

**WSR 16-08-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Behavioral Health Administration)

[Filed March 24, 2016, 11:30 a.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: The department is adopting, amending, and repealing rules to comply with 2SSB 6312, chapter 225, Laws of 2014. 2SSB 6312 requires, in part, the regional support networks (RSN) to be renamed behavioral health organizations (BHO) effective April 1, 2016, and authorizes the department to establish regional service areas within the state with the intended effect of integrating substance use disorder treatment with mental health services. Changes include updating definitions, changing "chemical dependency" to "substance use disorder," clarifying processes, and making editing changes to provide clarification and consistency within the rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-865-0100, 388-865-0105, 388-865-0106, 388-865-0107, 388-865-0110, 388-865-0115, 388-865-0120, 388-865-0150, 388-865-0200, 388-865-0205, 388-865-0210, 388-865-0215, 388-865-0220, 388-865-0221, 388-865-0222, 388-865-0225, 388-865-0229, 388-865-0230, 388-865-0235, 388-865-0240, 388-865-0245, 388-865-0250, 388-865-0265, 388-865-0270, 388-865-0275, 388-865-0280, 388-865-0282, 388-865-0284, 388-865-0286, 388-865-0288, 388-865-0300, 388-865-0305, 388-865-0310, 388-865-0315, 388-865-0320, 388-865-0325, 388-865-0330, 388-865-0335, 388-865-0345, 388-865-0350, 388-865-0355, 388-865-0360, 388-865-0363, 388-865-0365, 388-877A-0400, 388-877A-0410, 388-877A-0420, 388-877A-0430, 388-877A-0440, 388-877A-0450 and 388-877A-0460; and amending WAC 388-875-0070, 388-877-0100, 388-877-0200, 388-877-0300, 388-877-0305, 388-877-0335, 388-877-0365, 388-877-0420, 388-877-0600, 388-877-0605, 388-877-0610, 388-877-0620, 388-877-0640, 388-877A-0200, 388-877A-0270, 388-877A-0340, 388-877B-0100, 388-877B-0110, 388-877B-0120, 388-877B-0130, 388-877B-0200, 388-877B-0210, 388-877B-0220, 388-877B-0230, 388-877B-0240, 388-877B-0250, 388-877B-0260, 388-877B-0270, 388-877B-0280, 388-877B-0300, 388-877B-0310, 388-877B-0320, 388-877B-0330, 388-877B-0340, 388-877B-0350, 388-877B-0360, 388-877B-0370, 388-877B-0400, 388-877B-0405, 388-877B-0410, 388-877B-0420, 388-877B-0430, 388-877B-0440, 388-877B-0450, 388-877B-0500, 388-877B-0510, 388-877B-0530, 388-877B-0540, 388-877B-0550, 388-877B-0600, 388-877B-0610, 388-877B-0630, 388-877B-0640, 388-877B-0650, 388-877B-0660, and 388-877C-0110.

Statutory Authority for Adoption: RCW 70.02.290, 70.96A.040(4), 71.05.560, 71.24.035 (5)(c), 71.34.380.

Other Authority: 2SSB 6312 (chapter 225, Laws of 2014).

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 rule supports the requirements in 2SSB 6312, chapter 225, Laws of 2014, which requires the renaming of RSN to BHO effective April 1, 2016. The intent of the rule is to ensure BHOs provide or contract with behavioral health agencies to provide both substance use disorder treatment services and mental health services to individuals who need these services. An RSN currently provides only mental health services. The immediate adoption of this rule assures the preservation of the public health, safety, and welfare for those individuals needing both substance use disorder treatment services and mental health services from a BHO on April 1, 2016, and after. The department anticipates a May 24, 2016, public hearing date for the proposed permanent rule.

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 27, Amended 56, Repealed 51.

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 27, Amended 56, Repealed 51.

Date Adopted: March 21, 2016.

Katherine I. Vasquez  
Rules Coordinator

~~**((SECTION ONE — COMMUNITY MENTAL HEALTH  
AND INVOLUNTARY TREATMENT PROGRAMS))  
BEHAVIORAL HEALTH ORGANIZATIONS**~~

~~**((SECTION TWO — REGIONAL SUPPORT NET-  
WORKS))**~~

NEW SECTION

**WAC 388-865-0232 Behavioral health organizations—General.** (1) Effective April 1, 2016, regional support networks (RSN) become behavioral health organizations (BHO). A BHO contracts with the department's division of behavioral health and recovery (DBHR) to administer behavioral health services within its service area.

(2) A BHO operates only in areas of the state that have not implemented the Washington apple health fully integrated managed care (FIMC) program. See chapter 182-538A WAC for rules that govern the FIMC program operated by the health care authority (HCA).

(3) BHOs, behavioral health agencies, and the BHO managed care plan must:

(a) Comply with chapters 70.96A, 71.05, 71.24, 71.34, and 71.36 RCW, which contain laws regarding substance use

disorders, mental illness, and community mental health services.

(b) Meet the requirements in chapters 388-877, 877A, and 877B WAC regarding the licensure of behavioral health agencies and the certification of behavioral health services. An exemption of any section or subsection may be requested, subject to the criteria in WAC 388-865-0236. DBHR does not exempt any requirement that is part of statute.

(4) A BHO is responsible to ensure behavioral health services are responsive in an age and culturally competent manner to the substance use disorder treatment and mental health needs of its community.

(5) DBHR administers behavioral health services regionally if the criteria in WAC 388-865-0234 apply.

(6) The BHO managed care plan is the entity that operates the prepaid inpatient health plan (PIHP) medicaid behavioral health services.

(7) WAC 388-865-0238 and 388-877-0200 contain definitions for terms and phrases used in the BHO and the BHO managed care plan rules.

(8) Contact information can be found on the DBHR website at [www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery](http://www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery).

#### NEW SECTION

**WAC 388-865-0234 Behavioral health organizations—When the division of behavioral health and recovery administers regional behavioral health services.** (1) If a currently operating behavioral health organization (BHO) chooses to stop functioning as a BHO, fails to meet state minimum standards specified in rule, or does not meet the requirements under RCW 71.24.045, the following is implemented:

(a) Under RCW 71.24.035(16), the secretary:

(i) Is designated as the BHO until a new BHO is designated; and

(ii) Assumes the duties assigned to the region without a participating BHO.

(b) The division of behavioral health and recovery (DBHR):

(i) Administers behavioral health services within the region without a participating BHO; and

(ii) Continues to apply the BHO requirements in WAC 388-865-0232 through 388-865-0272 and the BHO managed care plan requirements in WAC 388-865-0370 through 388-865-0385.

(2) An individual who resides within the service area of a region without a participating BHO:

(a) May receive services, within available resources as defined in RCW 71.24.025(2), from any provider of behavioral health services that is contracted with and licensed by DBHR; and

(b) Who is a Title XIX medicaid recipient is entitled to receive medically necessary behavioral health services without charge to the individual.

(3) This section does not apply to a region in which the health care authority (HCA) operates the Washington apple health fully integrated managed care (FIMC) program which provides fully-integrated physical and behavioral health ser-

vices to medicaid beneficiaries through managed care. See chapter 182-538A WAC for information on Washington apple health FIMC.

#### NEW SECTION

**WAC 388-865-0236 Behavioral health organizations—How to request an exemption of a minimum standard.** (1) A behavioral health organization (BHO), a licensed behavioral health agency, and the behavioral health organization (BHO) managed care plan subject to the BHO and BHO managed care plan rules may request an exemption of a minimum standard in WAC 388-865-0232 through 388-865-0272 and WAC 388-865-0370 through 388-865-0385 by submitting a request in writing to the director of the division of behavioral health and recovery (DBHR).

(2) The exemption request must include:

(a) The name and address of the entity that is making the request;

(b) The specific section or subsection of the rule for which an exemption is being requested;

(c) The reason why the exemption is necessary, or the method the entity will use to meet the desired outcome of the section or subsection in a more effective and efficient manner;

(d) A description of the plan and timetable to achieve compliance with the minimum standard or to implement, test, and report results of an improved way to meet the intent of the section or subsection;

(e) Documentation that the quality review team or behavioral health ombuds office was consulted and any resulting recommendations are included in the request; and

(f) A description of how an individual(s) affected by the exemption will be notified.

(3) DBHR's review of the request considers whether approving the exemption will impact accountability, accessibility, efficiency, individual satisfaction, and quality of care, or will violate state or federal law. The requester receives a determination notice from DBHR within thirty days from the date the exemption request was received.

(a) If DBHR grants the exemption request, the notice includes:

(i) The section or subsection of rule exempted;

(ii) The conditions of acceptance;

(iii) The time frame for which the exemption is approved; and

(iv) Notification that the exemption may be renewed upon request of the party that initially asked for the exemption. In this case, the requester must submit a renewal request to the director of DBHR before the time frame of the initial exemption expires, and meet the applicable requirements of subsection (1) of this section.

(b) If DBHR denies the exemption request, the notice includes the reason for the denial.

(4) DBHR cannot exempt any minimum standard that is required by:

(a) Statute; or

(b) Another state agency.

NEW SECTION

**WAC 388-865-0238 Behavioral health organizations—Definitions.** The definitions in this section, WAC 388-877-0200, and WAC 388-877-0655 apply to behavioral health organizations (BHO) and the BHO managed care plan.

**"Behavioral health organization" or "BHO"** means any county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

**"Behavioral health organization (BHO) managed care plan"** is the entity that operates the prepaid inpatient health plan (PIHP) for medicaid behavioral health services.

**"Chemical dependency professional" or "CDP"** means a person credentialed by the department of health as a chemical dependency professional (CDP) with primary responsibility for implementing an individualized service plan for substance use disorder services.

**"Child"** means a person under the age of eighteen years. For the purposes of the medicaid program, child means a person who is under the age of twenty-one years.

**"Community support services"** means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week; prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health organizations.

**"Consultation"** means the clinical review and development of recommendations regarding activities, or decisions of, clinical staff, contracted employees, volunteers, or students by persons with appropriate knowledge and experience to make recommendations.

**"County authority"** means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

**"Designated chemical dependency specialist"** means a person designated by the behavioral health organization (BHO) or by the county alcoholism and other drug addiction program coordinator designated by the BHO to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

**"Designated mental health professional" or "DMHP"** means a mental health professional designated by the behavioral health organization (BHO) county or other authority authorized in rule to perform duties under the invol-

untary treatment act as described in RCW 10.77.010, 71.05.-020, 71.24.025 and 71.34.020.

**"Ethnic minority" or "racial/ethnic groups"** means, for the purposes of this chapter, any of the following general population groups:

- (1) African American;
- (2) An American Indian or Alaskan native, which includes:
  - (a) A person who is a member or considered to be a member in a federally recognized tribe;
  - (b) A person determined eligible to be found Indian by the secretary of interior;
  - (c) An Eskimo, Aleut, or other Alaskan native; and
  - (d) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off-reservation Indian/Alaskan native community organization;
- (3) Asian/Pacific Islander; or
- (4) Hispanic.

**"Housing services"** means the active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the individual's age, culture, and needs.

**"Medical necessity" or "medically necessary"** is a term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause or physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. For the purpose of this chapter "course of treatment" may include mere observation or, where appropriate, no treatment at all.

**"Mental health professional"** means:

- (1) A psychiatrist, psychologist, psychiatric nurse or social worker as defined in chapters 71.05 and 71.34 RCW;
- (2) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;
- (3) A person with a master's degree or further advanced degree in counseling or one of the behavioral sciences from an accredited college or university. Such person shall have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the supervision of a mental health professional;
- (4) A person who meets the waiver criteria of RCW 71.24.260, which was granted prior to 1986;
- (5) A person who had an approved waiver to perform the duties of a mental health professional that was requested by a regional support network and granted by the mental health division prior to July 1, 2001; or
- (6) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the division of behavioral health and recovery.

**"Mental health specialist"** means:

(1) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(a) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(b) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(2) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(a) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of persons sixty years of age and older; and

(b) The equivalent of one year of full-time experience in the treatment of persons sixty years of age and older, under the supervision of a geriatric mental health specialist.

(3) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

(a) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(b) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority individuals.

(4) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, "disabled" means an individual with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(a) If the consumer is deaf, the specialist must be a mental health professional with:

(i) Knowledge about the deaf culture and psychosocial problems faced by who are deaf; and

(ii) Ability to communicate fluently in the preferred language system of the consumer.

(b) The specialist for individuals with developmental disabilities must be a mental health professional who:

(i) Has at least one year's experience working with people with developmental disabilities; or

(ii) Is a developmental disabilities professional as defined in RCW 71.05.020.

**"Peer counselor"** means a person recognized by the division of behavioral health and recovery (DBHR) as a person who:

(1) Is a self-identified consumer of mental health services;

(2) Is a counselor credentialed under chapter 18.19 RCW;

(3) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the mental health division (now DBHR) before October 1, 2004, and has met the requirements in subsection (1), (2) and (4) of this section by January 31, 2005, the person is exempt from completing this specialized training;

(4) Has successfully passed an examination administered by DBHR or an authorized contractor; and

(5) Has received a written notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

**"Quality assurance and quality improvement"** means a focus on compliance to minimum requirements in rules and contracts, and activities to perform above minimum standards and achieve reasonably expected levels of performance, quality, and practice.

**"Quality strategy"** means an overarching system and/or process whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a behavioral health organization's (BHO)'s operations.

**"Regional support network (RSN)"** no longer exists as of March 31, 2016. See **"Behavioral health organization (BHO)."**

**"Residential services"** means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

**"Resource management services"** means the planning, coordination, and authorization of residential services and community support services for:

(1) Adults and children who are acutely mentally ill;

(2) Adults who are chronically mentally ill;

(3) Children who are severely emotionally disturbed; or

(4) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

**"Service area"** means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

**"State minimum standards"** means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for delivery of behavioral health services.

**"Substance use disorder"** means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

**"Tribal authority"** means, for the purposes of behavioral health organizations and RCW 71.24.300 only, the fed-

erally recognized Indian tribes and the major Indian organizations recognized by the secretary as long as these organizations do not have a financial relationship with any behavioral health organization that would present a conflict of interest.

#### NEW SECTION

**WAC 388-865-0242 Behavioral health organizations—Payment for behavioral health services.** Within available resources as defined in RCW 71.24.025(2), a behavioral health organization (BHO) must ensure an individual's eligibility for and payment for behavioral health services meet the following:

(1) An individual who is eligible for medicaid is entitled to receive covered medically necessary behavioral health services without charge to the individual, consistent with the state's medicaid state plan or federal waiver authorities. A medicaid recipient is also entitled to receive behavioral health services from a behavioral health organization (BHO) managed care plan without charge.

(2) An individual who is not eligible for medicaid is entitled to receive behavioral health services consistent with priorities established by the department. The individual, the parent(s) of an individual who has not reached their eighteenth birthday, the individual's legal guardian, or the estate of the individual:

- (a) Is responsible for payment for services provided; and
- (b) May apply to the following entities for payment assistance:
  - (i) The health care authority (HCA) for medical assistance;
  - (ii) The behavioral health service provider for payment responsibility based on a sliding fee scale; or
  - (iii) The BHO for authorization of payment for involuntary evaluation and treatment services.

#### NEW SECTION

**WAC 388-865-0246 Behavioral health organizations—Public awareness of behavioral health services.** A behavioral health organization (BHO) or its designee must provide public information on the availability of mental health and substance use disorder services. The BHO must:

- (1) Maintain information on available services, including crisis services and the recovery help line in telephone directories, public websites, and other public places in easily accessible formats;
- (2) Publish and disseminate brochures and other materials or methods for describing services and hours of operation that are appropriate for all individuals, including those who may be visually impaired, limited English proficient, or unable to read; and
- (3) Post and make information available to individuals regarding the behavioral health ombuds office consistent with WAC 388-865-0262, and local advocacy organizations that may assist individuals in understanding their rights.

#### NEW SECTION

**WAC 388-865-0248 Behavioral health organizations—Governing body responsible for oversight.** The behavioral health organization (BHO) must establish a governing body responsible for oversight of the BHO. The governing body must:

- (1) Be free from conflict of interest and all appearance of conflict of interest between personal, professional and fiduciary interests of a governing body member and the best interests of the BHO and the individuals it serves.
- (2) Have rules about:
  - (a) When a conflict of interest becomes evident;
  - (b) Not voting or joining a discussion when a conflict of interest is present; and
  - (c) When the governing body can assign the matter to others, such as staff members or advisory bodies.

#### NEW SECTION

**WAC 388-865-0252 Behavioral health organizations—Advisory board membership.** (1) A behavioral health organization (BHO) must appoint advisory board members and maintain an advisory board in order to:

- (a) Promote active engagement with individuals with behavioral health disorders, their families, and behavioral health agencies; and
- (b) Solicit and use the advisory board members input to improve service delivery and outcome.
- (2) The BHO must appoint advisory board members and maintain an advisory board that:
  - (a) Broadly represents the demographic character of the service area;
  - (b) Is composed of at least fifty-one percent representation of one or more of the following:
    - (i) Persons with lived experience;
    - (ii) Parents or legal guardians of persons with lived experience; or
    - (iii) Self-identified as persons in recovery from a behavioral health disorder;
  - (c) Includes law enforcement representation; and
  - (d) Includes tribal representation, upon request of a tribe.
- (3) When the BHO is not a function of county government, the advisory board must include no more than four county elected officials.
- (4) The advisory board:
  - (a) May have members who are employees of subcontracted agencies, as long as there are written rules that address potential conflicts of interest.
  - (b) Has the discretion to set rules in order to meet the requirements of this section.
  - (c) Membership is limited to three years per term for time served, per each advisory board member. Multiple terms may be served by a member if the advisory board rules allow it.
- (5) The advisory board independently reviews and provides comments to either the BHO, the BHO governing board, or both, on plans, budgets, and policies developed by the BHO to implement the requirements of this section, chapters 71.05, 71.24, 71.34 RCW, and applicable federal laws.

NEW SECTION

**WAC 388-865-0254 Behavioral health organizations—Voluntary inpatient services and involuntary evaluation and treatment services.** A behavioral health organization (BHO) must develop and implement age and culturally competent behavioral health services that are consistent with chapters 70.96A, 71.24, 71.05, and 71.34 RCW.

(1) For voluntary inpatient services, the BHO must develop and implement formal agreements with inpatient services funded by the BHO regarding:

- (a) Referrals;
- (b) Admissions; and
- (c) Discharges.

(2) For involuntary evaluation and treatment services, the BHO:

(a) Must ensure that individuals in their regional service area have access to involuntary inpatient care; and

(b) Is responsible for coordinating discharge planning with the treating inpatient facility.

(3) The BHO must:

(a) Ensure periodic reviews of the evaluation and treatment service facilities consistent with BHO procedures and notify the appropriate authorities if it believes that a facility is not in compliance with applicable rules and laws.

(b) Authorize admissions into inpatient evaluation and treatment services for eligible individuals from:

- (i) State psychiatric hospitals:
  - (A) Western state hospital;
  - (B) Eastern state hospital; and
  - (C) The child study and treatment center.
- (ii) Community hospitals.
- (iii) Certified inpatient evaluation and treatment facilities licensed by the department of health as adult residential treatment facilities.
- (iv) The children's long-term inpatient program (CLIP).

(c) Receive prior approval from the department's division of behavioral health and recovery (DBHR) in the form of a single bed certification for services to be provided to individuals on a ninety or one hundred eighty day community inpatient involuntary commitment order consistent with the exception criteria in WAC 388-865-0531.

NEW SECTION

**WAC 388-865-0256 Behavioral health organizations—Community support, residential, housing, and employment services.** (1) **Community support services** as defined in WAC 388-865-0238. A behavioral health organization (BHO) must:

(a) Develop and coordinate age and culturally appropriate community support services that are consistent with chapters 71.05, 71.24, and 71.34 RCW to ensure that the mental health and substance use disorder services listed in chapters 388-877A and 388-877B WAC can be accessed by all eligible individuals in the BHO's service area and are provided to eligible individuals directly, or by contract.

(b) Ensure prescreening determinations are conducted for providing community support services for individuals with mental illness who are being considered for placement in nursing facilities as required by RCW 71.24.025(8).

(2) **Residential services** as defined in 388-865-0238. A BHO must:

(a) Ensure active search and promotion of individual access to, and choice in, safe and affordable independent housing that is appropriate to the individual's age, culture, and residential needs. This includes:

(i) Providing services to families of eligible children and to eligible individuals who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing; and

(ii) Assuring the availability of community support services, with an emphasis on supporting individuals in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan, including a full range of residential services as defined in RCW 71.24.025(23).

(b) Ensure that eligible individuals in licensed residential facilities receive behavioral health services consistent with their individual service plan and are advised of their rights, including long-term care rights under chapter 70.129 RCW.

(3) **Housing services** as defined in WAC 388-865-0238. A BHO must ensure active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the individual's age, culture, and needs. This includes:

(a) Providing services to families of eligible children and to eligible individuals who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing;

(b) Assuring the availability of community support services, with an emphasis on supporting individuals in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan; and

(c) Coordinating with public housing entities, homeless continuums of care, and affordable housing developers.

(4) **Employment services.** A BHO must coordinate with the division of vocational rehabilitation or other local entities that support employment services to assure that individuals wanting to work are provided with recovery support-employment services under WAC 388-877A-0330.

NEW SECTION

**WAC 388-865-0258 Behavioral health organizations—Administration of the Mental Health and Substance Use Disorders Involuntary Treatment Acts.** A behavioral health organization (BHO) must establish policies and procedures for administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act, including investigation, detention, transportation, court-related, and other services required by chapters 70.96A, 71.05 and 71.34 RCW. This includes:

(1) Ensuring that designated mental health professionals (DMHP) and designated chemical dependency specialists perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 70.96A, 71.05 and 71.34 RCW.

(2) Documenting individual compliance with the conditions of mental health less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed individual for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety day commitments and one hundred eighty day commitments.

(b) Notifying the DMHP if noncompliance with the less restrictive alternative order impairs the individual sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

#### NEW SECTION

**WAC 388-865-0262 Behavioral health organizations—Behavioral health ombuds office.** A behavioral health organization (BHO) must provide unencumbered access to and maintain the independence of the behavioral health ombuds service as set forth in the contract between the BHO and the division of behavioral health and recovery (DBHR). The BHO and DBHR must ensure the inclusion of representatives of individual and family advocate organizations when revising the terms of the contract regarding the requirements of this section. Behavioral health ombuds members must be current consumers of the mental health or substance use disorder system, or past consumers or family members of past consumers. The BHO must maintain a behavioral health ombuds office that:

(1) Is responsive to the age and demographic character of the region and assists and advocates for individuals with resolving issues, grievances, and appeals at the lowest possible level;

(2) Is independent of agency service providers;

(3) Supports individuals, family members, and other interested parties regarding issues, grievances, and appeals;

(4) Is accessible to individuals, including having a toll-free, independent phone line for access;

(5) Is able to access service sites and records relating to individuals with appropriate releases so that it can reach out to individuals and help to resolve issues, grievances, and appeals;

(6) Receives training and adheres to confidentiality consistent with this chapter and chapters 70.96A, 71.05, 71.24, and 70.02 RCW;

(7) Continues to be available to advocate and support individuals through the grievance, appeal and administrative hearing processes;

(8) Involves other persons, at the individual's request;

(9) Supports individuals in the pursuit of a formal resolution;

(10) If necessary, continues to assist the individual through the administrative hearing process;

(11) Coordinates and collaborates with allied services to improve the effectiveness of advocacy and to reduce duplication when serving the same individual;

(12) Provides information on grievances to the DBHR and BHO quality strategy; and

(13) Provides reports and formalized recommendations at least biennially to DBHR and BHO advisory and governing boards, local consumer and family advocacy groups, the BHO quality review team, and the BHO provider network.

