (a) We calculate your AU's monthly benefits under WAC 388-450-0162 as if all the eligible persons in your AU could receive federally funded Basic Food benefits; and
(b) We then calculate your AU's monthly benefits under WAC 388-450-0162 for only the people in your AU who are eligible for federally funded benefits.

Table with 2 columns: 'If (a) is more than (b)' and 'If (b) is more than (a)'. It details the calculation process for FAP benefits based on whether (a) or (b) is higher.

(5) If your AU only includes persons eligible for FAP, we determine the amount of your state-funded FAP benefits by:

- (a) Applying the calculation for Basic Food under WAC 388-450-0162 as if all the persons in your AU were eligible to receive Basic Food; and
(b) Issuing FAP benefits to your AU equal to ((three fourths)) the amount calculated in subsection (5)(a), rounded down to the next whole dollar.