#### NEW SECTION

**WAC 388-865-0264 Behavioral health organizations—Quality strategy.** A behavioral health organization (BHO) must implement a quality strategy for continuous quality improvement in the delivery of culturally competent mental health services. The BHO must submit a quality assurance and improvement plan to the division of behavioral health and recovery (DBHR). All changes to the quality assurance and improvement plan must be submitted to DBHR for approval prior to implementation. The plan must include all of the following:

(1) Roles, structures, functions and interrelationships of all the elements of the quality strategy, including but not limited to the BHO governing board, clinical and management staff, advisory board, behavioral health ombuds service, and quality review teams.

(2) Procedures to ensure that quality assurance and improvement activities are effectively and efficiently carried out with clear management and clinical accountability, including methods to:

(a) Collect, analyze and display information regarding:

(i) The capacity to manage resources and services, including financial and cost information and compliance with statutes, regulations and contracts;

(ii) System performance indicators;

(iii) Quality and intensity of services;

(iv) Incorporation of feedback from individuals, allied service systems, community providers, the behavioral health ombuds office and quality review team;

(v) Clinical care and service utilization including consumer outcome measures; and

(vi) Recommendations and strategies for system and clinical care improvements, including information from exit interviews of individuals and practitioners;

(b) Monitor management information system data integrity;

(c) Monitor complaints, grievances and adverse incidents for adults and children;

(d) Monitor contractors and to notify DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements;

(e) Immediately investigate and report allegations of fraud and abuse of the contractor or subcontractor to DBHR;

(f) Monitor delegated administrative activities;

(g) Identify necessary improvements;

(h) Interpret and communicate practice guidelines to practitioners;

(i) Implement change;

(j) Evaluate and report results;

(k) Demonstrate incorporation of all corrective actions to improve the system;

(l) Consider system improvements based on recommendations from all on-site monitoring, evaluation, accreditation, and certification reviews; and

(m) Review, update, and make the plan available to community stakeholders.

(3) Targeted improvement activities, including:

(a) Performance measures that are objective, measurable, and based on either current knowledge or best practice, or both, including at least those defined by DBHR in the contract with the BHO;

(b) An analysis of consumer care covering a representative sample of at least ten percent of consumers or five hundred consumers, whichever is smaller;

(c) Efficient use of human resources; and

(d) Efficient business practices.

#### NEW SECTION

**WAC 388-865-0266 Behavioral health organizations—Quality review teams.** A behavioral health organization (BHO) must establish and maintain unencumbered access to and maintain the independence of a quality review team as described in this section and in the contract between the BHO and the division of behavioral health and recovery (DBHR). The quality review team must include individuals who currently receive or have in the past received behavioral health services, and may also include the family members of such individuals. The BHO must assure that quality review teams:

(1) Fairly and independently review the performance of the BHO and service providers in order to evaluate systemic issues as measured by objective indicators of individual outcomes in rehabilitation and recovery, including all of the following:

(a) Quality of care;

(b) The degree to which services are focused on the individual and are age and culturally appropriate;

(c) The availability of alternatives to hospitalization, cross-system coordination and range of treatment options; and

(d) The effectiveness of the BHO's coordination with allied systems including, but not limited to, schools, state and local hospitals, jails and shelters.

(2) Have the authority to enter and monitor any behavioral health agency contracted with a BHO.

(3) Meet with interested individuals and family members, allied service providers, including state or community psychiatric hospitals, BHO contracted service providers, and persons that represent the age and ethnic diversity of the BHO's service area to:

(a) Determine if services are accessible and address the needs of individuals based on sampled individual recipient's perception of services using a standard interview protocol. The protocol will query the sampled individuals regarding ease of accessing services, the degree to which services address medically necessary needs, and the benefit of the service received; and

(b) Work with interested individuals and other persons, if requested by the individual, service providers, the BHO, and DBHR to resolve identified problems.

(4) Provide reports and formalized recommendations at least biennially to DBHR, the behavioral health advisory committee and the BHO advisory and governing boards and ensure that input from the quality review team is integrated into the overall BHO quality strategy, behavioral health ombuds office services, local consumer and family advocacy groups, and provider network.

(5) Receive training in and adhere to applicable confidentiality standards.

#### NEW SECTION

**WAC 388-865-0268 Behavioral health organizations—Standards for contractors and subcontractors.** A behavioral health organization (BHO) must not contract or subcontract for clinical services to be provided using public funds unless the contractor or subcontractor is licensed by the division of behavioral health and recovery (DBHR) for those services, or is individually licensed by the department of health as defined in chapter 18.57, 18.71, 18.83, or 18.79 RCW. The BHO must:

(1) Require and maintain documentation that contractors and subcontractors are licensed, certified, or registered in accordance with state and federal laws;

(2) Follow applicable requirements of the BHO contract with DBHR;

(3) Demonstrate that it monitors contractors and subcontractors and notifies DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements; and

(4) Terminate its contract or subcontract with a provider if DBHR notifies the BHO of a provider's failure to attain or maintain licensure.

#### NEW SECTION

**WAC 388-865-0272 Behavioral health organizations—Operating as a behavioral health agency.** A behavioral health organization (BHO) may operate as a behavioral health agency when the BHO:

(1) Meets the criteria in RCW 71.24.045(2) and chapters 70.96A and 71.24 RCW; and

(2) Maintains a current license as a behavioral health agency from the division of behavioral health and recovery.

#### NEW SECTION

**WAC 388-865-0370 Behavioral health organization managed care plan—Minimum standards.** To be eligible to contract with the department's division of behavioral health and recovery (DBHR), the behavioral health organization (BHO) managed care plan must comply with all applicable local, state, and federal rules and laws. The BHO managed care plan must:

(1) Provide documentation of a population base of sixty thousand medicaid eligible persons covered lives within the service area or receive approval from DBHR based on submittal of an actuarially sound risk management profile;

(2) If the BHO is not a county-based organization, the BHO must maintain licensure by the Washington state office



of the insurance commissioner as a health care service contractor under chapter 48.44 RCW.

(3) Provide medically necessary behavioral health services that are age and culturally appropriate for all medicaid recipients in the service area within a capitated rate;

(4) Demonstrate working partnerships with tribal authorities for the delivery of services that blend with tribal values, beliefs and culture;

(5) Develop and maintain written subcontracts that clearly recognize that legal responsibility for administration of the service delivery system remains with the BHO managed care plan, as identified in the contract with DBHR;

(6) Retain responsibility to ensure that applicable standards of this chapter, other state rules, and federal laws are met even when it delegates duties to subcontractors; and

(7) Ensure the protection of individual and family rights as described in chapters 70.96A, 71.05 and 71.34 RCW.

#### NEW SECTION

**WAC 388-865-0375 Behavioral health organization managed care plan—Utilization management.** Utilization management is the way the behavioral health organization (BHO) managed care plan authorizes or denies substance use disorder treatment or mental health services, monitors services, and follows the level of care guidelines. To demonstrate the impact on individual access to care of adequate quality, a BHO must provide utilization management of the behavioral health rehabilitation services under 42 C.F.R. Sec. 440.130(d) that is independent of service providers. This process must:

(1) Provide effective and efficient management of resources;

(2) Assure capacity sufficient to deliver appropriate quality and intensity of services to enrolled individuals without a wait list consistent with the contract with the division of behavioral health and recovery (DBHR);

(3) Plan, coordinate, and authorize community support services;

(4) Ensure that services are provided according to the individual service plan;

(5) Ensure assessment and monitoring processes are in place by which service delivery capacity responds to changing needs of the community and enrolled individuals;

(6) Develop, implement, and enforce written level of care guidelines for admissions, placements, transfers and discharges into and out of services including:

(a) A clear process for the BHO managed care plan's role in the decision-making process about admission and continuing stay at various levels is available in language that is clearly understood by all parties involved in an individual consumer's care, including laypersons;

(b) Criteria for admission into various levels of care, including community support, inpatient and residential services that are clear and concrete;

(c) Methods to ensure that services are individualized to meet the needs of all medicaid recipients served, including methods that address different ages, cultures, languages, civil commitment status, physical abilities, and unique service needs; and

(d) Assure the BHO managed care plan retains a sufficiently strong and regular oversight role to assure decisions are being made appropriately, to the extent authorization of care at any level of care or at continuing stay determinations is delegated;

(7) Collect data that measures the effectiveness of the criteria in ensuring that all eligible people get services that are appropriate to their needs; and

(8) Report to DBHR any knowledge it gains that the BHO managed care plan or behavioral health service provider is not in compliance with a state or federal rule or law.

#### NEW SECTION

**WAC 388-865-0380 Behavioral health organization managed care plan—Choice of primary provider.** (1) The behavioral health organization (BHO) managed care plan must:

(a) Ensure that each individual receiving nonemergency behavioral health rehabilitation services has a primary provider who is responsible to carry out the individual service plan; and

(b) Allow individuals, parents of individuals under age thirteen, and guardians of individuals of all ages to select a primary provider from the available primary provider staff within the BHO managed care plan.

(2) For an individual with an assigned case manager, the case manager is the primary provider.

(3) If the individual does not select a primary provider, the BHO managed care plan or its designee must assign a primary provider not later than fifteen working days after the individual requests services.

(4) The BHO managed care plan or its designee must allow an individual to change primary providers at any time for any reason. The individual must notify the BHO managed care plan or its designee of the request for a change, and inform the plan of the name of the new primary provider.

#### NEW SECTION

**WAC 388-865-0385 Behavioral health organization managed care plan—Behavioral health screening for children.** The behavioral health organization (BHO) managed care plan is responsible for conducting behavioral health screening and treatment for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program. This includes:

(1) Providing resource management services for children eligible under the EPSDT program as specified in contract with the division of behavioral health and recovery; and

(2) Developing and maintaining an oversight committee for the coordination of the EPSDT program that must include representation from parents of medicaid-eligible children.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

**WAC 388-875-0070 Transfer of a patient between state-operated facilities for persons with mental illness.** In some instances, it is appropriate for the department to transfer a patient currently residing in a state facility to another state

facility for ongoing treatment. The department (~~shall accomplish~~) accomplishes the transfer with the utmost care given to the therapeutic needs of the patient. This section describes the procedures for handling a patient transfer between state facilities in a manner consistent with the best interest of the patient.

(1) The department (~~may use~~) uses the following criteria when determining the appropriateness of a patient transfer:

(a) The patient's family resides within the receiving facility's (~~catchment~~) service area; or

(b) The patient's primary home of residence is in the receiving facility's (~~catchment~~) service area; or

(c) A particular service or need of the patient is better met at the receiving facility; or

(d) Transfer to the receiving facility may facilitate community discharge due to the availability of community service in the receiving facility's (~~catchment~~) service area; or

(e) The county, (~~regional support network~~) behavioral health organization (BHO), or patient requests a transfer.

(2) Prior to any proposed transfer of a patient, the state facility (~~shall~~) must comply with the following:

(a) The sending facility, at the request of the (~~superintendent~~) chief executive officer (CEO), (~~shall in writing forward~~) must have forwarded in writing information necessary to make a decision on whether transfer is appropriate to the receiving facility's (~~liaison~~) attending physician or the physician's designee and the (~~regional support network~~) (BHO) liaison;

(b) The receiving facility's (~~liaison~~) attending physician or the physician's designee and the (~~regional support network~~) BHO liaison (~~shall recommend~~) must have recommended appropriate action to the (~~superintendent~~) CEO of the sending facility in writing within five calendar days of receipt of the request;

(c) If the receiving facility accepts the proposed patient transfer, the sending facility (~~shall~~) must notify the patient, guardian, (~~regional support network~~) BHO liaison, and attorney, if known, at least five days before the proposed patient transfer;

(d) The sending facility is responsible for all patient transfer arrangements, (~~e.g.~~) such as, transportation(~~;~~) and staff escort(~~;-etc-~~), and (~~shall~~) coordinates the day and time of arrival with the receiving (~~facility's liaison~~) facility; and

(e) The sending facility (~~shall~~) arranges for the transfer of patient's medical record to the receiving facility.

(3) The sending (~~state~~) facility (~~shall~~) must document the following in the patient's record:

(a) That the physician (~~documentation of~~) documented the medical suitability of the patient for transfer; and

(b) That the social worker (~~documentation regarding~~) documented:

(i) Justification as to why the transfer is considered in the patient's best interests; and

(ii) The patient's wishes regarding transfer.

(4) The sending facility (~~shall~~) must contact the prosecuting attorney's office of the committing county (~~prior to~~) before the transfer.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

**WAC 388-877-0100 Behavioral health services—Purpose and scope.** The rules in chapter 388-877 WAC:

(1) Establish the following for agencies that provide behavioral health services:

(a) Licensure and certification requirements;

(b) Agency administrative requirements;

(c) Agency personnel requirements; (~~and~~)

(d) Agency clinical policies and procedures(~~-~~); and

(e) A grievance system that includes a grievance process, an appeal process, and access to administrative hearings for agencies that serve individuals whose services are covered by the federal medicaid program.

(2) Support the specific program rules in chapter 388-877A WAC for mental health, chapter 388-877B WAC for (~~chemical dependency~~) substance use disorders, and chapter 388-877C WAC for problem and pathological gambling.

(3) The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

**WAC 388-877-0200 Behavioral health services—Definitions.** The definitions in this section contain words and phrases used in chapter 388-865 WAC for behavioral health organizations (BHOs) and the BHO managed care plan, and chapter 388-877 WAC for behavioral health services programs. These definitions also apply to the program-specific rules for mental health services in chapter 388-877A WAC, (~~chemical dependency~~) substance use disorder rules in chapter 388-877B WAC, and problem and pathological gambling rules in chapter 388-877C WAC.

"**Administrative hearing**" means a proceeding before an administrative law judge that gives a party an opportunity to be heard in disputes about DSHS programs and services.

"**Administrator**" means the designated person responsible for the operation of the licensed treatment agency and/or certified treatment service.

"**Adult**" means an individual eighteen years of age or older. For (~~an individual eligible for~~) purposes of the medicaid program, adult means an individual twenty-one years of age or older.

"**Agency**" means an entity licensed by the department to provide behavioral health services.

"**Assessment**" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"**Behavioral health**" means the prevention, treatment of, and recovery from (~~chemical dependency~~) substance use disorders, mental health disorders and/or problem and pathological gambling disorders.

"**Branch site**" means a physically separate licensed site, governed by a parent organization, where qualified staff provides certified treatment services.

**"Care coordination"** means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

~~("Certified peer counselor" means a current or former qualified recipient of behavioral health services, who has met the experience and training requirements of, satisfactorily passed the examination given by, and is recognized by the division of behavioral health and recovery as a certified peer counselor under WAC 388-865-0107.)~~

**"Certified"** means the status given by the department to ~~((chemical dependency))~~ substance use disorder, mental health, and problem and pathological gambling program-specific services.

**"Certified problem gambling counselor"** is an individual certified gambling counselor (WSCGC) or a nationally certified gambling counselor (NCGC), certified by the Washington State Gambling Counselor Certification Committee or the International Gambling Counselor Certification Board to provide problem and pathological gambling treatment services.

**"Change in ownership"** means one of the following:

- (1) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;
- (2) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or
- (3) The current ownership takes on a new owner of five per cent or more of the organizational assets.

**"Clinical record"** means a paper and/or electronic file that is maintained by the behavioral health agency and contains pertinent psychological, medical, and clinical information for each individual served.

**"Clinical supervision"** means regular and periodic activities performed by an appropriate level of professional for clinical staff. Clinical supervision includes review of assessment, diagnostic formulation, treatment planning, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care.

**"Community mental health agency (CMHA)"** means a behavioral health agency ~~((certified))~~ licensed by the department to provide a mental health service.

**"Community relations plan"** means a plan to minimize the impact of an opiate substitution treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section 2.C.(4).

**"Complaint"** means the expression of a dissatisfaction with a service or program which may be investigated by the department.

**"Consent"** means agreement given by an individual after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the

recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

**"Criminal background check"** means a search for any record of an individual's conviction or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults. A background check includes a search and review of current and past background check applicant self-disclosures, Washington state patrol criminal history data, Washington courts criminal history data, civil adjudication proceedings, department of health disciplinary board final decisions, out-of-state court or law enforcement records, and department of corrections information. A background check may include a national fingerprint-based background check, including a federal bureau of investigation criminal history search.

**"Crisis"** means an actual or perceived urgent or emergent situation that occurs when an individual's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

**"Critical incident"** means any one of the following events:

- (1) Any death, serious injury, or sexual assault that occurs at an agency that is licensed by the department;
- (2) Alleged abuse or neglect of an individual receiving services, that is of a serious or emergency nature, by an employee, volunteer, licensee, contractor, or another individual receiving services;
- (3) A natural disaster, such as an earthquake, volcanic eruption, tsunami, urban fire, flood, or outbreak of communicable disease that presents substantial threat to facility operation or client safety;
- (4) A bomb threat;
- (5) Theft or loss of data in any form regarding an individual receiving services, such as a missing or stolen computer, or a missing or stolen computer disc or flash drive;
- (6) Suicide attempt at the facility;
- (7) An error in program-administered medication at an outpatient facility that results in adverse effects for the individual and requires urgent medical intervention; and
- (8) Any media event regarding an individual receiving services, or regarding a staff member or owner(s) of the agency.

**"Cultural competence" or "culturally competent"** means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of ~~((cultural))~~ culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

**"Deemed"** means a status that may be given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with DBHR.

**"Department"** means the Washington state department of social and health services.

**"Designated chemical dependency specialist"** means a person designated by the ~~((county alcoholism and/or other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;))~~ behavioral health organization (BHO) or by the county alcoholism and other drug addiction program coordinator designated by the BHO to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

**"Designated mental health professional (DMHP)"** means a mental health professional designated by the behavioral health organization (BHO), county, or other authority authorized in rule to perform duties under the involuntary treatment act as described in RCW 10.77.010, 71.05.020, 71.24.025 and 71.34.020.

**"Disability"** means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

- (1) Has a record of such an impairment; or
- (2) Is regarded as having such impairment.

**"Division of behavioral health and recovery (DBHR)"** means the division within the department of social and health services (formerly the mental health division and the division of alcohol and substance abuse) that administers mental health, problem gambling and substance abuse programs authorized by chapters 43.20A, 71.05, 71.24, 71.34, and 70.96A RCW.

**"Governing body"** means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

~~((**"Grievance"** means an expression of dissatisfaction made by or on behalf of an individual and referred to the agency or regional support network (RSN), as applicable, for resolution.))~~

**"HIV/AIDS brief risk intervention"** means a face-to-face interview with an individual to help the individual assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

**"Individual"** means a person ~~((receiving treatment services))~~ who applies for, is eligible for, or receives behavioral health organization (BHO) authorized behavioral health services from an agency licensed by the department as from a ((licensed)) behavioral health agency.

**"Less restrictive alternative (LRA)"** means court ordered outpatient treatment in a setting less restrictive than total confinement.

**"Licensed"** means the status given to behavioral health agencies by the department under its authority to license and certify mental health programs chapters 71.05, 71.34, 71.24 RCW and its authority to certify ~~((chemical dependency))~~ substance use disorder treatment programs chapter 70.96A RCW.

**"Medical practitioner"** means a physician, advance registered nurse practitioner (ARNP), or certified ~~((physician's))~~ physician assistant. An ARNP and a midwife with prescriptive authority may perform practitioner functions related only to specific specialty services.

**"Medication administration"** means the direct application of a medication or device by ingestion, inhalation, injection or any other means, whether self-administered by a resident, or administered by a guardian (for a minor), or an authorized healthcare provider.

**"Mental health professional (MHP)"** means a designation given by the department to an agency staff member who is:

(1) A psychiatrist, psychologist, psychiatric advanced registered nurse practitioner (ARNP), or social worker as defined in chapters 71.05 and 71.34 RCW;

(2) A person who is licensed by the department of health as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(3) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, that was gained under the supervision of a mental health professional and is recognized by the department;

~~((3))~~ (4) A person who meets the waiver criteria of RCW 71.24.260, which was granted prior to 1986;

~~((4))~~ (5) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the ~~((regional support network (RSN)))~~ behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001; or

~~((5))~~ (6) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the ~~((department consistent with WAC 388-865-0265))~~ division of behavioral health and recovery (DBHR).

**"Minor"** means an individual who is not yet eighteen years of age.

**"Off-site"** means the provision of services by a provider from a licensed behavioral health agency at a location where the assessment and/or treatment is not the primary purpose of the site, such as in schools, hospitals, long term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

**"Outpatient services"** means behavioral health treatment services provided to an individual in a nonresidential setting.

**"Patient placement criteria (PPC)"** means admission, continued service, and discharge criteria found in the patient placement criteria (PPC) for the treatment of substance-related disorders as published by the American Society of Addiction Medicine (ASAM).

**"Peer counselor"** means a person recognized by the division of behavioral health and recovery (DBHR) as a person who meets all of the following:

(1) Is a self-identified consumer of mental health services.

(2) Is a counselor registered under chapter 18.19 RCW.

(3) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the mental health division (now DBHR) before October 1, 2004, and has met the requirements in (1), (2), and (4) by January 31, 2005, the person is exempt from completing this specialized training.

(4) Has successfully passed an examination administered by DBHR or an authorized contractor.

(5) Has received a notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

**"Probation"** means a licensing or certification status resulting from a finding of deficiencies that requires immediate corrective action to maintain licensure or certification.

**"Progress notes"** means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment, progress in recovery, and progress toward intended outcomes.

**"Recovery"** means a process of change through which an individual improves their health and wellness, lives a self-directed life, and strives to reach their full potential.

**"Relocation"** means a physical change in location from one address to another.

**"Remodeling"** means expanding existing office space to additional office space at the same address, or remodeling interior walls and space within existing office space to a degree that accessibility to or within the facility is impacted.

**"Summary suspension"** means the immediate suspension of a facility's license and/or program-specific certification by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

**"Supervision"** means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

**"Suspend"** means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement.

**"Vulnerable adult"** means an individual who receives services from the department and has at least one of the following characteristics:

(1) A vulnerable adult as defined in chapter 74.34 RCW; and

(2) An individual admitted for detoxification or detained or committed to an involuntary treatment facility that is certified by the division of behavioral health and recovery.

**"Youth"** means an individual who is seventeen years of age or younger.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877-0300 Agency licensure—General information.** The department licenses agencies to provide behavioral health treatment services. To gain and maintain licensure, an agency must meet the requirements of chapter 388-877 WAC, applicable local and state rules, and state and federal statutes. In addition, the agency must meet the applicable specific program requirements of chapter 388-877A WAC for mental health, chapter 388-877B WAC for (~~chemical dependency~~) substance use disorders, and/or chapter 388-877C WAC for problem and pathological gambling.

(1) An agency currently accredited by a national accreditation agency recognized by and having a current agreement with the department may be eligible for licensing through deeming. See WAC 388-877-0310.

(2) Initial applications and renewal forms for behavioral health agency licensure or certification may be downloaded at (~~(http://www.dshs.wa.gov/dbhr/daforms.shtml)~~) https://www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery/licensing-and-certification-behavioral-health-agencies. Completed application packets, forms, and requests for deeming or other services should be mailed to the aging and disability services finance office at the address listed on the applicable application packet or form.

(3) An agency must report to the department any changes that occur following the initial licensing or certification process. The department may request a copy of additional disclosure statements or background inquiries if there is reason to believe that offenses specified under RCW 43.43.830 have occurred since the original application was submitted.

(4) The department may grant an exemption or waiver from compliance with specific licensing or program certification requirements if the exemption does not violate an existing state, federal, or tribal law.

(a) To request an exemption to a rule in this chapter, the agency must:

(i) Submit the request in writing to the department;

(ii) Assure the exemption request does not jeopardize the safety, health, or treatment of an individual; and

(iii) Assure the exemption request does not impede fair competition of another service agency.

(b) The department approves or denies an exemption request in writing and requires the agency to keep a copy of the decision.

(c) Appeal rights under WAC 388-877-0370 do not apply to exemption to rule decisions.

(5) In the event of an agency closure or the cancellation of a program-specific certification, the agency must provide each individual currently being served:

(a) Notice of the agency closure or program cancellation at least thirty days before the date of closure or program cancellation;

(b) Assistance with relocation; and

(c) Information on how to access records to which the individual is entitled.

(6) If an agency certified to provide any behavioral health service closes, the agency must ensure all individual clinical records are kept and managed for at least six years

after the closure before destroying the records in a manner that preserves confidentiality. In addition:

(a) The closing agency must notify the division of behavioral health and recovery (DBHR) that the agency will do one of the following:

(i) Continue to retain and manage all individual clinical records; or

(ii) Arrange for the continued storage and management of all individual clinical records.

(b) The closing agency must notify DBHR in writing and include the name of the licensed agency or entity storing and managing the records, provide the method of contact, such as a telephone number, and/or electronic address, and provide the mailing and street address where the records will be stored.

~~((b))~~ ~~((c))~~ (c) When a closing agency that has provided ~~((chemical dependency))~~ substance use disorder services arranges for the continued storage and management of clinical records by another entity, the closing agency must enter into a specific qualified services organization agreement with a DBHR licensed agency or other entity. See 42 C.F.R. Part 2, Subpart B.

(d) When any agency or entity storing and maintaining individual clinical records receives an authorized request for a record, the record must be provided to the requester within a reasonable period of time.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877-0305 Agency licensure—Application.**

To apply for licensure to provide any behavioral health service, an agency must submit an initial application that is signed by the agency's administrator.

(1) The application must include the following:

(a) A copy of the agency's master business license that authorizes the organization to do business in Washington state;

(b) A list of the specific program services for which the agency is seeking certification;

(c) A copy of the report of findings from a criminal background check of the administrator and any owner of five percent or more of the organizational assets;

(d) The physical address of any agency operated facility where behavioral health services will be provided;

(e) A statement assuring the agency meets ~~((American Disability Act [Americans with Disabilities Act]))~~ Americans with Disabilities Act (ADA) standards and that the facility is:

(i) Suitable for the purposes intended;

(ii) Not a personal residence; and

(iii) Approved as meeting all building and safety requirements.

(f) A copy of the policies and procedures specific to the agency;

(g) A staff roster, including each staff member's license under department of health (DOH) rules for professional standards and licensing if credentials are required for the position;

(h) A copy of a current DOH residential treatment facility certificate if the agency is providing ~~((chemical dependency))~~ substance use disorder residential treatment or mental health residential treatment; and

(i) Payment of associated fees.

(2) The department conducts an on-site review as part of the initial licensing or certification process (see WAC 388-877-0320).

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877-0335 Agency licensure and program-specific certification—Denials, suspensions, revocations, and penalties.**

(1) The department will deny issuing or renewing an agency's license or specific program certification(s), place an agency on probation, or suspend, or revoke an agency's license or specific program certification for any of the following reasons:

(a) The agency fails to meet requirements in this chapter.

(b) The agency fails to cooperate or disrupts department representatives during an on-site survey or complaint investigation.

(c) The agency fails to assist the department in conducting individual interviews with ~~((individuals or))~~ either staff members or individuals receiving services, or both.

(d) The agency owner or agency administrator:

(i) Had a license or specific program certification issued by the department subsequently denied, suspended, or revoked;

(ii) Was convicted of child abuse or adjudicated as a perpetrator of substantiated child abuse;

(iii) Was convicted of abuse of a vulnerable adult or adjudicated as a perpetrator of substantiated abuse of a vulnerable adult;

(iv) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;

(v) Committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180;

(vi) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of a patient or displayed acts of discrimination;

(vii) Misappropriated patient (individual) property or resources;

(viii) Failed to meet financial obligations or contracted service commitments that affect patient care;

(ix) Has a history of noncompliance with state or federal rules in an agency with which the applicant has been affiliated;

(x) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:

(A) The submitted application or materials attached; or

(B) Any matter under department investigation.

(xi) Refused to allow the department access to view records, files, books, or portions of the premises relating to operation of the program;

(xii) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;

(xiii) Is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in transactions involving certain federal funds (this also applies to any person or business entity named in the agency's application for licensure or certification);

(xiv) Does not meet criminal background check requirements;

(xv) Fails to provide satisfactory application materials; or

(xvi) Advertises the agency as certified when licensing or certification has not been granted, or has been revoked or canceled.

(e) The department determines there is imminent risk to consumer health and safety.

(f) The agency's licensure or specific program certification is in probationary status and the agency fails to correct the noted health and safety deficiencies within the agreed-upon time frames.

(2) The department may deny issuing or renewing an agency's license or specific program certification, place an agency on probation, or suspend or revoke an agency's license or specific program certification for any of the following reasons:

(a) The agency voluntarily cancels licensure or certification.

(b) The agency fails to pay the required license or certification fees.

(c) The agency stops providing the services for which the agency is certified.

(d) The agency fails to notify the department before changing ownership.

(e) The agency fails to notify the department before relocating its licensed location.

(3) The department sends a written notice to deny, suspend, revoke, or modify the licensure or certification status (see RCW 43.20A.205) that includes the reason(s) for the decision and the agency's right to appeal a department decision (refer to WAC 388-877-0370).

(4) If an agency fails to comply with the requirements of this chapter, the department may:

(a) Assess fees to cover costs of added licensing and program-specific certification activities, including when the department determines a corrective action is required due to a complaint or incident investigation;

(b) Stop referral(s) of an individual who is a program recipient of a state and/or federally-funded program; and

(c) Notify the county alcohol and drug coordinator, ~~((regional support network (RSN)))~~ behavioral health organization (BHO) and/or local media of stopped referrals, suspensions, revocations, or nonrenewal of the agency's license or program-specific certification(s).

**AMENDATORY SECTION** (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877-0365 Agency licensure and program-specific certification—Fee requirements.** (1) Payment of

licensing and specific program certification fees required under this chapter must be included with the initial application, renewal application, or with requests for other services.

(2) Payment of fees must be made by check, bank draft, electronic transfer, or money order made payable to the department.

(3) The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

(4) Fees will not be refunded when licensure or certification is denied, revoked, or suspended.

(5) The department charges the following fees for approved substance use disorder treatment programs:

Application Fees for Agency Certification for Approved <del>((Chemical Dependency))</del> Substance Use Disorder Treatment Programs	
New agency application	\$1,000
Branch agency application	\$500
Application to add one or more services	\$200
Application to change ownership	\$500
Initial and Annual Certification Fees for Detoxification, Residential, and Nonresidential Services	
Detoxification and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 388-877-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 388-877-0310
Complaint/Critical Incident Investigation Fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(6) Agency providers must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

(a) The number of licensed detoxification and residential beds; and

- (b) The agency provider's national accreditation status.
- (7) The department charges the following fees for approved mental health treatment programs:

Initial Licensing Application Fee for Mental Health Treatment Programs	
Licensing application fee	\$1,000 initial licensing fee
Initial and Annual Licensing Fees for Agencies not Deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575
Annual Licensing Fees for Deemed Agencies	
Deemed agencies licensed by DBHR	\$500 annual licensing fee
Complaint/Critical Incident Investigation Fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(8) Agencies providing nonresidential mental health services must report the number of annual service hours provided based on the division of behavioral health and recovery's (DBHR's) current published "Service Encounter Reporting Instructions for ((RSN's)) BHOs" and the "Consumer Information System (CIS) Data Dictionary for ((RSN's)) BHOs." These publications are available at: (<http://www.dshs.wa.gov/dbhr/mhpublications.shtml>) <https://www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery/contractors-and-providers>.

- (a) Existing licensed agencies must compute the annual services hours based on the most recent state fiscal year.
- (b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first twelve months of operation.
- (9) For inpatient evaluation and treatment facility initial and annual certification bed fees charged by the department, see WAC 388-865-0511.

**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 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877-0420 Agency administration—Policies and procedures.** Each agency licensed by the department to provide any behavioral health service must develop,

implement, and maintain administrative policies and procedures to meet the minimum requirements of this chapter. The policies and procedures must demonstrate the following, as applicable:

- (1) **Ownership.** Documentation of the agency's governing body, including a description of membership and authorities, and documentation of the agency's:
  - (a) Articles and certificate of incorporation and bylaws if the owner is a corporation;
  - (b) Partnership agreement if the owner is a partnership; or
  - (c) Sole proprietorship if one person is the owner.
- (2) **Licensure.** A copy of the agency's master business license that authorizes the organization to do business in Washington state that:
  - (a) Includes the entity's name, firm name, or registered trade name; and
  - (b) Lists all addresses where the entity performs services.
- (3) **Organizational description.** An organizational description detailing all positions and associated licensure or certification, updated as needed.
- (4) **Agency staffing and supervision.** Documentation that shows the agency has staff members:
  - (a) Adequate in number to provide program-specific certified services to serve the agency's caseload of individuals; and
  - (b) Who provide treatment in accordance to regulations relevant to their specialty or specialties and registration, certification, licensing, and trainee or volunteer status.
- (5) **Interpreter services for individuals with Limited English Proficiency (LEP) and individuals who have sensory disabilities.** Documentation that demonstrates the agency's ability to provide or coordinate services for individuals with LEP and individuals who have sensory disabilities.
  - (a) Certified interpreters or other interpreter services must be available for individuals with limited English speaking proficiency and individuals who have sensory disabilities; or
  - (b) The agency must have the ability to effectively provide, coordinate or refer individuals in these populations for appropriate assessment or treatment.
- (6) **Reasonable access for individuals with disabilities.** A description of how reasonable accommodations will be provided to individuals with disabilities.
- (7) **Nondiscrimination.** A description of how the agency complies with all state and federal nondiscrimination laws, rules, and plans.
- (8) **Fee schedules.** A copy of the agency's current fee schedules for all services must be available on request.
- (9) **Funding options for treatment costs.** A description of how the agency works with individuals to address the funding of an individual's treatment costs, including a mechanism to address changes in the individual's ability to pay.
- (10) **State and federal rules on confidentiality.** A description of how the agency implements state and federal rules on individuals' confidentiality consistent with the service or services being provided.
- (11) **Reporting and documentation of suspected abuse, neglect, or exploitation.** A description how the



agency directs staff to report and document suspected abuse, neglect, or exploitation of a child or vulnerable adult consistent with chapters 26.44 and 74.34 RCW.

(12) **Protection of youth.** Documentation of how the agency addresses compliance with program-specific rules and the protection of youth participating in group or residential treatment with adults.

(13) **Completing and submitting reports.** A description of how the agency directs staff to:

(a) Complete and submit in a timely manner, all reports required by entities such as the courts, department of corrections, department of licensing, and the department of social and health services; and

(b) Include a copy of the report(s) in the clinical record and document the date submitted.

(14) **Reporting the death of an individual seeking or receiving services.** A description of how the agency directs staff to report to the department or (~~regional support network (RSN)~~) behavioral health organization (BHO), as applicable, within one business day the death of any individual which occurs on the premises of a licensed agency.

(15) **Reporting critical incidents.** A description of how the agency directs staff to report to the department or (~~RSN~~) BHO, as applicable, within one business day any critical incident that occurs involving an individual, and actions taken as a result of the incident.

(16) **A smoking policy.** Documentation that a smoking policy consistent with chapter 70.160 RCW (smoking in public places), is in effect.

(17) **Outpatient evacuation plan.** For a nonresidential agency, an evacuation plan for use in the event of a disaster or emergency that addresses:

(a) Different types of disasters or emergencies;

(b) Placement of posters showing routes of exit;

(c) The need to mention evacuation routes at public meetings;

(d) Communication methods for individuals, staff, and visitors, including persons with a visual or hearing impairment or limitation;

(e) Evacuation of mobility impaired individuals; and

(f) Evacuation of children if child care is offered.

(18) **Individual rights.** A description of how the agency has individual participation rights and policies consistent with WAC 388-877-0600 and if applicable, WAC 388-877-0680.

(19) **Individual complaints and grievances.** A description of how the agency addresses an individual's complaint, consistent with WAC 388-877-0605, and/or the grievance system, consistent with WAC 388-877-0650 through 388-877-0675.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

**WAC 388-877-0600 Clinical—Individual rights.** (1) Each agency licensed by the department to provide any behavioral health service must develop a statement of individual participant rights applicable to the service categories the agency is licensed for, to ensure an individual's rights are protected in compliance with chapters 70.96A, 71.05, 71.12,

and 71.34 RCW. In addition, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements. "You have the right to:

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment service. Individual participants have the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, and cultural differences;

(d) Be treated with respect, dignity and privacy, except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of any sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality regulations;

(h) Review your clinical record in the presence of the administrator or designee and be given an opportunity to request amendments or corrections;

(i) Receive a copy of agency (~~complaint and~~) grievance system procedures upon request and to (~~lodge a complaint or~~) file a grievance with the agency, or (~~regional support network (RSN)~~) behavioral health organization (BHO), if applicable, if you believe your rights have been violated; and

(j) (~~File~~) Lodge a complaint with the department when you feel the agency has violated a WAC requirement regulating behavior health agencies.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Available in alternative formats for individuals who are blind;

(c) Translated to the most commonly used languages in the agency's service area;

(d) Posted in public areas; and

(e) Available to any participant upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency (~~enrolled as a medicare and/or medicaid provider~~) providing services to medicaid recipients must ensure an individual seeking or participating in behavioral health treatment services, or the person legally responsible for the individual is informed of their medicaid rights at time of admission and in a manner that is understandable to the individual or legally responsible person.

(5) The grievance system rules in WAC 388-877-0654 through WAC 388-877-0675 apply to an individual who receives behavioral health services funded through a federal

medicaid program or sources other than a federal medicaid program.

AMENDATORY SECTION (Amending WSR 15-14-058, filed 6/25/15, effective 7/26/15)

**WAC 388-877-0605 DBHR complaint process.** Any individual or the individual's representative may use the division of behavioral health and recovery's (DBHR's) complaint process to express concern or dissatisfaction with some aspect of a behavioral health service. See WAC 388-877-0200 for terms and definitions used in this section that apply to the complaint process.

(1) The DBHR complaint manager can be contacted at 360-725-3752 or DBHRcomplaintmgr@dshs.wa.gov.

(2) Examples of complaints include, but are not limited to:

(a) An issue with a behavioral health service or case management;

(b) A possible violation of a DSHS rule; and

(c) ~~((A belief that))~~ The individual believes their rights have been or are being violated.

(3) DBHR requires the following information for each complaint:

(a) The name of the agency or agency provider involved;

(b) The name of the person making the complaint and the person's contact information;

(c) The name of the individual receiving the service and the individual's contact information;

(d) A description of the complaint issue and the date or timeframe it occurred; and

(e) The final finding and/or resolution and the date of the decision if the individual previously discussed the concern with the ~~((RSN))~~ behavioral health organization (BHO), the agency, or agency provider.

(4) If DBHR conducts a complaint investigation in order to resolve a complaint, agency representatives must cooperate to allow DBHR representatives to:

(a) Examine any part of the facility at reasonable times and as needed.

(b) Review and evaluate agency records, including but not limited to:

(i) An individual's clinical record and/or personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by DBHR to determine compliance and to resolve the complaint.

(c) Conduct individual interviews with staff members and/or individuals receiving services.

(5) The agency must immediately correct compliance deficiencies found as a result of an investigation, or as agreed to by a plan of correction approved by DBHR.

(6) An agency or agency provider must not retaliate against any:

(a) Individual for making a complaint with DBHR or being interviewed by DBHR about a complaint. Examples of retaliation include, but are not limited to:

(i) Restricting access to a treatment program;

(ii) Restricting access to the individual involved with the complaint issue;

(iii) Increasing or threatening to increase charges for services;

(iv) Decreasing or threatening to decrease services, rights, or privileges;

(v) Taking any action that coerces or compels the individual to leave the facility or to stop receiving services; and

(vi) Abusing or harassing, or threatening to abuse or harass the individual.

(b) Person representing the individual.

(c) A witness involved in the complaint issue.

(d) An employee of the agency.

(7) Under WAC 388-877-0365, DBHR may assess an agency a one thousand dollar fee for the cost of a complaint investigation. Reasons for assessing the fee include, but are not limited to:

(a) Any allegation within the complaint being substantiated; or

(b) DBHR's finding that the individual, an individual's representative, a witness, and/or employee of the agency experienced an act of retaliation by the agency as described in subsection (6) of this section during or after a complaint investigation.

(8) DBHR reviews all complaints and behavioral health agency actions to assure compliance with this section.

(9) At any time during the complaint process, an individual applying for, eligible for, or receiving mental health services, or the individual's representative, may access any of the following through the ~~((regional support network's (RSN's)))~~ behavioral health organization's (BHO) grievance system, subject to the applicable rules:

(a) The grievance process, subject to the rules in WAC ~~((388-877A-0420))~~ 388-877-0660.

(b) The appeal process, subject to the rules in WAC ~~((388-877A-0440))~~ 388-877-0670.

(c) An administrative hearing, subject to the rules in WAC ~~((388-877A-0460))~~ 388-877-0675.

(d) Ombuds services, as described in WAC ~~((388-877A-0400(3)))~~ 388-877-0655(3) and ~~((388-865-0250))~~ 388-865-0262.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

**WAC 388-877-0610 Clinical—Initial assessment.**

Each agency licensed by the department to provide any behavioral health service is responsible for an individual's initial assessment.

(1) The initial assessment must be:

(a) Conducted in person; and

(b) Completed by a professional appropriately credentialed or qualified to provide ~~((chemical dependency))~~ substance use disorder, mental health, and/or problem and pathological gambling services as determined by state law.

(2) The initial assessment must include and document the individual's:

(a) Identifying information;

(b) Presenting issues;

(c) Medical provider's name or medical providers' names;

(d) Medical concerns;

- (e) Medications currently taken;
- (f) Brief mental health history;
- (g) Brief substance use history, including tobacco;
- (h) Brief problem and pathological gambling history;
- (i) The identification of any risk of harm to self and others, including suicide and/or homicide;
- (j) A referral for provision of emergency/crisis services must be made if indicated in the risk assessment;
- (k) Information that a person is or is not court-ordered to treatment or under the supervision of the department of corrections; and
- (l) Treatment recommendations or recommendations for additional program-specific assessment.

**AMENDATORY SECTION** (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877-0620 Clinical—Individual service plan.** Each agency licensed by the department to provide any behavioral health service is responsible for an individual's service plan as follows:

- (1) The individual service plan must:
  - (a) Be completed or approved by a professional appropriately credentialed or qualified to provide mental health, (~~chemical dependency~~) substance use disorder, and/or problem and pathological gambling services.
  - (b) Address age, gender, cultural, strengths and/or disability issues identified by the individual or, if applicable, the individual's parent(s) or legal representative.
  - (c) Be in a terminology that is understandable to the individual and the individual's family.
  - (d) Document that the plan was mutually agreed upon and a copy was provided to the individual.
  - (e) Demonstrate the individual's participation in the development of the plan.
  - (f) Document participation of family or significant others, if participation is requested by the individual and is clinically appropriate.
  - (g) Be strength-based.
  - (h) Contain measurable goals or objectives, or both.
  - (i) Be updated to address applicable changes in identified needs and achievement of goals and objectives.
- (2) If the individual service plan includes assignment of work to an individual, the assignment must have therapeutic value and meet all the requirements in (1) of this section.
- (3) When required by law, the agency must notify the required authority of a violation of a court order or nonparticipation in treatment, or both.

**AMENDATORY SECTION** (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877-0640 Clinical—Record content.** Each agency licensed by the department to provide any behavioral health service is responsible for an individual's clinical record content. The clinical record must include:

- (1) Documentation the individual received a copy of counselor disclosure requirements as required for the counselor's credential.
- (2) Demographic information.
- (3) An initial assessment.

(4) Documentation of the individual's response when asked if:

(a) The individual is under department of corrections (DOC) supervision.

(b) The individual is under civil or criminal court ordered mental health or (~~chemical dependency~~) substance use disorder treatment.

(c) There is a court order exempting the individual participant from reporting requirements. A copy of the court order must be included in the record if the participant claims exemption from reporting requirements.

(5) Documentation that the agency met all the following requirements when an individual informs the agency that the individual is under supervision by DOC due to a less restrictive alternative or DOC order for treatment:

(a) The agency notified DOC orally or in writing. The agency must confirm an oral notification with a written notice by electronic mail or fax.

(b) The agency obtained a copy of the court order from the individual and placed it in the record when the individual has been given relief from disclosure by the committing court.

(c) When appropriate, the agency requested an evaluation by a designated mental health professional when the provider becomes aware of a violation of the court-ordered treatment and the violation concerns public safety.

(6) The initial and any subsequent individual service plan that include:

(a) All revisions to the plan, consistent with the service(s) the individual receives; and

(b) Documentation of objective progress towards established goals as outlined in the plan.

(7) Documentation the individual was informed of applicable federal and state confidentiality requirements.

(8) Documentation of confidential information that has been released without the consent of the individual under:

(a) RCW 70.02.050;

(b) The Health Insurance Portability and Accountability Act (HIPAA); and

(c) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services.

(9) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred.

(10) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative.

(11) If treatment is court-ordered, a copy of the order.

(12) Documentation of coordination of care, as needed.

(13) Documentation of all service encounters.

(14) Medication records, if applicable.

(15) Laboratory reports, if applicable.

(16) Properly completed authorizations for release of information, if applicable.

(17) Copies of applicable correspondence.

(18) Discharge information.

(19) A copy of any report required by entities such as the courts, department of corrections, department of licensing, and the department of social and health services, and the date the report was submitted.

NEW SECTION

**WAC 388-877-0654 How individuals can express concern about their rights, services, or treatment.** (1) An individual applying for, eligible for, or receiving mental health services or substance use disorder services, or both, authorized by a behavioral health organization (BHO), the individual's representative, or the individual's legal guardian, may access the BHO's grievance system to express concern about their rights, services, or treatment. The grievance system includes:

- (a) A grievance process;
- (b) An appeal process; and
- (c) Access to administrative hearings.

(2) Before requesting an administrative hearing, the individual must exhaust:

(a) The grievance process, subject to WAC 388-877-0660; or

(b) The appeal process, subject to WAC 388-877-0670.

(3) Individuals may also use the free and confidential ombuds services through the BHO that contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and agency services providers and are offered to individuals at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

(4) See WAC 388-865-0262 for more information on ombuds services through the behavioral health ombuds office.

NEW SECTION

**WAC 388-877-0655 Grievance system—Definitions.** The terms and definitions in this section and WAC 388-877-0200 apply to the grievance system rules.

(1) "Action" means, in the case of a behavioral health organization (BHO):

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state; or

(e) The failure of a BHO or its contracted behavioral health agency to act within the grievance system timeframes as provided in WAC 388-877-0660 through 388-877-0675.

(2) "Administrative hearing" means a proceeding before an administrative law judge that gives an individual an opportunity to be heard in disputes about DSHS programs and services.

(3) "Appeal" means an oral or written request by an individual, or with the individual's written permission, the individual's representative, for the behavioral health organization (BHO) to review an "action," as defined in this section. See also "expedited appeal."

(4) "Appeal process" is one of the processes included in the grievance system that allows an individual to appeal an

action made by the behavioral health organization (BHO) and communicated on a "notice of action."

(5) "Expedited appeal process" allows an individual, in certain circumstances, to file an appeal that will be reviewed by the behavioral health organization (BHO) more quickly than a standard appeal.

(6) "Grievance" means an expression of dissatisfaction about any matter other than an "action."

(7) "Grievance process" is one of the processes included in the grievance system that allows an individual to express concern or dissatisfaction about a behavioral health service.

(8) "Grievance system" means the processes through a behavioral health organization (BHO) in which an individual applying for, eligible for, or receiving behavioral health services may express dissatisfaction about services. The grievance system must be established by the BHO, must meet the requirements of 42 C.F.R. Sec. 438, Subpart F, and include:

(a) A grievance process;

(b) An appeal process; and

(c) Access to the department's administrative hearing process.

(9) "Individual" means a person who applies for, is eligible for, or receives behavioral health organization (BHO)-authorized behavioral health services from an agency licensed by the department as a behavioral health agency. For the purposes of accessing the grievance system, the definition of individual also includes the following if another person is acting on the individual's behalf:

(a) In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;

(b) The individual's legal guardian; or

(c) The individual's representative if the individual gives written permission.

(10) "Notice of action" is a written notice a behavioral health organization (BHO) provides to an individual to communicate an "action."

(11) "Regional support network" or "RSN" no longer exists as of March 31, 2016. See WAC 388-865-0238, "Behavioral health organization."

NEW SECTION

**WAC 388-877-0660 Grievance process.** (1) The grievance process is used by an individual or the individual's representative to express dissatisfaction in person, orally, or in writing about any matter other than an "action," as defined in WAC 388-877-0655, to:

(a) The behavioral health agency providing the behavioral health services; or

(b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If an individual receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the individual's grievances or expressions of dissatisfaction.

(3) The ombuds serving the behavioral health agency or BHO may assist the individual in resolving the grievance at the lowest possible level.

(4) Grievances are subject to the rules in this section, WAC 388-877-0650, 388-877-0655, and 388-877-0665 through 388-877-0680. An individual may choose to file a grievance with the behavioral health agency that provides the behavioral health services or with the BHO, subject to the following:

(a) **Filing a grievance with a behavioral health agency.** If the individual first files a grievance with the behavioral health agency and the individual is not satisfied with the agency's written decision on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection (6) of this section, the individual may then choose to file the grievance with the BHO. If the individual is not satisfied with the BHO's written decision on the grievance, or if the individual does not receive a copy of the decision from the BHO within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it.

(b) **Filing a grievance with a BHO.** If the individual first files a grievance with the BHO (and not the agency), and the individual either is not satisfied with the BHO's written decision on the grievance, or does not receive a copy of the decision within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it. Once an individual gets a decision on a grievance from a BHO, the individual cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance.

(5) An individual may also request an administrative hearing if a written notice regarding the grievance was not received within the timeframes established in subsection (6) of this section.

(6) When an individual files a grievance, the behavioral health agency or BHO receiving the grievance must:

- (a) Acknowledge the receipt of the grievance in writing within five business days;
- (b) Investigate the grievance;
- (c) Apply the rules in subsection (7) of this section; and
- (d) Send the individual who filed the grievance a written notice describing the decision within ninety calendar days from the date the grievance was filed.

(7) The behavioral health agency or BHO receiving the grievance must ensure all of the following:

- (a) Other people, if the individual chooses, are allowed to participate in the grievance process.
- (b) The individual's right to have currently authorized behavioral health services continued pending resolution of the grievance and, if applicable, through subsequent steps of the grievance system.

(c) That a grievance is resolved even if the individual is no longer receiving behavioral health services.

(d) That the persons who make decisions on a grievance:

- (i) Were not involved in any previous level of review or decision making; and

(ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise if the grievance involves clinical issues.

(e) That the individual and, if applicable, the individual's representative, receive a written notice containing the decision within ninety days from the date a grievance is received by the agency or BHO. This timeframe can be extended up to an additional fourteen days:

(i) If requested by the individual or the individual's representative; or

(ii) By the agency or BHO when additional information is needed and the BHO can demonstrate that it needs additional information and that the added time is in the individual's interest.

(f) That the written notice includes:

- (i) The decision on the grievance;
- (ii) The reason for the decision; and
- (iii) The right to request an administrative hearing and the required timeframe to request the hearing.

(g) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are maintained and:

(i) Kept for six years after the completion of the grievance process;

(ii) Made available to the department upon request as part of the state quality strategy;

(iii) Kept in confidential files separate from the individual's clinical record; and

(iv) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the grievance.

#### NEW SECTION

**WAC 388-877-0665 Notice of action.** (1) The behavioral health organization's (BHO's) notice of action provided to an individual must be in writing, be in the individual's primary language, be easily understood and, at a minimum, explain:

(a) The action the BHO or its contractor (behavioral health agency) has taken or intends to take;

(b) The reason for the action and a citation of the rule(s) being implemented;

(c) The individual's right to file an appeal with the BHO and the required timeframes if the individual does not agree with the decision or action;

(d) The circumstances under which an expedited resolution is available and how to request it; and

(e) The individual's right to receive behavioral health services while an appeal is pending, how to make the request, and that the individual may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision or action.

(2) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required timeframes, or fails to provide services in a timely manner or to act within the grievance system timeframes, as defined in rule, it is considered a denial. In these cases, the BHO sends a formal notice of action, which

includes the individual's right to request an administrative hearing.

#### NEW SECTION

**WAC 388-877-0670 Appeal process.** (1) The appeal process is used by an individual to ask the behavioral health organization (BHO) to review an action that the BHO has communicated on a written notice of action (see WAC 388-877-0665). An individual's representative may appeal an action with the individual's written consent. If a written notice of action was not received, an appeal may still be filed.

(2) The individual requesting review of an action must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) The appeal process can be:

(a) Standard as described in subsection (6) of this section; or

(b) Expedited if the criteria in subsection (7) of this section are met.

(4) The appeal process must:

(a) Provide an individual a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The BHO must inform the individual of the limited time available.

(b) Provide the individual opportunity, before and during the appeal process, to examine the individual's clinical record, including medical records and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

(i) The individual, the individual's representative, or both; or

(ii) The legal representative of a deceased individual's estate.

(5) The BHO must ensure that the persons who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making; and

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service involved in the appeal.

(6) **Standard appeal process.** The standard appeal process includes the following:

(a) **Standard appeals for actions communicated on a notice of action—continued services not requested.** An individual who disagrees with a decision or action communicated on a notice of action may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. All of the following apply:

(i) The individual must file the appeal within ninety calendar days from the date on the notice of action.

(ii) The BHO must confirm receipt of the appeal in writing within five business days.

(iii) The BHO must send the individual a written notice of the resolution within forty-five calendar days of receiving the appeal. This timeframe may be extended up to fourteen additional days if the individual requests an extension or the BHO can demonstrate that it needs additional information

and that the added time is in the individual's interest. The written notice of the resolution must include:

(A) The BHO's decision;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision. The hearing must be requested within ninety calendar days from the date on the notice of the resolution.

(b) **Standard appeals for termination, suspension, or reduction of previously authorized services—continued services requested.** An individual receiving a notice of action from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. All of the following apply:

(i) The individual must:

(A) File the appeal with the BHO on or before the later of the following:

(I) Within ten calendar days of the date on the notice of action; or

(II) The intended effective date of the BHO's proposed action.

(B) Request continuation of services.

(ii) The BHO must:

(A) Confirm receipt of the appeal and the request for continued services with the individual orally or in writing within five business days;

(B) Send a notice in writing that follows up on any oral confirmation made; and

(C) Include in the notice that if the appeal decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

(iii) The BHO's written notice of the resolution must contain:

(A) The BHO's decision on the appeal;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision and include the following timeframes:

(I) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services be continued pending the outcome of the hearing.

(II) Within ninety calendar days from the date on the notice of the resolution if the individual is not asking for continued services.

(7) **Expedited appeal process.** If an individual or the individual's behavioral health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the individual's life or health and ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal can be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the timeframe for standard resolutions under subsection (6) of this section, and make reasonable efforts to give the individual prompt oral

notice of the denial and follow up within two calendar days with a written notice.

(a) Both of the following apply to expedited appeal requests:

(i) The action taken on the notice of action is for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services; and

(ii) The appeal must be filed with the BHO, either orally or in writing, within:

(A) Ten calendar days of the BHO's mailing the written notice of action that communicated the action, or the intended effective date of the BHO's proposed action, if the individual is requesting continued benefits; or

(B) Twenty calendar days from the date on the BHO's written notice of action that communicated the action if the individual is not requesting continued benefits.

(b) The BHO must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the individual a written notice of the resolution within three business days of receiving the request for an expedited appeal.

(c) The BHO may extend the timeframes up to fourteen additional days if the individual requests an extension or the BHO can demonstrate it needs additional information and that the added time is in the individual's interest.

**(8) Duration of continued services during the appeal process.** When an individual has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO ensures the services are continued until one of the following occurs:

(a) The individual withdraws the appeal.

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the individual and the individual does not request an administrative hearing within ten days from the date the BHO mails the notice. (See WAC 388-877-0675, Administrative Hearings, for rules on duration of continued services during the administrative hearing process.)

(c) The time period of a previously authorized service has expired.

(d) A behavioral health treatment service limit of a previously authorized service has been fulfilled.

**(9) Recovery of the cost of behavioral health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the individual, the BHO may recover the cost of the behavioral health services furnished to the individual while the appeal was pending to the extent that they were provided solely because of the requirements of this section.

(10) The BHO must maintain full records of all appeals and ensure an individual's records are:

(a) Kept for six years after the completion of the appeal process;

(b) Made available to the department upon request as part of the state quality strategy;

(c) Kept in confidential files separate from the individual's clinical record; and

(d) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the appeal.

#### NEW SECTION

**WAC 388-877-0675 Administrative hearings.** (1) An administrative hearing (also known as "fair hearing") is a proceeding before an administrative law judge (ALJ) that gives an individual, as defined in WAC 388-877-0200, an opportunity to be heard in disputes about a behavioral health program or service.

(2) An individual must first exhaust the grievance process described in WAC 388-877-0660, or the appeal process described in WAC 388-877-0670 before requesting an administrative hearing.

(3) An individual requesting an administrative hearing must do so within one of the following timeframes:

(a) If continued services are not requested, a hearing must be requested within ninety calendar days from:

(i) The date on the written notice from the agency or behavioral health organization (BHO) at the end of the grievance process; or

(ii) The date on the written notice of the resolution received from the BHO at the end of the appeal process.

(b) If continued services are requested pending the outcome of the administrative hearing, all of the following apply:

(i) The decision on a notice of action must be for termination, suspension, or reduction of the individual's behavioral health services and the individual appealed this decision;

(ii) The individual received a written notification of the resolution of the appeal from the BHO that upholds the decision on the notice of action; and

(iii) The individual requests an administrative hearing and continued behavioral health services within ten calendar days of the date on the written notification of the resolution.

(4) If an individual requests an expedited administrative hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution. Subsection (3)(b) of this section applies if continued behavioral health services are requested.

(5) If a written notice was not received under subsection (3) or (4) of this section, the individual may still request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO continues the individual's behavioral health treatment services during the administrative hearing process until one of the following occurs:

(a) The individual withdraws the hearing request.

(b) The administrative law judge issues a hearing decision adverse to the individual.

(c) The period covered by the original authorization of mental health services has expired.

(7) If the administrative hearing decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services furnished to the individual while the hearing was pending to the extent that they were provided solely because of the requirements of this section.

(8) For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 WAC, chapter 10-08 WAC, or other law. Chapter 34.05 RCW and chapter 388-02 WAC govern cases where an individual has an issue involving a service that is not funded by medicaid. Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

#### NEW SECTION

**WAC 388-877-0680 Individual rights specific to medicaid recipients.** (1) Medicaid recipients have general individual rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(a) General rights that apply to all individuals, regardless of whether an individual is or is not a medicaid recipient, include:

- (i) All applicable statutory and constitutional rights;
- (ii) The participant rights provided under WAC 388-877-0600; and
- (iii) Applicable necessary supplemental accommodation services in chapter 388-472 WAC.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

- (i) Receive medically necessary behavioral health services, consistent with access to care standards adopted by the department in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA) division of behavioral health and recovery (DBHR) website.
- (ii) Receive the name, address, telephone number, and any languages offered other than English, of behavioral health providers in your BHO.
- (iii) Receive information about the structure and operation of the BHO.
- (iv) Receive emergency or urgent care or crisis services.
- (v) Receive post-stabilization services after you receive emergency or urgent care or crisis services that result in admission to a hospital.
- (vi) Receive age and culturally appropriate services.
- (vii) Be provided a certified interpreter and translated material at no cost to you.
- (viii) Receive information you request and help in the language or format of your choice.
- (ix) Have available treatment options and alternatives explained to you.
- (x) Refuse any proposed treatment.
- (xi) Receive care that does not discriminate against you.
- (xii) Be free of any sexual exploitation or harassment.
- (xiii) Receive an explanation of all medications prescribed and possible side effects.
- (xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a behavioral health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change behavioral health care providers at any time for any reason.

(xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Medically necessary services in accordance with the early periodic screen, diagnosis and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint used as a means of coercion, discipline, convenience or retaliation.

(xxviii) A second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. § 438.206(3).

(xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.

(xxx) File a grievance with the BHO if you are not satisfied with a service.

(xxxii) Receive a notice of action so that you may appeal any decision by the BHO that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service, or that denies payment for a service, in whole or in part.

(xxxii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state, or act within the timeframes provided in 42 CFR § 438.408(b).

(xxxiii) Request an administrative (fair) hearing if your grievance or appeal is not resolved in your favor.

(xxxiv) Services by the behavioral health ombuds office to help you in filing a grievance or appeal, or to request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) and certified by DBHR to provide mental health and/or substance use disorder



der services must ensure the medicaid rights described in subsection (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877A-0200 Crisis mental health services—**

**General.** The rules in WAC 388-877A-0200 through 377A-0280 apply to behavioral health agencies that provide crisis mental health services. The definitions in WAC 388-877-0200 also apply to crisis mental health services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Crisis mental health services are intended to stabilize an individual in crisis to:

(a) Prevent further deterioration;

(b) Provide immediate treatment and intervention in a location best suited to meet the needs of the individual; and

(c) Provide treatment services in the least restrictive environment available.

(2) Crisis mental health services include:

(a) Crisis telephone support (see WAC 388-877A-0230);

(b) Crisis outreach services (see WAC 388-877A-0240);

(c) Crisis stabilization services (see WAC 388-877A-0260);

(d) Crisis peer support services (see WAC 388-877A-0270); and

(e) Emergency involuntary detention services (see WAC 388-877A-0280).

(3) An agency providing any crisis mental health service to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Be certified by the department to provide crisis mental health services;

(c) Meet the applicable behavioral health agency licensure, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Program-specific requirements in WAC 388-877A-0230 through WAC 388-877A-0280 for each crisis mental health service provided; and

(iii) Department of Corrections Access to Confidential Mental Health Information requirements in WAC 388-865-600 through 388-865-0640.

(4) An agency providing crisis mental health services only is not required to meet the initial assessment, individual service plan, and clinical record requirements in WAC 388-877-0610, 388-877-0620, and 388-877-0640.

(5) An agency must ensure crisis mental health services:

(a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;

(b) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis; and

(c) Are provided in a setting that provides for the safety of the individual and agency staff members.

(6) An agency providing involuntary crisis mental health services must hold a contract with the county in which it is located, or the appropriate ((~~regional support network (RSN)~~)) behavioral health organization (BHO).

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877A-0270 Crisis mental health services—**

**Peer support services.** Crisis peer support services assist an individual in exercising control over their own life and recovery process through the practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

(1) Peer support services are intended to augment and not supplant other necessary mental health services.

(2) An agency providing crisis peer support services must:

(a) Ensure services are provided by a (~~(peer counselor, properly credentialed under WAC 388-865-0107))~~ person recognized by the division of behavioral health and recovery (DBHR) as a peer counselor, as defined in WAC 388-877-0200, under the supervision of a mental health professional.

(b) Ensure services provided by a peer counselor are within the scope of the peer counselor's training and credential.

(c) Ensure that a peer counselor responding to a crisis is accompanied by a mental health professional.

(d) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication.

(e) Ensure peer counselors receive annual training that is relevant to their unique working environment.

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877A-0340 Recovery support services requiring program-specific certification—Peer support**

**services.** Peer support services are a recovery support service that requires program-specific certification by the department's division of behavioral health and recovery.

(1) Peer support services provide a wide range of activities to assist an individual in exercising control over their own life and recovery process through:

(a) Developing self-advocacy and natural supports;

(b) Maintenance of community living skills;

(c) Promoting socialization; and

(d) The practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

(2) An agency providing peer support services must ensure peer support counselors(~~(s)~~):

(a) (~~Meet the requirements of WAC 388-865-0107~~) Are recognized by the division of behavioral health and recovery (DBHR) as a "peer counselor" as defined in WAC 388-877-0200.

(b) Provide peer support services:

(i) Under the supervision of a mental health professional; and

(ii) Within the scope of the peer counselor's training and department of health credential.

(c) Receive annual training relevant to their unique working environment.

(3) An agency providing peer support services must document the frequency, duration, and expected outcome of all peer support services in the individual service plan.

~~((CHEMICAL DEPENDENCY))~~  
**SUBSTANCE USE DISORDER SERVICES**

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0100 (~~((Chemical dependency))~~) Substance use disorder detoxification services—General.** The rules in WAC 388-877B-0100 through 388-877B-0130 apply to behavioral health agencies that provide detoxification services. The definitions in WAC 388-877-0200 also apply to (~~chemical dependency~~) substance use disorder detoxification services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) (~~Chemical dependency~~) Substance use disorder detoxification services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, in accordance with patient placement criteria (PPC).

(2) A behavioral health agency certified for detoxification services may choose to provide optional (~~chemical dependency~~) substance use disorder youth detoxification services (see WAC 388-877B-0130). Optional youth detoxification services require additional program-specific certification by the department's division of behavioral health and recovery (DBHR).

(3) An agency providing detoxification services to an individual must:

(a) Be a facility licensed by department of health under one of the following department of health chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and (~~chemical dependency~~) substance use disorder hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC);

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0100 through 388-877B-0130.

(4) An agency must:

(a) Use PPC for admission, continued services, and discharge planning and decisions.

(b) Provide counseling to each individual that addresses the individual's:

(i) (~~Chemical dependency~~) Substance use disorder and motivation;

(ii) Continuing care needs and need for referral to other services.

(c) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services.

(d) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility.

(e) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.

(f) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877B-0110 (~~((Chemical dependency))~~) Substance use disorder detoxification services—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing (~~chemical dependency~~) substance use disorder detoxification services must ensure:

(1) All (~~chemical dependency~~) substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.

(2) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(3) Each staff member providing detoxification services to an individual, with the exception of licensed staff members and CDPs, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

- (a) Substance use disorders;
- (b) Infectious diseases, to include hepatitis and tuberculosis (TB); and
- (c) Detoxification screening, admission, and signs of trauma.

(4) Each CDPT has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(5) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel file.

(6) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens, and TB. The training must be documented in the personnel file.

**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 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0120 (~~(Chemical dependency)~~) Substance use disorder detoxification services—Clinical record content and documentation requirements.** In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing (~~(chemical dependency)~~) substance use disorder detoxification services must maintain an individual's clinical record that contains:

- (1) Documentation of a (~~(chemical dependency)~~) substance use disorder screening before admission.
- (2) A voluntary consent to treatment form, or any release forms, signed and dated by the individual, or the individual's parent or legal guardian, except as authorized by law for protective custody and involuntary treatment.
- (3) Documentation that the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R., Part 2.
- (4) Documentation that the individual received the HIV/AIDS brief risk intervention.
- (5) Documentation of progress notes in a timely manner from each shift and as events occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the shift or event, and the name of the staff member who provided it.
- (6) Documentation that a discharge summary, including a continuing care recommendation and a description of the individual's physical condition, was completed within seven working days of discharge.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0130 (~~(Chemical dependency)~~) Substance use disorder detoxification services requiring program-specific certification—Youth detoxification services.** Youth detoxification services are (~~(chemical dependency treatment)~~) substance use disorder services provided to an individual seventeen years of age or younger. Youth detoxification services are optional detoxification services that require program-specific certification by the department's division of behavioral health and recovery. An agency providing youth detoxification services must:

- (1) Admit youth only with the written permission of the youth's parent or, if applicable, the youth's legal guardian. If a youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.
- (2) Assess the individual's need for referral to the department's child welfare services.
- (3) Ensure the following for individuals who share a room:
  - (a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older.
  - (b) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.
- (4) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.
- (5) (~~(Must)~~) Notify the parent or legal guardian within two hours of any change in the status of the youth and document all notification and attempts of notification in the clinical record.
- (6) Discharge the youth to the care of the parent or legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.
- (7) Ensure at least one adult staff member of each gender is present or available by phone at all times if co-educational treatment services are provided.
- (8) Ensure a staff member who demonstrates knowledge of adolescent development and addiction is available at the facility or available by phone.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877B-0200 (~~(Chemical dependency)~~) Substance use disorder residential treatment services—General.** The rules in WAC 388-877B-0200 through 388-877B-0280 apply to behavioral health agencies that provide (~~(chemical dependency)~~) substance use disorder residential treatment services. The definitions in WAC 388-877-0200 also apply to (~~(chemical dependency)~~) substance use disorder residential treatment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, chapter 388-877C WAC no later than September 1, 2013.

- (1) Residential treatment services provide (~~(chemical dependency)~~) substance use disorder treatment for an indi-

vidual and include room and board in a facility with twenty-four hours a day supervision.

(2) Residential treatment services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Intensive inpatient services (see WAC 388-877B-0250);

(b) Recovery house treatment services (see WAC 388-877B-0260);

(c) Long-term residential treatment services (see WAC 388-877B-0270); and

(d) Youth residential services (see WAC 388-877B-0280).

(3) An agency providing residential treatment services must:

(a) Be a facility licensed by department of health (DOH) and meet the criteria under one of the following DOH chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and ~~((chemical dependency))~~ substance use disorder hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC);

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0200 through 388-877B-0280.

(4) An agency must:

(a) Use patient placement criteria (PPC) for admission, continued services, and discharge planning and decisions.

(b) Provide education to each individual admitted to the treatment facility on:

(i) Alcohol, other drugs, and/or ~~((chemical dependency))~~ substance use disorder;

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(c) Provide education or information to each individual admitted on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine addiction; and

(iii) The impact of ~~((chemical))~~ substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy.

(d) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services.

(e) Screen for the prevention and control of tuberculosis.

(f) Limit the size of group counseling sessions to no more than twelve individuals.

(g) Have written procedures for:

(i) Urinalysis and drug testing, including laboratory testing; and

(ii) How agency staff members respond to medical and psychiatric emergencies.

(5) An agency that provides services to a pregnant woman must:

(a) Have a written procedure to address specific issues regarding the woman's pregnancy and prenatal care needs; and

(b) Provide referral information to applicable resources.

(6) An agency that provides an assessment to an individual under RCW 46.61.5056 must also meet the requirements for driving under the influence (DUI) assessment providers in WAC 388-877B-0550.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0210 ~~((Chemical dependency))~~ Substance use disorder residential treatment services—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing ~~((chemical dependency))~~ substance use disorder residential treatment services must ensure all ~~((chemical dependency))~~ substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.

The agency must ensure:

(1) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records maintained by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(2) Each CDPT has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(3) All staff members are provided annual training on the prevention and control of communicable disease, blood borne pathogens and tuberculosis (TB) and the training is documented in each personnel file.

(4) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screening or testing in their personnel file.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877B-0220 ~~((Chemical dependency))~~ Substance use disorder residential treatment services—Clinical record content and documentation requirements.** In addition to the general clinical record content requirements in

WAC 388-877-0640, an agency providing (~~chemical dependency~~) substance use disorder residential treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of the federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction.

(c) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(f) Documentation that a staff member(s) met with each individual at the time of discharge, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan.

(ii) Assist the individual in making contact with necessary agencies or services.

(iii) Provide and document the individual was provided with a copy of the plan.

(g) Documentation that the discharge summary was completed within seven working days of the individual's discharge from the agency, which includes the date of discharge and a summary of the individual's progress toward each individual service plan goal.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs.

(b) Be initiated with at least one goal identified by the individual during the initial assessment or at the first service session following the assessment.

(c) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) Patient bio-psychosocial problems;

(iii) Treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(d) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(e) Document that the plan was updated to reflect any changes in the individual's treatment needs, status, and progress towards goals, or as requested by the individual, at least weekly.

(f) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0230 (~~Chemical dependency~~) Substance use disorder residential treatment services—Additional assessment standards.** An individual must have a (~~chemical dependency~~) substance use disorder assessment before receiving (~~chemical dependency~~) substance use disorder residential treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(a) A history of the individual's involvement with alcohol and other drugs, including:

(i) The type of substances used, including tobacco;

(ii) The route of administration; and

(iii) The amount, frequency, and duration of use.

(b) A history of alcohol or other drug treatment or education;

(c) The individual's self-assessment of use of alcohol and other drugs;

(d) A history of relapse;

(e) A history of self-harm;

(f) A history of legal involvement; and

(g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using:

(a) Diagnostic and Statistical Manual (DMS IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at [www.DSM5.org](http://www.DSM5.org).

(3) A placement decision, using patient placement criteria (PPC) dimensions when the assessment indicates the individual is in need of services.

(4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(5) The additional requirements for DUI assessment providers in WAC 388-877B-0550 if the agency is providing services to an individual under RCW 46.61.5056.

(6) Documented attempts to obtain the following information when assessing youth:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0240 ((~~Chemical dependency~~)) Substance use disorder residential treatment services—Non-compliance reporting requirements.** An agency providing ((~~chemical dependency~~)) substance use disorder residential treatment services must report noncompliance in all levels of care, for an individual reentered into ((~~chemical dependency~~)) substance use disorder treatment by a court of law or other appropriate jurisdictions. An agency that fails to report non-compliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4).

An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure under the requirements of 42 C.F.R. Part 2, Sections 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revoking the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individ-

ual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(c) An individual leaving the program against program advice.

(d) An individual discharged for rule violation.

(4) Reporting and recommending action for ((~~nonemergency~~)) nonemergency noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on:

(a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups.

(b) An individual's failure to make acceptable progress in any part of the treatment plan.

(5) Transmitting noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports.

(6) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0250 ((~~Chemical dependency~~)) Substance use disorder residential treatment services requiring program-specific certification—Intensive inpatient services.** Intensive inpatient services are ((~~chemical dependency~~)) substance use disorder residential treatment services that provide a concentrated program of individual and group counseling, education, and activities for a detoxified individual and the individual's family to address overall functioning and to demonstrate aspects of recovery lifestyle. Intensive inpatient services require program-specific certification by the department's division of behavioral health and recovery. An agency providing intensive inpatient services must:

(1) Complete the individual service plan within five days of admission.

(2) Conduct and document at least weekly, one face-to-face individual ((~~chemical dependency~~)) substance use disorder counseling session with the individual.

(3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(4) Document at least weekly, an individual service plan review which determines continued stay needs and progress towards goals.

(5) Provide a minimum of twenty hours of treatment services each week to each individual. At least ten hours of these services must be ((~~chemical dependency~~)) substance use disorder counseling. The agency may provide an individual up to ten hours of education each week to meet the minimum requirements.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0260 (~~Chemical dependency~~) Substance use disorder residential treatment services requiring program-specific certification—Recovery house.** Recovery house services are (~~chemical dependency~~) substance use disorder residential treatment services that provide a program of care and treatment with social, vocational, and recreational activities to aid in individual adjustment to abstinence and to aid in job training, employment, or participating in other types of community services. Recovery house services require program-specific certification by the department's division of behavioral health and recovery.

An agency providing recovery house services must:

- (1) Provide an individual a minimum of five hours of treatment each week consisting of individual or group counseling and education regarding drug-free and sober living, and general re-entry living skills.
- (2) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur. Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.
- (3) Conduct and document an individual service plan review at least monthly.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0270 (~~Chemical dependency~~) Substance use disorder residential treatment services requiring program-specific certification—Long-term treatment services.** Long-term treatment services are (~~chemical dependency~~) substance use disorder residential treatment services that provide a program for an individual needing consistent structure over a longer period of time to develop and maintain abstinence, develop recovery skills, and to improve overall health. Long-term treatment services require program-specific certification by the department's division of behavioral health and recovery. An agency providing long-term treatment services must:

- (1) Provide an individual a minimum of two hours each week of individual or group counseling.
- (2) Provide an individual a minimum of two hours each week of education regarding alcohol, other drugs, and other addictions.
- (3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the names of the staff member who provided it.
- (4) Provide an individual, during the course of services, with:
  - (a) Education on social and coping skills;
  - (b) Social and recreational activities;
  - (c) Assistance in seeking employment, when appropriate; and

(d) Assistance with re-entry living skills to include seeking and obtaining safe housing.

(5) Conduct and document an individual service plan review at least monthly.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0280 (~~Chemical dependency~~) Substance use disorder residential treatment services requiring program-specific certification—Youth residential services.** Youth residential services are (~~chemical dependency~~) substance use disorder residential treatment services provided to an individual seventeen years of age or younger. Youth residential services require program-specific certification by the department's division of behavioral health and recovery. The agency must:

- (1) Ensure at least one adult staff member of each gender is present or on call at all times if co-educational treatment services are provided.
- (2) Ensure group counseling sessions with nine to twelve youths include a second adult staff member.
- (3) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:
  - (a) Verbal de-escalation;
  - (b) Crisis intervention;
  - (c) Anger management;
  - (d) Suicide assessment and intervention;
  - (e) Conflict management and problem solving skills;
  - (f) Management of assaultive behavior;
  - (g) Proper use of therapeutic physical intervention techniques; and
  - (h) Emergency procedures.
- (4) Provide group meetings to promote personal growth.
- (5) Provide leisure, and other therapy or related activities.
- (6) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.
- (7) Provide each youth one or more hours per day, five days each week, of supervised academic tutoring or instruction by a certified teacher when the youth is unable to attend school for an estimated period of four weeks or more. The agency must:
  - (a) Document the individual's most recent academic placement and achievement level; and
  - (b) Obtain school work from the individual's school, or when applicable, provide school work and assignments consistent with the individual's academic level and functioning.
- (8) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.
- (9) Only admit youth with the written permission of the youth's parent or if applicable, legal guardian. In cases where the youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.
- (10) Assess the individual's need for referral to the department's child welfare services.

(11) Ensure the following for individuals who share a room:

(a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older.

(b) An individual sixteen or seventeen years of age must be evaluated for clinically appropriateness before being placed in a room with an individual eighteen years of age or older.

(12) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(13) ~~((Must))~~ Notify the parent or legal guardian within two hours of any change in the status of the youth and document all notifications and attempts of notifications in the clinical record.

(14) Discharge the youth to the care of the youth's parent or if applicable, legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(15) Ensure each individual's clinical record:

(a) Contains any consent or release forms signed by the youth and their parent or legal guardian.

(b) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate and if possible.

(c) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0300 ~~((Chemical dependency)) Substance use disorder outpatient treatment services—General.~~** The rules in WAC 388-877B-0300 through 388-877B-0370 apply to behavioral health agencies that provide ~~((chemical dependency)) substance use disorder outpatient treatment services.~~ The definitions in WAC 388-877-0200 also apply to ~~((chemical dependency)) substance use disorder outpatient treatment services.~~ The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Outpatient treatment services provide ~~((chemical dependency)) substance use disorder treatment to an individual and include essential education and counseling services in accordance with patient placement criteria (PPC).~~

(2) ~~((Chemical dependency)) Substance use disorder outpatient treatment services require additional program-specific certification by the department's division of behavioral health and recovery and include:~~

(a) Level II intensive outpatient treatment services (see WAC 388-877B-0350); and

(b) Level I outpatient treatment services (see WAC 388-877B-0360).

(3) An agency providing outpatient treatment services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0300 through 388-877B-0370.

(4) An agency must:

(a) Use the PPC for admission, continued services, and discharge planning and decisions.

(b) Have an outline of each lecture and education session included in the service, sufficient in detail for another trained staff member to deliver the session in the absence of the regular instructor.

(c) Maintain a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(d) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.

(5) An agency must:

(a) Provide education to each individual admitted to the treatment facility on:

(i) Alcohol, other drugs, and/or ~~((chemical dependency)) substance use disorders;~~

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(b) Provide education or information to each individual admitted on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine addiction; and

(iii) The impact of ~~((chemical))~~ substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy.

(c) Limit the size of group counseling sessions to no more than twelve individuals.

(d) Have written procedures for:

(i) Urinalysis and drug testing, including laboratory testing; and

(ii) How agency staff members respond to medical and psychiatric emergencies.

(6) An agency that provides services to a pregnant woman must:

(a) Have a written procedure to address specific issues regarding a woman's pregnancy and prenatal care needs; and

(b) Provide referral information to applicable resources.

(7) An agency that provides youth outpatient treatment services must:

(a) Have a written procedure to assess and refer an individual to the department's child welfare services when applicable; and

(b) Ensure that counseling sessions with nine to twelve youths include a second adult staff member.

(8) An agency that provides a DUI assessment to an individual under RCW 46.61.5056 must also be certified by the department under WAC 388-877B-0550.



(9) An agency must ensure that when offering off-site treatment:

(a) The agency maintains a current list of all locations where off-site services are provided, including:

- (i) The name and address (except for an individual receiving in-home services);
- (ii) The primary purpose of the off-site location;
- (iii) The level of services provided; and
- (iv) The date the off-site services began at that location.

(b) The agency maintains a written procedure of:

(i) How confidentiality will be maintained at each off-site location, including how confidential information and individual records will be transported between the certified facility and the off-site location; and

(ii) How services will be offered in a manner that promotes individual and agency staff safety.

(c) The agency is certified to provide the type of service offered at its main location.

(d) ~~((Chemical dependency))~~ Substance use disorder assessment or treatment is not the primary purpose of the location where the individual is served (such as in a school, hospital, or correctional facility).

(e) Services are provided in a private, confidential setting within the off-site location.

(10) Minimum treatment requirements for deferred prosecution are established in chapter 10.05 RCW.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877B-0310 (~~((Chemical dependency))~~ Substance use disorder outpatient treatment services—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing ~~((chemical dependency))~~ substance use disorder outpatient treatment services must ensure:

(1) All ~~((chemical dependency))~~ substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a department of health-credential CDP trainee (CDPT) under the supervision of an approved supervisor.

(2) There is a designated clinical supervisor who:

- (a) Is a CDP;
- (b) Has documented competency in clinical supervision;
- (c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(3) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(4) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel file.

(5) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens and TB, and document the training in the personnel file.

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

**WAC 388-877B-0320 (~~((Chemical dependency))~~ Substance use disorder outpatient treatment services—Clinical record content and documentation.** In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing ~~((chemical dependency))~~ substance use disorder outpatient treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanctions.

(c) Documentation that the initial individual service plan was completed before treatment services are received.

(d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

- (i) The individual's demographic information; and
- (ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(f) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(g) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan~~(-)~~;

(ii) Assist the individual in making contact with necessary agencies or services~~(-)~~; and

(iii) Provide and document the individual was provided with a copy of the plan.

(h) Documentation that a discharge summary was completed within seven days of the individual's discharge, including the date of discharge, a summary of the individual's progress towards each individual service plan goal, legal status, and if applicable, current prescribed medication.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs;

(b) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) Treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter.

(e) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0330 (~~(Chemical dependency)~~) Substance use disorder outpatient treatment services—Additional assessment standards.** An individual must have a (~~(chemical dependency)~~) substance use disorder assessment before receiving outpatient treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document a history of the individual's involvement with alcohol and other drugs, including:

(a) The type of substances used, including tobacco;

(b) The route of administration; and

(c) The amount, frequency, and duration of use.

(2) A history of alcohol or other drug treatment or education.

(3) The individual's self-assessment of use of alcohol and other drugs.

(4) A history of relapse.

(5) A history of self-harm.

(6) A history of legal involvement.

(7) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(8) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using:

(a) Diagnostic and Statistical Manual (DSM IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at [www.DSM5.org](http://www.DSM5.org).

(9) A placement decision, using PPC dimensions when the assessment indicates the individual is in need of services.

(10) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(11) The additional requirements outlined under WAC 388-877B-0550 for driving under the influence (DUI) assessments, for an agency providing services to an individual under RCW 46.61.5056.

(12) Documented attempts to obtain the following information when assessing youth:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems, which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) The ability of parents, or if applicable, a legal guardian to participate in treatment.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0340 (~~(Chemical dependency)~~) Substance use disorder outpatient treatment services—Non-compliance reporting requirements.** An agency providing (~~(chemical dependency)~~) substance use disorder outpatient treatment services must report noncompliance, in all levels of care, for an individual ordered into (~~(chemical dependency)~~) substance use disorder treatment by a court of law or other appropriate jurisdictions. An agency that fails to report non-compliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4). An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure pursuant to 42 C.F.R. Part 2, Sections 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information

of any violation of the terms of the court order for purposes of revocation of the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(c) An individual leaving the program against program advice or an individual discharged for rule violation.

(4) Reporting and recommending action for (~~nonemergency~~) nonemergency, noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on:

(a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups.

(b) An individual's failure to make acceptable progress in any part of the treatment plan.

(5) Transmitting noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports.

(6) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0350 ((~~Chemical dependency~~) Substance use disorder outpatient treatment services requiring program-specific certification—Level II intensive outpatient services.** Level II intensive outpatient services are (~~chemical dependency~~) substance use disorder outpatient treatment services that provide a concentrated program of individual and group counseling, education, and activities, in accordance with patient placement criteria (PPC). Level II intensive outpatient services require program-specific certification by the department's division of behavioral health and recovery. An agency providing Level II intensive outpatient treatment services must:

(1) Develop an initial individual service plan prior to the individual's participation in treatment.

(2) Provide individual (~~chemical dependency~~) substance use disorder counseling sessions with each individual at least once a month or more if clinically indicated.

(3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(4) Conduct and document a review of each individual's service plan in individual counseling sessions, at least once a month, to assess adequacy and attainment of goals.

(5) Refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary.

(6) Ensure that individuals admitted under a deferred prosecution order, under chapter 10.05 RCW:

(a) Receive a minimum of seventy-two hours of treatment services within a maximum of twelve weeks, which consist of the following during the first four weeks of treatment:

(i) At least three sessions each week, with each session occurring on separate days of the week.

(ii) Group sessions must last at least one hour.

(b) Attend self-help groups in addition to the seventy-two hours of treatment services.

(c) Have approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this subsection.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0360 ((~~Chemical dependency~~) Substance use disorder outpatient treatment services requiring program-specific certification—Level I outpatient treatment services.** Level I outpatient treatment services are (~~chemical dependency~~) substance use disorder outpatient treatment services that provide (~~chemical dependency~~) substance use disorder treatment to an individual less than twenty-four-hours-a-day, including individual and group treatment services of varying duration and intensity according to a prescribed plan. Level I outpatient treatment services require program-specific certification by the department's division of behavioral health and recovery.

An agency providing Level I outpatient treatment services must:

(1) Develop an initial individual service plan before the individual's participation in treatment.

(2) Conduct group or individual (~~chemical dependency~~) substance use disorder counseling sessions for each individual, each month, according to an individual service plan.

(3) Conduct and document an individual service plan review for each individual once a month for the first three months and quarterly thereafter or sooner if required by other laws.

(4) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877B-0370 ((~~Chemical dependency~~) Substance use disorder outpatient treatment services—** (~~Chemical dependency~~) Substance use disorder counsel-

**ing subject to RCW 46.61.5056.** (~~Chemical dependency~~) Substance use disorder outpatient treatment services provided to an individual convicted of driving under the influence or physical control under RCW 46.61.5056 are subject to the requirements in this section. An agency providing outpatient treatment services subject to RCW 46.61.5056 must ensure treatment is completed as follows:

(1) Treatment during the first sixty days must include:

(a) Weekly group or individual (~~chemical dependency~~) substance use disorder counseling sessions according to the individual service plan.

(b) One individual (~~chemical dependency~~) substance use disorder counseling session of not less than thirty minutes duration, excluding the time taken for a (~~chemical dependency~~) substance use disorder assessment, for each individual, according to the individual service plan.

(c) Alcohol and drug basic education for each individual.

(d) Participation in self-help groups for an individual with a diagnosis of substance dependence. Participation must be documented in the individual's clinical record.

(e) The balance of the sixty-day time period for individuals who complete intensive inpatient (~~chemical dependency~~) substance use disorder treatment services must include, at a minimum, weekly outpatient counseling sessions according to the individual service plan.

(2) The next one hundred twenty days of treatment includes:

(a) Group or individual (~~chemical dependency~~) substance use disorder counseling sessions every two weeks according to the individual service plan.

(b) One individual (~~chemical dependency~~) substance use disorder counseling session of not less than thirty minutes duration, every sixty days according to the individual service plan.

(c) Referral of each individual for ongoing treatment or support, as necessary, using PPC, upon completion of one hundred eighty days of treatment.

(3) For an individual who is assessed with insufficient evidence of a substance use disorder, a (~~chemical dependency~~) substance use disorder professional (CDP) must refer the individual to alcohol/drug information school.

**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 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0400** (~~Chemical dependency~~) Substance use disorder opiate substitution treatment services—**General.** The rules in WAC 388-877B-0400 through WAC 388-877B-0450 apply to behavioral health agencies that provide (~~chemical dependency~~) substance use disorder opiate substitution treatment services. The definitions in WAC 388-877-0200 also apply to (~~chemical dependency~~) substance use disorder opiate substitution treatment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter

388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Opiate substitution treatment services include the dispensing of an opioid agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opiate addiction. These services include detoxification treatment and maintenance treatment.

(2) An agency must meet all the certification requirements in WAC 388-877B-0405 in order to provide opiate substitution treatment services and:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Program-specific requirements in WAC 388-877B-0400 through 388-877B-0450.

(3) An agency providing opiate substitution treatment services must ensure that the agency's individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid addiction.

(4) An agency must:

(a) Use patient placement criteria (PPC) for admission, continued services, and discharge planning and decisions.

(b) Provide education to each individual admitted, totaling no more than fifty percent of treatment services, on:

(i) Alcohol, other drugs, and (~~chemical dependency~~) substance use disorder;

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(c) Provide education or information to each individual on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine addiction;

(iii) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy; and

(iv) Family planning.

(d) Have written procedures for:

(i) Diversion control that contains specific measures to reduce the possibility of the diversion of controlled substances from legitimate treatment use, and assign specific responsibility to the medical and administrative staff members for carrying out the described diversion control measures and functions.

(ii) Urinalysis and drug testing, to include obtaining:

(A) Specimen samples from each individual, at least eight times within twelve consecutive months.

(B) Random samples, without notice to the individual.

(C) Samples in a therapeutic manner that minimizes falsification.

(D) Observed samples, when clinically appropriate.

(E) Samples handled through proper chain of custody techniques.

(iii) Laboratory testing.

(iv) The response to medical and psychiatric emergencies.

(v) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.

(5) An agency must ensure that an individual is not admitted to opiate substitution treatment detoxification services more than two times in a twelve-month period following admission to services.

(6) An agency providing services to a pregnant woman must have a written procedure to address specific issues regarding their pregnancy and prenatal care needs, and to provide referral information to applicable resources.

(7) An agency providing youth opiate substitution treatment services must:

(a) Have a written procedure to assess and refer the youth to the department's child welfare services, when applicable.

(b) Ensure that a group counseling session with nine to twelve youths include a second staff member.

(c) Ensure that before admission the youth has had two documented attempts at short-term detoxification or drug-free treatment within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term detoxification treatment.

(d) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained.

(8) An agency providing opiate substitution treatment services must ensure:

(a) That notification to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and the department is made within three weeks of any replacement or other change in the status of the program, program sponsor (as defined in 42 C.F.R. Part 8), or medical director.

(b) Treatment is provided to an individual in compliance with 42 C.F.R. Part 8.

(c) The number of individuals receiving treatment services does not exceed three hundred fifty unless authorized by the county, city, or tribal ((legislative)) authority in which the program is located.

(d) The individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid addiction.

(e) The death of an individual enrolled in opiate substitution treatment is reported to the department within one business day.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0405 ((~~Chemical dependency~~)) Substance use disorder opiate substitution treatment services—Certification.** An agency providing opiate substitution treatment services must be certified by the department's

division of behavioral health and recovery to provide these services. An agency applying to provide opiate substitution treatment service must:

(1) Submit to the department documentation that the agency has communicated with the county legislative authority and if applicable, the city legislative authority or tribal ((legislative)) authority, in order to secure a location for the new opiate substitution treatment program that meets county, tribal or city land use ordinances.

(2) Ensure that a community relations plan developed and completed in consultation with the county, city, or tribal ((legislative)) authority or their designee, in order to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located. The plan must include:

(a) Documentation of the strategies used to:

(i) Obtain stakeholder input regarding the proposed location;

(ii) Address any concerns identified by stakeholders; and

(iii) Develop an ongoing community relations plan to address new concerns expressed by stakeholders.

(b) Documentation that transportation systems will provide reasonable opportunities to persons in need of treatment to access the services of the program.

(c) A copy of the application for:

(i) A registration certificate from the Washington state board of pharmacy.

(ii) Licensure to the federal Drug Enforcement Administration.

(iii) Certification to the federal Center for Substance Abuse Treatment (CSAT) of the Substance Abuse and Mental Health Services Administration (SAMHSA).

(iv) Accreditation from a federal CSAT/SAMHSA-approved opioid treatment program accreditation body.

(d) A declaration to limit the number of individual program participants to three hundred fifty as specified in RCW 70.96A.410 (1)(e).

(e) For new applicants who operate opiate substitution treatment programs in another state, copies of all survey reports written by their national accreditation body and state certification, if applicable, within the past six years.

(3) Have concurrent approval to provide opiate substitution treatment by:

(a) The Washington State department of health board of pharmacy;

(b) The Federal CSAT SAMHSA, as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and

(c) The federal Drug Enforcement Administration.

(4) An agency must ensure that opiate substitution treatment is provided to an individual in compliance with the applicable requirements in 42 C.F.R. Part 8 and 21 C.F.R. Part 1301.

(5) The department may deny an application for certification when:

(a) There is not a demonstrated need in the community where the applicant proposes to locate the program.

(b) There is sufficient availability, access, and capacity of other certified programs near the area where the applicant is proposing to locate the program.

(c) The applicant has not demonstrated in the past, the capability to provide the appropriate services to assist individuals using the program to meet goals established by the legislature.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0410 (~~Chemical dependency~~) Substance use disorder opiate substitution treatment services—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing (~~chemical dependency~~) substance use disorder opiate substitution treatment services must:

(1) Appoint a program sponsor, as defined in 42 C.F.R. Part 8, who is responsible for notifying the federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), the federal Drug Enforcement Administration (DEA), the department, and the Washington State board of pharmacy of any theft or significant loss of a controlled substance.

(2) Ensure there is an appointed medical director who:

(a) Is licensed by department of health (DOH) to practice medicine and practices within their scope of practice.

(b) Is responsible for all medical services performed. See the program physician responsibilities in WAC 388-877B-0440.

(c) Ensures all medical services provided are in compliance with applicable federal, state, and local rules and laws.

(3) Ensure all medical services provided are provided by an appropriate DOH-credentialed medical provider practicing within their scope of practice.

(4) Ensure all (~~chemical dependency~~) substance use disorder assessment and counseling services are provided by a DOH-credentialed chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.

(5) Ensure there is a designated and identified clinical supervisor who:

(a) Is a CDP.

(b) Has documented competency in clinical supervision.

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. This monitoring must include a semi-annual review of a sample of each CDP's clinical records.

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(6) Ensure an agency using CDPTs has at least one approved supervisor that meets the qualification in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(7) Ensure at least one staff member has documented training in:

(a) Family planning;

(b) Prenatal health care; and

(c) Parenting skills.

(8) Ensure that at least one staff member is on duty at all times who has documented training in:

(a) Cardiopulmonary resuscitation (CPR); and

(b) Management of opiate overdose.

(9) Ensure that a personnel file for a staff member providing individual care includes a copy of an initial tuberculosis (TB) screen and subsequent screening as appropriate.

(10) Provide and ensure all staff members receive annual training on:

(a) The prevention and control of communicable disease, blood borne pathogens, and TB; and

(b) Opiate dependency clinical and medical best practice, specific to the staff member's scope of practice and job function.

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

**WAC 388-877B-0420 (~~Chemical dependency~~) Substance use disorder opiate substitution treatment services—Clinical record content and documentation requirements.** In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing (~~chemical dependency~~) substance use disorder opiate substitution treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of the federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opiate substitution treatment and take appropriate action.

(c) Documentation that the agency:

(i) Referred the individual to self-help group(s).

(ii) Addressed the individual's vocational, educational, and employment needs; and

(iii) Encouraged family participation.

(d) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction.

(e) Documentation that the individual service plan was completed before the individual received treatment services.

(f) Documentation that the individual service plan was reviewed:

(i) Once every month, for the first ninety days in treatment;

(ii) Once every three months, for every two years of continued enrollment in treatment; and

(iii) Once every six months, after the second year of continued enrollment in treatment.

(g) Documentation that individual or group counseling sessions were provided:

(i) Once every week, for the first ninety days:

(A) For a new individual in treatment;

(B) For an individual readmitted more than ninety days since the most recent discharge from opiate substitution treatment.

(ii) Once every week, for the first month, for an individual readmitted within ninety days since the most recent discharge from opiate substitution treatment; and

(iii) Once every month, for an individual transferring from another opiate substitution treatment program, when the individual had received treatment for at least ninety days.

(h) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(i) Documentation when an individual refuses to provide a drug testing specimen sample or refuses to initial the log containing the sample number. The refusal is considered a positive drug screen specimen.

(j) Documentation of the results and the discussion held with the individual regarding any positive drug screen specimens in the counseling session immediately following the notification of positive results.

(k) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(l) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(m) Documentation that a staff member(s) met with the individual at the time of discharge from the agency, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan.

(ii) Assist the individual in making contact with necessary agencies or services.

(iii) Provide and document the individual was provided a copy of the plan.

(n) Documentation that the discharge summary was completed within seven working days of the individual's discharge from the agency, which includes the date of discharge and a summary of the individual's progress towards each individual service plan goal.

(o) Documentation of all medical services. See WAC 388-877B-0440 and 388-877B-0450, regarding program physician responsibility and medication management.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs;

(b) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) The treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0430 (~~(Chemical dependency)~~) Substance use disorder opiate substitution treatment services—Additional assessment standards.** An individual must have a (~~(chemical dependency)~~) substance use disorder assessment before receiving (~~(chemical dependency)~~) substance use disorder opiate substitution treatment services. The purpose of the assessment is to gather information to determine if a substance disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(a) A history of the individual's involvement with alcohol and other drugs, to include:

(i) The type of substances used, including tobacco;

(ii) The route of administration; and

(iii) The amount, frequency, and duration of use.

(b) A history of alcohol or other drug treatment or education.

(c) The individual's self-assessment of use of alcohol and other drugs.

(d) A history of relapse.

(e) A history of self-harm.

(f) A history of legal involvement.

(g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using the:

(a) Diagnostic and Statistical Manual (DMS IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at [www.DSM5.org](http://www.DSM5.org).

(3) A placement decision, using patient placement criteria dimensions when the assessment indicates the individual is in need of services.

(4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(5) The additional requirements for driving under the influence (DUI) assessment providers in WAC 388-877B-0550 if the agency is providing services to an individual under RCW 46.61.5056.

(6) When assessing youth, documented attempts to obtain the following information:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0440 ((~~Chemical dependency~~)) Substance use disorder opiate substitution treatment services—Program physician responsibility.** An agency providing ((~~chemical dependency~~)) Substance use disorder opiate substitution treatment services must ensure the program physician, or the medical practitioner under supervision of the program physician, performs and meets the following:

(1) The program physician or medical practitioner under supervision of the program physician:

(a) Is responsible to verify an individual is currently addicted to an opioid drug and that the person became addicted at least twelve months before admission to treatment.

(b) May waive the twelve month requirement in (a) of this subsection upon receiving documentation that the individual:

(i) Was released from a penal institution, if the release was within the previous six months;

(ii) Is pregnant; or

(iii) Was previously treated within the previous twenty-four months.

(2) A physical evaluation must be completed on the individual before admission that includes the determination of opiate physical addiction consistent with the Diagnostic and Statistical Manual (DSM-5) criteria, and an assessment for appropriateness for Sunday and holiday take-home medication. Information on the DSM-5 can be found on the American Psychiatric Association's public website at [www.DSM5.org](http://www.DSM5.org).

(3) A review must be completed by the department of health prescription drug monitoring program data on the individual:

(a) At admission;

(b) Annually after the date of admission; and

(c) Subsequent to any incidents of concern.

(4) All relevant facts concerning the use of the opioid drug must be clearly and adequately explained to each individual.

(5) Current written and verbal information must be provided to pregnant individuals, before the initial prescribed dosage regarding:

(a) The concerns of possible addiction, health risks, and benefits the opiate substitution medication may have on the individual and the fetus.

(b) The risk of not initiating opiate substitution medication on the individual and the fetus.

(c) Referral options to address neonatal abstinence syndrome for the baby.

(6) Each individual voluntarily choosing to receive maintenance treatment must sign an informed consent to treatment.

(7) Within fourteen days of admission, a medical examination must be completed that includes:

(a) Documentation of the results of serology and other tests; and

(b) An assessment for the appropriateness of take-home medications as required by 42 C.F.R. part 8.12(i).

(8) When exceptional circumstances exist for an individual to be enrolled with more than one opiate substitution treatment agency, justification granting permission must be documented in the individual's clinical record at each agency.

(9) Each individual admitted to detoxification services must have an approved detoxification schedule that is medically appropriate.

(10) Each individual administratively discharged from services must have an approved detoxification schedule that is medically appropriate.

(11) An assessment for other forms of treatment must be completed for each individual who has two or more unsuccessful detoxification episodes within twelve consecutive months.

(12) An annual medical examination must be completed on each individual that includes the individual's overall physical condition and response to medication.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0450 ((~~Chemical dependency~~)) Substance use disorder opiate substitution treatment services—Medication management.** An agency providing ((~~chemical dependency~~)) substance use disorder opiate substitution treatment services must ensure the medication management requirements in this section are met.

(1) An agency:

(a) Must use only those opioid agonist treatment medications that are approved the Food and Drug Administration under section 505 of the federal Food, Drug, and Cosmetic



Act (21 U.S.C. 355) for use in the treatment of opioid addiction.

(b) Providing opiate substitution treatment that is fully compliant with the procedures of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. The following opioid agonist treatment medications are approved by the Food and Drug Administration for use in the treatment of opioid addiction:

- (i) Methadone; and
- (ii) Buprenorphine.

(2) An agency providing opiate substitution treatment must ensure that initial dosing requirements are met as follows:

(a) Methadone must be administered or dispensed only in oral form and is formulated in such a way as to reduce its potential for parenteral abuse.

(b) The initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the individual's record that forty milligrams did not suppress opiate abstinence symptoms.

(c) The establishment of the initial dose must consider:

- (i) Signs and symptoms of withdrawal;
- (ii) Individual comfort; and
- (iii) Side effects from over medication.

(3) An agency providing opiate substitution treatment must ensure that:

(a) Each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling.

(b) All dosing and administration decisions are made by a:

(i) Program physician; or

(ii) Medical practitioner under supervision of a program physician familiar with the most up-to-date product labeling.

(c) Any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the individual's record.

(4) An agency providing opiate substitution treatment must ensure that all take-home medications are:

(a) Consistent with 42 C.F.R. Part 8.12 (i)(1-5) and are authorized only to stable individuals who:

(i) Have received opiate substitution treatment medication for a minimum of ninety days; and

(ii) Have not had any positive drug screens in the last sixty days.

(b) Assessed and authorized, as appropriate, for a Sunday or legal holiday as identified in RCW 1.16.050.

(c) Assessed and authorized, as appropriate, when travel to the facility presents a safety risk for an individual or staff member due to inclement weather.

(d) Not allowed in short-term detoxification or interim maintenance treatment.

(5) All exceptions to take-home requirements must be submitted and approved by the state opioid treatment author-

ity and Substance Abuse and Mental Health Services Administration (SAMHSA).

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

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

**WAC 388-877B-0500 (~~Chemical dependency~~) Substance use disorder assessment services—General.** The rules in WAC 388-877B-0500 through 388-877B-0550 apply to behavioral health agencies that provide (~~chemical dependency~~) substance use disorder assessment services. The definitions in WAC 388-877-0200 also apply to (~~chemical dependency~~) substance use disorder assessment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) (~~Chemical dependency~~) Substance use disorder assessment services are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(2) (~~Chemical dependency~~) Substance use disorder assessment services include:

(a) Assessment only services; and

(b) Driving under the influence (DUI) assessment services.

(3) A behavioral health agency certified for assessment only services may choose to provide optional program-specific DUI assessment services (see WAC 388-877B-0550). Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery.

(4) An agency providing assessment services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Program-specific requirements in WAC 388-877B-0500 through 388-877B-0550.

(5) An agency providing assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) Is not required to meet the individual service plan requirements in WAC 388-877-0620.

(6) An agency must maintain and provide a list of resources, including self-help groups, and referral options

that can be used by staff members to refer an individual to appropriate services.

(7) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

- (i) The individual's demographic information; and
- (ii) The diagnostic assessment statement and other assessment information to include:

- (A) Documentation of the HIV/AIDS intervention.
- (B) Tuberculosis (TB) screen or test result.
- (C) A record of the individual's detoxification and treatment history.
- (D) The reason for the individual's transfer.
- (E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.
- (F) A discharge summary and continuing care plan.

(8) An agency providing driving under the influence (DUI) assessment services must meet the additional program-specific standards in WAC 388-877B-0550.

(9) An agency that offers off-site assessment services must meet the requirements in WAC 388-877B-0300(9).

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

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0510 (~~Chemical dependency~~) Substance use disorder assessment only services—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing (~~chemical dependency~~) substance use disorder assessment services must ensure:

- (1) All (~~chemical dependency~~) substance use disorder assessment only services are provided by a chemical dependency professional (CDP).
- (2) There is a designated clinical supervisor who:
  - (a) Is a CDP;
  - (b) Has documented competency in clinical supervision; and
  - (c) Is responsible for monitoring the continued competency of each CDP. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP.
- (3) Each staff member that provides individual care has a copy of an initial tuberculosis (TB) screen or test and any subsequent screening or testing in their personnel file.
- (4) All staff members are provided annual training on the prevention and control of communicable disease, blood borne pathogens, and TB. The training must be documented in the personnel file.

**AMENDATORY SECTION** (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0530 (~~Chemical dependency~~) Substance use disorder assessment only services—Additional assessment standards.** An individual must have a (~~chemical dependency~~) substance use disorder assessment before receiving (~~chemical dependency~~) substance use disorder treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

- (1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:
  - (a) A history of the individual's involvement with alcohol and other drugs, including:
    - (i) The type of substances used, including tobacco;
    - (ii) The route of administration;
    - (iii) The amount, frequency, and duration of use.
  - (b) A history of alcohol or other drug treatment or education.
  - (c) The individual's self-assessment of use of alcohol and other drugs.
  - (d) A history of relapse.
  - (e) A history of self-harm.
  - (f) A history of legal involvement.
  - (g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.
- (2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using the:
  - (a) Diagnostic and Statistical Manual (DSM IV TR, 2000), as it existed on the effective date of this section; then
  - (b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at [www.DSM5.org](http://www.DSM5.org).
  - (3) A placement decision, using patient placement criteria dimensions when the assessment indicates the individual is in need of services.
  - (4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.
  - (5) Documented attempts to obtain the following information when assessing youth:
    - (a) Parental and sibling use of alcohol and other drugs.
    - (b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.
    - (c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.
    - (d) A history of emotional or psychological problems.
    - (e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0540 ((~~Chemical dependency~~)) Substance use disorder assessment services—Noncompliance reporting requirements.** An agency providing ((~~chemical dependency~~)) substance use disorder assessment services must report noncompliance in all levels of care for an individual ordered into ((~~chemical dependency~~)) substance use disorder treatment by a court or other appropriate jurisdiction(s). An agency that fails to report noncompliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4). An agency providing treatment to an individual court-mandated to treatment, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure under the requirements of 42 C.F.R. Part 2, Section 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revoking the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(4) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877B-0550 ((~~Chemical dependency~~)) Substance use disorder assessment only services requiring program-specific certification—DUI assessment services.** Driving under the influence (DUI) assessment services are diagnostic services requested by a court to determine an individual's involvement with alcohol and other drugs and to recommend a course of action.

(1) A behavioral health agency certified for ((~~chemical dependency~~)) substance use disorder assessment only services may choose to provide optional program-specific DUI assessment services. Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery.

(2) An agency providing DUI assessment services, as defined in chapter 46.61 RCW, must ensure:

(a) The assessment is conducted in person.

(b) The individual has a summary included in the assessment that evaluates the individual's:

(i) Blood or breath alcohol level and other drug levels, or documentation of the individual's refusal at the time of the arrest, if available; and

(ii) Self-reported driving record and the abstract of the individual's legal driving record.

(3) When the assessment findings do not result in a substance use disorder diagnosis, the assessment must also include:

(a) A copy of the police report;

(b) A copy of the court originated criminal case history;

(c) The results of a urinalysis or drug testing obtained at the time of the assessment; and

(d) A referral to alcohol and drug information school.

(4) If the information in subsection (3)(a) through (d) of this section is required and not readily available, the record must contain documentation of attempts to obtain the information.

(5) Upon completion of the DUI assessment, the individual must be:

(a) Informed of the results of the assessment; and

(b) Referred to the appropriate level of care according to patient placement criteria (PPC).

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0600 ((~~Chemical dependency~~)) Substance use disorder information and assistance services—General.** The rules in WAC 388-877B-0600 through 388-877B-0660 apply to behavioral health agencies that provide ((~~chemical dependency~~)) substance use disorder information and assistance services. The definitions in WAC 388-877-0200 also apply to ((~~chemical dependency~~)) substance use disorder information and assistance services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Information and assistance services are considered nontreatment services provided to support an individual who has a need for interventions related to the use of alcohol and/or other drugs.

(2) Information and assistance services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Alcohol and drug information school (see WAC 388-877B-0630);

(b) Information and crisis services (see WAC 388-877B-0640);

(c) Emergency service patrol (see WAC 388-877B-0650); and

(d) Screening and brief intervention (see WAC 388-877B-0660).

(3) An agency providing information and assistance services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0600 through 388-877B-0660.

(4) ~~((Chemical dependency))~~ Substance use disorder information and assistance services are available without an initial assessment or individual service plan and are not required to meet the requirements under WAC 388-877-0640.

(5) An agency providing information and assistance services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0610 ~~((Chemical dependency))~~ Substance use disorder information and assistance services—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing ~~((chemical dependency))~~ substance use disorder information and assistance services must ensure each staff member:

(1) Is provided annual training on the prevention and control of communicable disease, blood borne pathogens and tuberculosis (TB). The training must be documented in the personnel file.

(2) Who provides individual care has a copy of their initial TB screen or test and any subsequent screening or testing in their personnel file.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0630 ~~((Chemical dependency))~~ Substance use disorder information and assistance services requiring program-specific certification—Alcohol and drug information school services.** Alcohol and drug information school services are a ~~((chemical dependency))~~ substance use disorder information and assistance services educational program about the use and abuse of alcohol and other drugs. These services are for an individual referred by a court or other jurisdiction(s) who may have been assessed and determined not to require treatment. The services require program-specific certification by the department's division of behavioral health and recovery. An agency providing alcohol and drug information school services must:

(1) Ensure courses are taught by a certified information school instructor or a chemical dependency professional (CDP) who:

(a) At the time of enrollment, informs each student of the course fees.

(b) Advises each student there is no assumption the student has a substance use disorder, and that the course is not a therapy session.

(c) Discusses the class rules.

(d) Reviews the course objectives.

(e) Follows a department-approved curriculum.

(f) Ensures each course has no fewer than eight and no more than fifteen hours of classroom instruction.

(g) Ensures adequate and comfortable seating in a well-lit and ventilated room.

(h) Administers each enrolled student the post-test for each course after the course is completed.

(2) Ensure a school instructor who is not a CDP:

(a) Has a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department, and the personnel file contains documentation of the training.

(b) Maintains school instructor status by completing fifteen clock hours of continuing education. The fifteen hours of continuing education must:

(i) Occur during each two-year period beginning January of the year following the instructor's initial qualification; and

(ii) Be in subject areas that increase knowledge and skills in training, teaching techniques, curriculum planning and development, presentation of educational material, laws and rules, and developments in the ~~((chemical dependency))~~ substance use disorder field.

(3) Ensure each individual student record contains:

(a) An intake form, including demographics;

(b) The hours of attendance, including dates;

(c) The source of the student's referral;

(d) A copy of all reports, assessments, letters, certificates, and other correspondence to the courts and the department of licensing, including noncompliance reporting under chapter 46.61 RCW;

(e) A record of any referrals made; and

(f) A copy of the scored post-test.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

**WAC 388-877B-0640 ~~((Chemical dependency))~~ Substance use disorder information and assistance services requiring program-specific certification—Information and crisis services.** ~~((Chemical dependency))~~ Substance use disorder information and crisis services provide an individual assistance or guidance related to the abuse of addictive substances, twenty-four hours a day by telephone or in-person. Information and crisis services require program-specific certification by the department's division of behavioral health and recovery. An agency providing information and crisis services must:

(1) Have services available to any individual twenty-four hours a day, seven days a week.

(2) Ensure each staff member completes forty hours of training that covers the following areas before assigning the staff member unsupervised duties:

(a) ~~((Chemical dependency))~~ Substance use disorder crisis intervention techniques; and

(b) Alcoholism and drug abuse.

(3) Ensure a chemical dependency professional (CDP), or a CDP trainee (CDPT) under supervision of a CDP, is available or on staff twenty-four hours a day.

(4) Have at least one approved supervisor that meets the qualifications in WAC 246-811-049, if services are provided by a CDPT or other certified or licensed counselor in training to become a CDP. The supervisor must decrease the number of individual contact hours for each full-time CDPT under their supervision.

(5) Maintain a current directory of all certified (~~chemical dependency~~) substance use disorder service providers in the state.

(6) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

(7) Maintain records of each individual contact, including:

(a) The name, age, sex, and ethnic background of the individual.

(b) The presenting problem.

(c) The outcome.

(d) A record of any referral made.

(e) The signature of the person handling the case.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0650 (~~Chemical dependency~~) Substance use disorder information and assistance services requiring program-specific certification—Emergency service patrol services.** Emergency service patrol services are (~~chemical dependency~~) substance use disorder information and assistance services that provide transport assistance to an intoxicated individual in a public place when a request has been received from police, merchants, or other persons. An agency providing emergency service patrol services must:

(1) Ensure the staff member providing the service:

(a) Has proof of a valid Washington state driver's license.

(b) Possesses annually updated verification of first-aid and cardiopulmonary resuscitation training.

(c) Has completed forty hours of training in (~~chemical dependency~~) substance use disorder crisis intervention techniques and alcoholism and drug abuse, to improve skills in handling crisis situations.

(2) Respond to calls from police, merchants, and other persons for assistance with an intoxicated individual in a public place.

(3) Patrol assigned areas and give assistance to an individual intoxicated in a public place.

(4) Conduct a preliminary screening of an individual's condition related to the state of their impairment and presence of a physical condition needing medical attention.

(5) Transport the individual to their home or shelter, to a certified treatment provider, or a health care facility if the individual is intoxicated, but subdued and willing to be transported.

(6) Make reasonable efforts to take the individual into protective custody and transport the individual to an appropriate treatment or health care facility, when the individual is

incapacitated, unconscious, or has threatened or inflicted harm on another person.

(7) Call law enforcement for assistance if the individual is unwilling to be taken into protective custody.

(8) Maintain a log, including:

(a) The date, time and origin of each call received for assistance.

(b) The time of arrival at the scene.

(c) The location of the individual at the time of the assist.

(d) The name and sex of the individual transported.

(e) The results of the preliminary screening.

(f) The destination and address of the transport and time of arrival.

(g) In case of nonpickup of a person, documentation of why the pickup did not occur.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877B-0660 (~~Chemical dependency~~) Substance use disorder information and assistance services requiring program-specific certification—Screening and brief intervention services.** Screening and brief intervention services are a combination of information and assistance services designed to screen an individual for risk factors that appear to be related to alcohol and other drug use disorders, provide interventions, and make appropriate referral as needed. These services require program-specific certification by the department's division of behavioral health and recovery and may be provided in a wide variety of settings. An agency providing screening and brief intervention services must:

(1) Ensure services are provided by a chemical dependency professional (CDP), a chemical dependency professional trainee (CDPT) under the supervision of a CDP, or another appropriately credentialed staff member.

(2) Ensure each staff member completes forty hours of training that covers the following areas before assigning the staff member unsupervised duties:

(a) (~~Chemical dependency~~) Substance use disorder screening and brief intervention techniques;

(b) Motivational interviewing; and

(c) Referral.

(3) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

(4) Ensure each individual's record contains:

(a) A copy of a referral.

(b) Demographic information.

(c) Documentation the individual was informed and received a copy of the requirements under 42 C.F.R. Part 2.

(d) Documentation the individual received a copy of the counselor disclosure information.

(e) Documentation the individual received a copy of the individual rights.

(f) Authorization for the release of information.

(g) A copy of screening documents, including outcome and referrals.

(h) Documentation of progress notes in a timely manner summarizing any contact with the individual. Progress notes

must include the date, time, duration, participant names, a brief summary of the screening and brief intervention, and the name of the staff member who provided it.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

**WAC 388-877C-0110 Problem and pathological gambling services—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing problem and pathological gambling services must ensure:

(1) All problem and pathological gambling treatment services are provided by:

(a) A certified Washington state, national, or international gambling counselor who is credentialed by the department of health (DOH) under chapter 18.19, 18.83, or 18.225 RCW; or

(b) An individual credentialed by DOH under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified problem gambling counselor, in training to become a certified problem gambling counselor.

(2) Before providing problem and pathological treatment services, an individual in training to become a certified problem gambling counselor must have minimum of:

(a) At least one thousand five hundred hours of professionally supervised post-certification or post-registration experience providing mental health or (~~chemical dependency~~) substance use disorder treatment services; and

(b) Thirty hours of unduplicated gambling specific training, including the basic training. One of the following state, national, or international organizations must approve the training:

(i) Washington state gambling counselor certification committee;

(ii) National or international gambling counselor certification board; or

(iii) The department's division of behavioral health and recovery.

(3) An individual who meets (2)(b) of this section must complete training to become a certified problem and pathological gambling counselor within two years of beginning problem and pathological gambling clinical practice.

(4) All staff members in training to become a certified problem gambling counselor must receive clinical supervision. The clinical supervisor must:

(a) Hold a valid international gambling counselor certification board-approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and

(b) Complete training on gambling specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(i) Washington state gambling counselor certification committee;

(ii) National or international gambling counselor certification board; or

(iii) The department's division of behavioral health and recovery.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-865-0100	Purpose.
WAC 388-865-0105	What the mental health division does and how it is organized.
WAC 388-865-0106	When local services are administered by the mental health division.
WAC 388-865-0107	Peer counselor certification.
WAC 388-865-0110	Access to records of registration.
WAC 388-865-0115	Access to clinical records.
WAC 388-865-0120	Waiver of a minimum standard of this chapter.
WAC 388-865-0150	Definitions.
WAC 388-865-0200	Regional support networks.
WAC 388-865-0205	Initial certification of a regional support network.
WAC 388-865-0210	Renewal of regional support network certification.
WAC 388-865-0215	Consumer eligibility and payment for services.
WAC 388-865-0220	Standards for administration.
WAC 388-865-0221	Public awareness of mental health services.
WAC 388-865-0222	Advisory board.
WAC 388-865-0225	Resource management.
WAC 388-865-0229	Inpatient services.
WAC 388-865-0230	Community support services.
WAC 388-865-0235	Residential and housing services.
WAC 388-865-0240	Consumer employment services.
WAC 388-865-0245	Administration of the Involuntary Treatment Act.
WAC 388-865-0250	Ombuds services.
WAC 388-865-0265	Mental health professional—Exception.
WAC 388-865-0270	Financial management.
WAC 388-865-0275	Management information system.
WAC 388-865-0280	Quality management process.
WAC 388-865-0282	Quality review teams.
WAC 388-865-0284	Standards for contractors and sub-contractors.
WAC 388-865-0286	Coordination with a mental health prepaid health plan.

- WAC 388-865-0288 Regional support networks as a service provider.
- WAC 388-865-0300 Mental health prepaid health plans.
- WAC 388-865-0305 Regional support network contracting as a mental health prepaid health plan.
- WAC 388-865-0310 Mental health prepaid health plans—Minimum standards.
- WAC 388-865-0315 Governing body.
- WAC 388-865-0320 Utilization management.
- WAC 388-865-0325 Risk management.
- WAC 388-865-0330 Marketing/education of mental health services.
- WAC 388-865-0335 Consumer enrollment.
- WAC 388-865-0345 Choice of primary care provider.
- WAC 388-865-0350 Mental health screening for children.
- WAC 388-865-0355 Consumer request for a second opinion.
- WAC 388-865-0360 Monitoring of mental health prepaid health plans.
- WAC 388-865-0363 Coordination with the regional support network.
- WAC 388-865-0365 Suspension, revocation, limitation or restriction of a contract.
- WAC 388-877A-0400 How individuals can express concern about their rights, services, or treatment.
- WAC 388-877A-0410 Grievance system—Definitions.
- WAC 388-877A-0420 Grievance process.
- WAC 388-877A-0430 Notice of action.
- WAC 388-877A-0440 Appeal process.
- WAC 388-877A-0450 Administrative hearings.
- WAC 388-877A-0460 Individual rights specific to Medicaid recipients.

**WSR 16-10-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-76—Filed April 20, 2016, 1:10 p.m., effective April 29, 2016]

Effective Date of Rule: April 29, 2016.

Purpose: Amend recreational fishing rules for the Snake River.

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: Based on the preseason prediction for a relatively good return of spring Chinook and angler input requesting an emphasis for a longer fishery season, Snake River fisheries in each of these zones are open for only two days per week (with only one weekend day included each week) with a daily bag limit of only one adult hatchery Chinook. The restrictions on the fishery help prolong the duration of the season, enable sharing of fishing opportunities with upriver fishery zones, and allow management of fisheries to comply with Endangered Species Act restrictions and harvest allocations available for the Snake River. 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: April 20, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-310-19500F Freshwater exceptions to statewide rules—Snake River.** Notwithstanding the provisions of WAC 220-310-195 and WAC 220-56-180:

(1) Effective April 29, 2016, until further notice, a person may fish for and possess salmon in waters of the Snake River from the South Bound Highway 12 Bridge at Pasco upstream about 7 miles to the fishing restriction boundary below Ice Harbor Dam. Open Friday and Saturday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

(2) Effective May 1, 2016, until further notice, a person may fish for and possess salmon in the following waters of the Snake River from Texas Rapids boat launch (south side of the river approximately 3.5 miles upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam. Minimum size for Chinook is 12 inches in length. This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the wall" in front of the juvenile collection facility). Open Sunday and Monday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

(3) Effective May 1, 2016, until further notice, a person may fish for and possess salmon in the following waters of the Snake River from the downstream edge of the large power lines crossing the Snake River (just upstream from the West Evans Road on the south shore) upstream about 3.5 miles to the Washington state line (from the east levee of the Greenbelt boat launch in Clarkston northwest across the Snake River to the WA/ID boundary waters marker on the Whitman County shore). Open Sunday and Monday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

**WSR 16-10-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-80—Filed April 21, 2016, 8:50 a.m., effective April 21, 2016, 8:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000G; and amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Impacts to nonlocal stocks have been higher than expected and season reductions were necessary to remain within allocated impacts. Local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 27, 2016, and April 19, 2016. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-



2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; 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: April 21, 2016.

J. W. Unsworth  
Director

## NEW SECTION

**WAC 220-33-01000H Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

### **(1) Deep River Select Area**

a) **Dates:** Open hours are 7 PM to 7 AM Thursday night from April 28 and Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

d) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

### **(2) Tongue Point/South Channel**

a) **Dates:** Open Thursday night April 28 from 11 AM to 3 PM. Open 3 PM to 9 PM Monday May 2. Open 7 PM to 7 AM on: Monday and Thursday nights from May 5 through June 14, 2016.

b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) **Miscellaneous:** Permanent transportation rules in effect.

### **(3) Blind Slough/Knappa Slough Select Area**

e) **Dates:** Open hours are 7 PM to 7 AM. Open Thursday night April 28, 2016 and Monday and Thursday nights from May 2, 2016 until further notice.

f) **Area:** Blind Slough and Knappa Slough areas are both open. From May 2, 2016 until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the

west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

g) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

h) **Miscellaneous:** Permanent transportation rules in effect.

(4) **Allowable Possession:** Salmon and shad

(5) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

(6) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

(7) **Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

**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:

WAC 220-33-01000G Columbia River seasons below Bonneville. (16-64)

#### **WSR 16-10-006**

##### **EMERGENCY RULES**

#### **DEPARTMENT OF REVENUE**

[Filed April 21, 2016, 11:17 a.m., effective April 21, 2016, 11:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-19404 (Rule 19404) explains how financial institutions must apportion gross income when they engage in business both within and outside the state. RCW 82.04.460(2) provides that the department adopt a rule for the apportionment of income of financial institutions that is consistent with the model adopted by the Multistate Tax Commission (MTC). Rule 19404 has been amended to remain consistent with the MTC's change in its model method of apportionment for financial institutions that becomes effective January 1, 2016.

There are no changes from the previous emergency rule filed December 28, 2015, under WSR 16-02-010.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-19404 Financial institutions—Income apportionment.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

Other Authority: RCW 34.05.350, 82.04.460(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: Taxpayers engaging in business as a financial institution both within and outside the state are required to apportion their income. Consistent with the MTC requirements, the apportionment methodology for financial institutions changed on January 1, 2016. Taxpayers need information and reporting instructions on how to properly apportion their income. An emergency adoption of this rule is necessary because the permanent rule cannot be adopted at this time.

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: April 21, 2016.

Kevin Dixon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-04-004, filed 1/22/15, effective 2/22/15)

#### **WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.**

(a) Effective June 1, 2010, ~~((section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's))~~ Washington changed its method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) RCW 82.04.460(2) requires the department, to the extent feasible, to adopt the multistate tax commission's recommended formula for apportionment and allocation of net income for financial institutions, with the exceptions that the definition of financial institution in the appendix to the recommended formula is advisory only and only the receipts factor will be used to apportion income.

(c) On July 29, 2015, the multistate tax commission approved amendments to its recommended formula for the apportionment and allocation of net income of financial institutions including amendments to how the receipts factor is

calculated. The amendments are effective for tax years starting on or after January 1, 2016.

(d) This rule applies to the apportionment of income taxable under RCW 82.04.290 for periods beginning January 1, 2016.

(e) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401((;)) Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective after May 31, 2010.

(ii) WAC 458-20-19402((;)) Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective after May 31, 2010.

(iii) WAC 458-20-19403((;)) Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194((;)) Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-14601((;)) Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

~~((e))~~ (f) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

**(2) Apportionment ~~(and allocation)~~.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. ~~((Any other))~~ Apportionable income that is not taxable under RCW 82.04.290 must be apportioned pursuant to WAC 458-20-19402((;)) Single factor receipts apportionment—Generally or WAC 458-20-19403((;)) Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401((;)) Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not ~~((includable))~~ from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) All ~~((apportionable income))~~ service and other activities income, regardless of where that income is attributed,

shall be apportioned to this state by multiplying such income, less any deductions or exemptions authorized under chapter 82.04 RCW, by the apportionment((s)) percentage. The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. ~~((Persons should))~~ For further guidance on the requirements of each accounting method refer to WAC 458-20-197((;)) When tax liability arises and WAC 458-20-199((;)) Accounting methods ~~((for further guidance on the requirements of each accounting method)).~~

(d) Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

~~((e))~~ (e) Interest and penalties on reconciliations under ~~((e))~~ (d) of this subsection apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

~~((e))~~ (f) If the ~~((allocation and))~~ apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement ~~((and/))~~ or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) **"Card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(d) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

~~((f))~~ (e) **"Credit card"** means ~~((credit, travel or entertainment card.~~

~~((e))~~ **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

~~((f))~~ a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(f) **"Debit card"** means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

(g) **"Department"** means the department of revenue.

~~((g))~~ (h) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

~~((h))~~ (i) **"Financial institution"** means:

(i) Any corporation or other business entity ~~((chartered))~~ authorized under ~~((Title 30))~~ Title 30A, 31, 32, or 33 RCW ~~((; or))~~ to engage in business in Washington, provided that persons authorized to act as a loan servicer pursuant to chapter 31.04 RCW or as a check casher or check seller pursuant to chapter 31.45 RCW shall not be considered a financial institution solely on that basis; or

(ii) Registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

~~((iii))~~ (iii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

~~((iii))~~ (iv) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

~~((iv))~~ (v) Any bank or thrift institution incorporated or organized under the laws of any state;

~~((v))~~ (vi) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

~~((vi))~~ (vii) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

~~((vii) Any credit union, other than a state or federal credit union exempt under state or federal law;))~~

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

~~((j))~~ (j) **"Gross income of the business," "gross income," or "income"**:

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose ~~((of (3)(i)))~~ of this subsection, affiliated means the affiliated person and the financial institution are under common control. Control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

~~((j))~~ (k) **"Interest, fees, and penalties"** means any fees related to a loan, credit card, or other extension of credit and includes any fees charged a prospective borrower prior to funding of a loan regardless of whether the loan is eventually funded.

(l) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository insti-

tutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

~~((k))~~ (m) **"Loan secured by real property"** means that more than fifty percent ~~((or more))~~ of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

~~((h))~~ (n) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any card holder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its card holder.

~~((m))~~ (o) **"Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

~~((n))~~ (p) **"Person"** has the meaning given in RCW 82.04.030.

~~((o))~~ (q) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

~~((p))~~ (r) **"Service and other activities income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state ~~((, less the exemptions and deductions allowable under chapter 82.04 RCW)).~~

~~((q))~~ (s) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

~~((r))~~ (t) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

~~((s))~~ (u) **"Taxable in another state"** means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state ~~((has))~~ would have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

(iii) For purposes of ~~((s) or (t))~~ this subsection (3)(u), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities

tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

~~((t))~~ (v) **"Taxable period"** means the calendar year during which tax liability is incurred.

**(4) Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the ~~((apportionable))~~ service and other activities income of the taxpayer in this state during the taxable period and the denominator of which is the ~~((apportionable))~~ service and other activities income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest ~~((from))~~, fees, and penalties imposed in connection with loans secured by real property.

(i) The numerator of the receipts factor includes interest ~~((and))~~, fees ~~((or))~~ and penalties ~~((in the nature of interest from))~~ imposed in connection with loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest ~~((from))~~, fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor includes interest ~~((and))~~, fees ~~((or))~~, and penalties ~~((in the nature of interest from))~~ imposed in connection with loans not secured by real property if the borrower is located in this state.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection ~~((and))~~ and the denominator of which is the total amount

of interest and fees or penalties (~~in the nature of interest from~~) imposed in connection with loans not secured by real property.

(e) Receipts from (~~credit card receivables~~) fees, interest, and penalties charged to card holders. The numerator of the receipts factor includes fees, interest, and (~~fees or~~) penalties (~~in the nature of interest from credit card receivables and income from fees~~) charged to card holders (~~such as~~) including, but not limited to, annual fees and overdraft fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest (~~and fees or penalties in the nature of interest from credit card receivables and fees~~), fees, and penalties charged to credit card holders.

(g) (~~Credit~~) Card issuer's reimbursement fees. The numerator of the receipts factor includes:

(i) All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and (~~fees or~~) penalties (~~in the nature of interest from credit card receivables and fees~~) charged to credit card holders.

(ii) All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders.

(iii) All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(h) Receipts from merchant discount.

(i) If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numerator of the receipts factor includes receipts from merchant discount (~~if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.~~

~~(i))~~ (ii) If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor includes such receipts from the merchant discount multiplied by a fraction:

(A) In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders that is included in the numerator of the receipts factor pursuant to

(e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders; and

(B) In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; and

(C) In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(ii) The taxpayer's method for sourcing each receipt from a merchant discount must be consistently applied to such receipt in all states that have adopted sourcing methods substantially similar to (h)(i) and (ii) of this subsection and must be used on all subsequent returns for sourcing receipts from such merchant unless the department permits or requires application of the alternative method.

(i) Receipts from ATM fees. The receipts factor includes all ATM fees that are not forwarded directly to another bank.

(i) The numerator of the receipts factor includes fees charged to a card holder for the use at an ATM of a card issued by the taxpayer if the card holder's billing address is in this state.

(ii) The numerator of the receipts factor includes fees charged to a card holder, other than the taxpayer's card holder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in this state.

(j) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest (~~and fees or penalties in the nature of interest from~~), fees, and penalties imposed in connection with loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties (~~in the nature of interest from~~) imposed in connection with loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

~~((j))~~ Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside

and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.)

(k) Receipts from the financial institution's investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports are included in the receipts factor. Investment assets and activities and trading assets and activities include, but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from both investment assets and activities and from trading assets and activities described in (k)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in ~~(the)~~ each investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of (k)(ii) of this subsection, the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an ((investment)) asset or ((activity or trading asset or)) activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an ((investment)) asset or ((activity or trading asset or)) activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) All other receipts. The numerator of the receipts factor includes all other receipts from engaging in activities subject to tax under RCW 82.04.290 pursuant to the rules set forth in WAC 458-20-19402 Single factor receipts apportionment—Generally.

(m) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after ((June 1, 2014)) January 1, 2016.

**WSR 16-10-007**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-82—Filed April 21, 2016, 4:02 p.m., effective May 1, 2016]

Effective Date of Rule: May 1, 2016.

Purpose: Amend commercial fishing rules for coastal crab.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500P; 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: Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. 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: April 21, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-52-04500Q Coastal crab seasons.** Notwithstanding the provisions of WAC 220-52-046, 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 the WA/OR border (46°15.00) and the U.S./Canada Border, including Willapa Bay and 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 Copalis River (47°08.00). This area is closed until further notice. The legal 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°08.00 N. Lat.	124°25.50 W. Lon.
(d) Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(4) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. on May 1, 2016. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

• Northeast Corner (Cape Johnson):	47°58.00' N. Lat.	124°40.40' W. Lon.
• Northwest Corner:	47°58.00' N. Lat.	124°49.00' W. Lon.
• Southwest Corner:	47°40.50' N. Lat.	124°40.00' W. Lon.
• Southeast Corner (Copalis River):	47°40.50' N. Lat.	124°24.43' W. Lon.

(5) It is unlawful for a vessel to use more than 100 pots in the Quileute SMA from 8:00 a.m. May 1, 2016, until 8:00



a.m. June 1, 2016. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at [Carol.Henry@dfw.wa.gov](mailto:Carol.Henry@dfw.wa.gov); or
- Telephone call to Carol Henry at 360-249-1296.

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

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2016:

WAC 220-52-04500P Coastal crab seasons (16-41)

**WSR 16-10-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-83—Filed April 22, 2016, 9:08 a.m., effective May 1, 2016]

Effective Date of Rule: May 1, 2016.

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: April 22, 2016.

James B. Scott, Jr.  
for J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-24-04000F 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 below:

(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:

May 1 through 3,  
May 6 through 10,  
May 13 through 17,  
May 20 through 24,  
May 27 through 31,  
June 3 through 5,  
June 10 through 16,  
June 24 through 30, 2016.

(2) Landing and possession limit of 40 Chinook per vessel per entire open period.

(3) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

(4) 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.

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

(6) 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 salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, 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) 249-1215 or by email at Wendy.Beeghley@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.

(7) 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.

(8) 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.

(9) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch 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.

(10) 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.

(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 trollfistickets@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.

**WSR 16-10-011**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-81—Filed April 22, 2016, 9:33 a.m., effective June 1, 2016]

Effective Date of Rule: June 1, 2016.

Purpose: Amend recreational fishing rules for Heart Lake.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000A; and 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: This emergency rule is needed to ensure a successful kids fishing event. The closure is needed before the event as the fish will be planted in the lake two days prior to the event to better acclimate them. On the day of the event only children fourteen years of age or less will be allowed to fish in the lake. 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: April 22, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-310-19000A Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective 12:01 a.m. June 1 through 11:59 p.m. June 5, 2016, it is unlawful to fish in those waters of Heart Lake, except open to fishing 6:00 a.m. to 12:00 p.m. June 4, 2016, to anglers participating in the youth fishing event. Juvenile anglers can continue to fish on June 6, 2016, after the youth fishing event closes.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 6, 2016:

WAC 220-310-19000A Exceptions to statewide rules—Heart Lake (Skagit Co.)

**WSR 16-10-012**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed April 22, 2016, 9:46 a.m., effective April 22, 2016, 9:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending this rule so coverage is consistent for new and renewing enrollees in TAKE CHARGE. Coverage is for the duration of the waiver.

Citation of Existing Rules Affected by this Order: Amending WAC 182-532-720.

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: This emergency rule is necessary to assure that clients in the TAKE CHARGE program understand that coverage under this program is only for the duration of the waiver. The agency filed the preproposal statement of inquiry for permanent rule making under WSR 16-02-023 and is currently working through the permanent 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 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 1, Repealed 0.

Date Adopted: April 22, 2016.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-02-056, filed 1/5/15, effective 2/5/15)

**WAC 182-532-720 TAKE CHARGE program—Eligibility.** (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in WAC 182-503-0530, and give proof of citizenship or qualified alien status and identity upon request from the medicaid agency;

(b) Provide a valid Social Security number (SSN);

(c) Be a resident of the state of Washington as described in WAC 182-503-0520;

(d) Have an income at or below two hundred sixty percent of the federal poverty level as described in WAC 182-505-0100;

(e) Need family planning services;

(f) Have applied for categorically needy coverage, unless the applicant:

(i) Is a domestic violence victim who is covered under the alleged perpetrator's health insurance;

(ii) Is under eighteen years of age and is seeking confidential services; or

(iii) Has an income between one hundred fifty percent and two hundred sixty percent (inclusive) of the federal poverty level.

(g) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(h) Not be covered currently through another Washington apple health program for family planning. If categorically needy coverage is approved for a TAKE CHARGE recipient, the individual will be enrolled in the categorically needy program.

(2) An applicant who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) An applicant who has concurrent coverage under a creditable health insurance policy as defined in WAC 182-12-109 is not eligible for TAKE CHARGE unless the applicant is seeking confidential services and is either under nineteen years old or is a domestic violence victim who is covered under the perpetrator's insurance.

(4) A client is authorized for TAKE CHARGE coverage for one year from the date the medicaid agency determines eligibility, or for the duration of the waiver, whichever is shorter. Upon reapplication for TAKE CHARGE by the client, the medicaid agency may renew the coverage for an additional period of up to one year, or for the duration of the waiver, whichever is shorter.

**WSR 16-10-016**

**EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed April 22, 2016, 2:10 p.m., effective April 22, 2016, 2:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is adding two new sections to chapter 388-71 WAC, Home and community services and programs; amending one section in chapter 388-106 WAC, Long-term care services; and creating a new chapter as chapter 388-114 WAC, Travel time and work week limitations for individual providers, as a result of the passage of E2SHB 1725.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-1458.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: E2SHB 1725.

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: See Purpose above.

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 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 16, Amended 1, Repealed 0.

Date Adopted: April 21, 2016.

Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-71-0507 What responsibilities do clients have related to individual provider work week limits?** Clients must comply with WAC 388-114-0090.

#### NEW SECTION

**WAC 388-71-0518 What responsibilities do individual providers have related to work week limitation?** Individual providers must comply with WAC 388-114-0100.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

**WAC 388-106-1458 How do I create and use my spending plan?** (1) You create your spending plan with the assistance of the Care Consultant using the New Freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the Care Consultant.

(3) You and your Care Consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month). The value of those units is deducted from your New Freedom budget. The rest of funds can be used for other covered goods and services or saved.

(a) Once a service month begins, the number of personal care units may not be altered during that month.

(b) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

(c) Prior to the service month, you may elect to use savings funds to buy additional personal care.

(d) You can choose to have your personal care provided by an individual provider (IP) or a home care agency. Each unit will be deducted from your New Freedom budget at the average IP wage rate including mileage. Subsection (4) of this section describes when the department will be responsible for any extra costs for overtime payments to your individual provider and when you will have to pay the extra costs out of your monthly budget.

(e) The balance of your individual New Freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

(f) If you have a change of condition or situation and your New Freedom budget increases due to a new assessment or Exception to Rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

(g) You may assign your predetermined personal care units to a different provider during the month of service.

(4) The responsibility for paying the extra cost of overtime, which under chapter 388-114 WAC may be paid to providers who work as individual providers for one or more department clients when they work more than forty hours in a work week, is as follows:

(a) If the department approves the individual provider to work more than forty hours per week, the department will pay the extra cost for overtime up to the number of service hours the individual provider is approved to work. Payment for these extra costs will not be charged to your budget.

(b) If you assign more overtime hours to your individual provider than the department approved, you are responsible for paying the extra costs for the unapproved overtime hours. The additional cost will impact your monthly budget and may reduce the number of service hours you are able to purchase from it.

### Chapter 388-114 WAC

#### TRAVEL TIME AND WORK WEEK LIMITATIONS FOR INDIVIDUAL PROVIDERS

#### NEW SECTION

**WAC 388-114-0010 What is the purpose of this chapter?** The purpose of this chapter is to describe:

(1) The number of hours the department may approve an individual provider to work in a work week;

(2) How the department determines work week limitations;

(3) When the department may approve an individual provider to work more than the work week limit;

(4) Client responsibilities regarding work week limits;

(5) Individual provider responsibilities around work week limits;

(6) What happens when a family or household member works more hours than are authorized in the client's plan of care;

(7) What happens when an individual provider works more than the work week limit or submits claims for unauthorized travel time;

(8) How the department approves and authorizes travel time; and

(9) Travel time limitations.

#### NEW SECTION

**WAC 388-114-0020 What definitions apply to WAC 388-114-0010 through WAC 388-114-0040? "Approve"** means the department, either in advance or after the fact, has reviewed the circumstances, applied the rules in this chapter, and has authorized the individual provider to work more than forty hours in a work week.

**"Family member"** means a person who is related by blood, marriage, adoption, or registered domestic partnership to the client.

**"Household member"** means the individual provider lives with the client and has a relationship with the client that existed before the client was assessed and approved for department paid personal care services as defined in WAC 388-106-0010.

**"Overtime"** means the number of hours an individual provider works in a work week that is more than forty hours. When required by law, the overtime wage is one and one half times the individual provider's regular wage rate. Paid time off does not accrue as overtime pay.

**"Service hours"** means the time individual providers are paid by the department to provide personal care, relief care, skills acquisition training, or respite services under medicaid state plan and 1915(c) waiver programs, roads to community living, the veterans directed home services program, and programs solely funded by the state. Service hours do not include hours paid for training, travel, or paid time off.

**"Travel time"** is the direct one way travel time from one worksite to another in the same workday. Direct one way travel is the amount of time it takes to travel the most direct route between two specific worksites on the same day, as verified by using an online mapping tool.

**"Worksite"** is defined as the location where an individual provider provides authorized care to a department client or attends required training. An individual provider's residence is not a worksite for the purposes of travel time, whether or not the client lives there.

**"Work week"** begins at 12:00 a.m. Sunday morning and ends at 11:59 p.m. the following Saturday night.

**"Work week limit"** is the total number of service hours an individual provider can provide in a work week. Travel and training hours are not included in the work week limit.

#### NEW SECTION

**WAC 388-114-0030 How many service hours may the department approve an individual provider to work in a work week?** (1) The department may not approve an individual provider to work more than a total of forty hours per work week, unless:

(a) The individual provider has a higher work week limit as described under WAC 388-114-0040;

(b) The individual provider has a higher work week limit because:

(i) The department determined that the additional hours are necessary for the client for one of the reasons listed in WAC 388-114-0080;

(ii) It is allowable travel time as described in WAC 388-114-0130 and WAC 388-114-0140; or

(iii) The individual provider attends required training during the work week; and

(c) The authorization of additional hours would not exceed any expenditure limitations under RCW 74.39A.270 (10).

(2) The limitations of this section will apply to individual providers who were paid for one hundred and seventy-four or more service hours in January 2016 after the department reviews the plans of care for the individual provider's employers. The department will notify individual providers in this group of their work week limit once the department has completed the reviews.

#### NEW SECTION

**WAC 388-114-0040 How does the department determine an individual provider's work week limit?** (1) An individual provider's work week limit is forty service hours per week, unless the department approves a higher work week limit as described in this section.

(2) Subject to any expenditure limitations required by RCW 74.39A.270(10), if the department paid the individual provider for one hundred and seventy-four or more service hours of work in January 2016, the individual provider's work week is calculated by dividing the individual provider's January paid service hours by 4.33 and rounding to the nearest quarter hour. However, an individual provider's maximum work week limit cannot exceed sixty-five hours regardless of the number of service hours the individual provider worked in January 2016. Beginning July 1, 2017, the maximum work week limit will be reduced to sixty service hours.

#### NEW SECTION

**WAC 388-114-0050 What if the service hours the individual provider was paid for in January 2016 does not accurately represent the individual provider's work history in February and March 2016?** (1) If the service hours the individual provider was paid for in January 2016 does not accurately represent the individual provider's work history for the first three months of 2016, the individual provider may appeal the determination by submitting a request to the client's case manager by August 31, 2016.

(2) The department will consider an appeal if:

(a) The individual provider was contracted with the department;

(b) The individual provider was employed by a client in January 2016; and

(c) The total monthly service hours the individual provider was paid in January 2016 is less than the total monthly service hours the individual provider was paid in either February or March 2016 and the average in those months was above forty hours.

(3) The department will not consider an appeal request from an individual provider who was not contracted with the department or was not employed by a client in January 2016.

(4) The department will evaluate individual provider service hours appeals as follows:

(a) Calculate the average number of weekly service hours the individual provider was paid for in January 2016 as follows:

(i) The average weekly service hours for January equals the total monthly service hours paid divided by 4.33 which is the average number of weeks in a month;

(b) Calculate the average number weekly service hours the individual provider was paid for February and March 2016 as follows:

(i) The average weekly service hours for February equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month; and

(ii) The average weekly service hours for March equals the total monthly service hours divided by 4.33 which is the average number of weeks in a month;

(c) Add the average weekly service hours for January 2016 with the average weekly service hours for February and March 2016 together, and divide the total by two. The result will be the average weekly service hours for February and March;

(d) Compare the average weekly service hours for January 2016 with the average weekly service hours for February and March 2016 that were calculated under this section. If the average weekly service hours calculated for January 2016 is less than forty and the average weekly service hours for February and March 2016 is over forty, then the department will use the average of the paid weekly service hours for February and March 2016 as the individual provider's weekly service hour limit.

#### NEW SECTION

**WAC 388-114-0060 How will the client and individual provider know the individual provider's work week limit?** (1) The department will send a notification of the individual provider's work week limit, as determined under WAC 388-114-0040, to the individual provider and to the clients associated with the individual provider.

(2) The department will send a notification to the client and associated individual provider if the department approves additional service hours to the client under WAC 388-114-0080.

#### NEW SECTION

**WAC 388-114-0070 May an individual provider work more than his or her work week limit?** An individual provider with a work week limit of more than forty service hours has flexibility to work more than their work week limit in a given week if:

(1) Requested by the client to meet a specific need;

(2) Doing so would not exceed the client's monthly authorized hours;

(3) The total number of service hours worked over forty for each work week in a calendar month does not exceed the amount of overtime the individual provider would receive if

he or she worked his or her work week limit every week of the calendar month. This amount of monthly overtime is calculated by taking the individual provider's work week limit and subtracting forty. The result is multiplied by 4.33 and rounded to the nearest quarter hour; and

(4) The use of more service hours in a given week will not result in a client going without essential care in other weeks of the month.

#### NEW SECTION

**WAC 388-114-0080 When may the department approve an individual provider to work more than the work week limits in WAC 388-114-0030?** (1) In addition to the increased work week limits allowed under WAC 388-114-0040, the department may approve additional service hours to an individual provider's work week limit if it finds the increase is necessary:

(a) Due to lack of available providers who are able to adequately meet a client's care needs, as evaluated by the department in its consideration of:

(i) The overall availability of providers in the geographic region;

(ii) Whether the client has complex medical or behavioral needs;

(iii) Whether the client requires a provider with specific language skills; and

(iv) The client's good faith efforts and cooperation to manage his or her service hours and locate and select additional providers, which must include:

(A) Making schedule adjustments within the work week limits of current providers who are providing your services;

(B) Seeking a qualified family or friend to contract as an individual provider;

(C) Utilizing the home care referral registry; and

(D) Requesting a worker through a home care agency, unless doing so would cost more than paying the individual provider overtime;

(b) To protect a client's health and safety, as evaluated by the department in its consideration of:

(i) Whether the request is to approve service hours the individual provider spent caring for the client because of an emergent condition;

(ii) The nature and severity of the emergent condition; and

(iii) Whether the need could have been postponed until another provider could have arrived;

(c) To serve the client's needs in the most efficient and economic manner; or

(d) To prevent an increased risk that the client will be unable to remain in a home or community based setting, except in cases where there are additional qualified providers available to select and the client has chosen not to select them.

(2) When a department approved increase to an individual provider's work week limit is no longer needed by the client, the individual provider's work week limit will revert to the level described in WAC 388-11-0040.

(3) The department will not approve additional service hours to an individual provider's work week limit that would

exceed the client's monthly service hours limit or is more than eighty service hours per week for an individual provider.

#### NEW SECTION

**WAC 388-114-0090 How does the individual provider work week limits affect the client's responsibilities listed in WAC 388-70-0505?** In addition to the responsibilities detailed in WAC 388-71-0505, the client must:

(1) Manage his or her individual providers' work time to stay within each individual provider's total work week limit described in this chapter and within the total number of monthly authorized hours in the client's plan of care;

(2) Contact his or her case manager and participate in the search, selection, and hiring of additional providers when necessary to comply with subsection (1) of this section; and

(3) Choose a different provider when an individual provider is already working for one or more clients and the individual provider would exceed his or her work week limit by working for the client.

#### NEW SECTION

**WAC 388-114-0100 How does the individual provider work week limits affect the individual provider's responsibilities in WAC 388-71-0515?** In addition to the responsibilities detailed in WAC 388-71-0515, the individual provider must:

(1) Communicate and coordinate with each of his or her clients about how many service hours the individual provider is allowed and available to work each week; and

(2) Not accept assignments or changes in schedules for clients that would require the individual provider to work more than his or her work week limit unless it is to respond to an unexpected health or safety need of the client that cannot be postponed.

#### NEW SECTION

**WAC 388-114-0110 What happens when an individual provider, who is a family member or household member, provides more care or services than authorized in the client's plan of care?** The department will not pay an individual provider who is also a family or household member for care hours or services beyond the monthly authorized hours in the client's plan of care.

#### NEW SECTION

**WAC 388-114-0120 What happens if an individual provider works more service hours in a work week than the individual provider's work week limit or claims unapproved travel or service hours?** (1) If an individual provider works more service hours in a work week than the work week limit approved by the department or submits a claim for unapproved travel or service hours, the department may take any one or more of the following actions:

(a) Contact the individual provider to discuss the client's care needs and the individual provider's responsibilities under department rules and the individual provider's contract;

(b) Provide additional technical assistance to the individual provider and the client on how to comply with department rules and the individual provider contract;

(c) Give the individual provider and the client notice that continued failure by the individual provider to comply will result in termination of the individual provider's contract; and

(d) Terminate the individual provider's contract and assist the client in finding another individual provider.

(2) Individual providers do not have a right to an administrative hearing to appeal contract terminations under this section.

#### NEW SECTION

**WAC 388-114-0130 How is travel time approved and authorized?** (1) Individual providers must provide an estimate of planned travel time and request approval from the department in advance of travel. The reasonableness of the request may be verified by the department using an online mapping tool.

(2) Travel time is calculated based upon the actual time to travel directly between worksites during each work day and is rounded to the nearest fifteen minutes. If more than one trip between worksites is made in a day, direct travel times are added together and rounded to the nearest fifteen minutes once each day.

(3) Regardless of the estimated travel time, individual providers may only bill for actual time spent traveling as calculated in subsection (2) of this section.

(4) If the individual provider has unexpected or unplanned travel time, the individual provider must contact the department to request approval and authorization for payment of the unplanned travel. The department will approve unplanned travel time requests related to client health and safety or due to traffic conditions outside the individual provider's control.

#### NEW SECTION

**WAC 388-114-0140 Are there limitations on travel time?** The department will not approve an individual provider to provide care for a client if the department determines, based on an online mapping tool, that the individual provider would regularly travel for more than sixty minutes between worksites or exceed a total of seven hours of travel time per work week.

### WSR 16-10-025

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed April 26, 2016, 8:36 a.m., effective April 27, 2016]

Effective Date of Rule: April 27, 2016.

Purpose: The developmental disabilities administration (DDA) is amending WAC 388-832-0015 and repealing WAC 388-832-0085 due to the 2014 operating supplemental budget directing DDA to move the state funded individual and fam-

ily services (IFS) program into a 1915(C) home and community based services (HCBS) waiver. These changes reflect that the IFS program is closed to new entrants.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-832-0085; and amending WAC 388-832-0015.

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: Based on the passage of SSB 6387 of the 63rd legislature 2014 regular session, DDA implemented a new IFS waiver on June 1, 2015. Centers for Medicare and Medicaid Services approved the IFS waiver on May 27, 2015, with an effective date of June 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 1, Repealed 1.

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

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

Date Adopted: March 10, 2016.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

**WAC 388-832-0015 Am I eligible for the IFS program?** (1) The IFS program and SSP in lieu of IFS is not open to new enrollment.

(2) If you were enrolled in the IFS program before June 1, 2015 you are eligible to ((be considered for)) remain on the IFS program if you meet the following criteria:

- (a) You are currently an eligible client of DDD;
- (b) You live in your family home;
- (c) You are not eligible to enroll((ed)) in a DDD home and community based services waiver defined in chapter 388-845 WAC;
- (d) You are currently enrolled in ~~((traditional family support, family support opportunity or the family support pilot or funding has been approved for you to receive IFS program services))~~ the IFS program;
- (e) You are age three or older;
- (f) You have been assessed as having a need for IFS program services as listed in WAC 388-832-0140; and

(g) You are not receiving a DDD adult or child residential service or licensed foster care.

~~((2))~~ (3) If you are a parent who is a client of DDD, you are eligible to ((receive)) remain on the IFS program ((services)) in order to promote the integrity of the family unit until your next assessment, provided:

(a) You meet the criteria in subsections ~~((4))~~ (2)(a) through (f) ~~((above))~~ of this section; and

(b) Your minor child who lives in your home is at risk of being placed up for adoption or into foster care.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-832-0085 When there is state funding available to enroll additional clients on the IFS program, how will DDD select from the clients on the IFS program request list?

#### **WSR 16-10-026**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed April 26, 2016, 8:51 a.m., effective April 28, 2016]

Effective Date of Rule: April 28, 2016.

Purpose: The department is amending WAC 388-97-0001 Definitions, related to the passage of SB 5600 in 2015. The department is also amending WAC 388-97-1080 Nursing services, and creating new WAC 388-97-1090 Direct care hours, related to the passage of SHB 1274 in 2015 and SHB 2678 in 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 388-97-0001 and 388-97-1080.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Other Authority: 42 C.F.R. 483.

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: Section 7 (2)(b) of SHB 1274 states "The department shall establish in rule by January 1, 2016, a system of financial penalties for facilities out of compliance with minimum staffing standards." A CR-101 was filed on July 16, 2015, to start the rule-making process. However, by legislative mandate, a stakeholder group was convened to provide opportunity to discuss the bill and rule language and this delayed the development of the rules. A CR-103E was filed on December 30, 2015, to implement the rules according to the requirements of SHB 1274. During the 2016 legislative session, HB 2678 was introduced to revise requirements set forth in SHB 1274. As a result, the filing of a CR-102 has been further delayed, and the first CR-103E



(filed December 30, 2015) is set to expire. A second CR-103E will be required to allow time to incorporate the language changes of SHB 2678.

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

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

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

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

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

Date Adopted: April 7, 2016.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-027, filed 6/24/14, effective 7/25/14)

**WAC 388-97-0001 Definitions. "Abandonment"** means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual 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 of a vulnerable adult. 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. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(1) **"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 resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating,))~~ a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(2) **"Physical abuse"** means the 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, or prodding~~((, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements)).~~

(3) **"Sexual abuse"** means any form of nonconsensual sexual ~~((contact))~~ conduct, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harass-

ment. Sexual ~~((contact))~~ conduct 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))~~ conduct between a staff person and a resident, whether or not it is consensual.

(4) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a ~~((resident))~~ vulnerable adult causing the ~~((resident))~~ vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

**(5) "Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

**"Administrative law judge (ALJ)"** means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

**"Administrator"** means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

**"Advanced registered nurse practitioner (ARNP)"** means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

**"Applicant"** means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

**"ASHRAE"** means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

**"Attending physician"** means the doctor responsible for a particular individual's total medical care.

**"Berm"** means a bank of earth piled against a wall.

**"Chemical restraint"** means ~~((a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms))~~ the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

**"Civil adjudication proceeding"** means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

**"Civil fine"** is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

**"Condition on a license"** means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

**"Consent"** means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

**"Deficiency"** is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

**"Deficiency citation"** or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

**"Deficient facility practice"** or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

**"Dementia care"** means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

**"Denial of payment for new admissions"** is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

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

**"Department on-site monitoring"** means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

**"Dietitian"** means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

**"Direct care employee"** is a registered nurse, licensed practical nurse, certified nursing assistant, director of nursing, nurse with administrative duties, medication assistant, nursing assistant in training, or geriatric behavioral health worker.

**"Directly supervising"** means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments and other direct care of residents, and provide oversight of supervised staff.

**"Disclosure statement"** means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

**"Drug"** means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

**"Drug facility"** means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

**"Emergency closure"** is an order by the department to immediately close a nursing home.

**"Emergency transfer"** means immediate transfer of residents from a nursing home to safe settings.

**"Entity"** means any type of firm, partnership, corporation, company, association, or joint stock association.

**"Essential community provider"** has the same meaning as this term is defined in RCW 74.46.020.

**"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 or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020 ~~((6))~~ (7).

**"Habilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

**"Highest practicable physical, mental, and psychosocial well-being"** means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with

all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

**"Informal department review"** is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

**"Inspection" or "survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

**"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)"** means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

**"Large nonessential community providers"** has the same meaning as this term is defined in RCW 74.46.020.

**"License revocation"** is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

**"License suspension"** is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

**"Licensee"** means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

**"Licensed practical nurse"** means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

**"Mandated reporter"** as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of assisted living ~~((facility))~~ facilities, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

**"Mechanical restraint"** means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(1) Medically authorized, as required; and

(2) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities.

**"Misappropriation of resident property"** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

**"NFPA"** means National Fire Protection Association, Inc.

**"Neglect"**:

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means:

~~((a))~~ (a) 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

(b) An act or omission by a person or entity with a 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.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

**"Noncompliance"** means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

**"Nursing assistant"** means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

**"Nursing facility (NF)" or "medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

**"Nursing home"** means any facility licensed to operate under chapter 18.51 RCW.

**"Officer"** means an individual serving as an officer of a corporation.

**"Owner of five percent or more of the assets of a nursing home"** means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

**"Partner"** means an individual in a partnership owning or operating a nursing home.

**"Permanent restraining order"** means a restraining order 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.

**"Person"** means any individual, firm, partnership, corporation, company, association or joint stock association.

**"Pharmacist"** means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

**"Pharmacy"** means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

**"Physical restraint"** (~~means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body~~) means the application of physical force without the use of any device for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include: (a) briefly holding without undue force a vulnerable adult in order to calm or comfort him or her; or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

**"Physician's assistant (PA)"** means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

**"Plan of correction"** is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

**"Reasonable accommodation"** and **"reasonably accommodate"** has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

**"Receivership"** is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

**"Recurring deficiency"** means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

**"Registered nurse"** means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

**"Rehabilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

**"Resident"** generally means an individual residing in a nursing home. 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. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

**"Resident care unit"** means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

**"Respiratory isolation"** is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

**"Siphon jet clinic service sink"** means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

**"Skilled nursing facility (SNF)"** or **"medicare-certified skilled nursing facility"** means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

**"Small nonessential community providers"** has the same meaning as this term is defined in RCW 74.46.020.

**"Social/therapeutic leave"** means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

**"Staff work station"** means a location at which nursing and other staff perform charting and related activities throughout the day.

**"Stop placement"** or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

**"Substantial compliance"** means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicaid certified facility, no deficiencies higher than a scope and severity "C."

**"Surrogate decision maker"** means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

**"Survey"** means the same as **"inspection"** as defined in this section.

**"Temporary manager"** means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

**"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.

**"Termination"** means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

**"Toilet room"** means a room containing at least one toilet fixture.

**"Uncorrected deficiency"** is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

**"Violation"** means the same as **"deficiency"** as defined in this section.

**"Volunteer"** means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

**"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; or  
 (2) Found incapacitated under chapter 11.88 RCW; or  
 (3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility(~~(, including any assisted living facility)~~); or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(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))~~  
Who self directs his or her own care and receives services from a personal aide under chapter 74.39(,050) RCW.

**"Whistle blower"** means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-1080 Nursing services.** (1) The nursing home must ensure that a sufficient number of qualified nursing personnel are available on a twenty-four hour basis seven days per week to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care.

(2) The nursing home must:

(a) Designate a registered nurse or licensed practical nurse to serve as charge nurse, who is accountable for nursing services on each tour of duty; and

(b) Have a full time director of nursing service who is a registered nurse.

(3) The nursing home must have(~~(=)~~)

~~((a) A) a registered nurse on duty directly supervising resident care ((a minimum of sixteen hours per day, seven days per week,)) as required in RCW 74.42.360 (3) and (4). ((and~~

~~(b) A registered nurse or licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week. "Directly supervising" means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments and other direct care of residents; and oversight of supervised staff.))~~

(4) The nursing home must ensure that staff respond to each resident's requests for assistance in a manner which promptly meets the quality of life and quality of care needs of all the residents.

(5) The director of nursing services is responsible for:

(a) Coordinating the plan of care for each resident;

(b) Ensuring that registered nurses and licensed practical nurses comply with chapter 18.79 RCW; and

(c) Ensuring that the nursing care provided is based on the nursing process in accordance with nationally recognized and accepted standards of professional nursing practice.

#### NEW SECTION

**WAC 388-97-1090 Direct care hours** (1) Each nursing facility must provide a minimum of 3.4 hours of direct care per resident day (HRD). Direct care includes only care provided by direct care employees, either employed by the facility or contracted by the facility from an outside source.

(2) Each nursing facility shall file reports with the department as follows:

(a) The reports shall be made on forms specified by the department, showing the hours of direct care provided, and the resident census information, for each month of the quarter. Where feasible, the department may use existing forms of the federal centers for medicare and medicaid services for the reporting of direct care hours and resident census.

(b) The reports shall be submitted within forty five days after the end of each calendar quarter, and shall be filed electronically.

(c) Unless the nursing facility reports otherwise, it will be presumed that all hours worked by direct care employees at the facility have been spent providing direct care.

(d) If any hours worked by direct care employees have not been spent providing direct care, the facility shall adjust its report to reflect that.

(3) Compliance with the minimum staffing standard shall be measured as follows:

(a) The direct care hours provided at the facility for each quarter shall be divided by the total resident days at the facility for that quarter to calculate the hours of direct care per resident day provided by the facility.

(b) The department may use census and payroll data from facilities to perform enforcement audits.

(c) The department shall monitor facilities' census information, reported staff hours, and payroll data to determine whether HRD figures are relatively constant throughout a quarter or are being increased at the end of the quarter through unusual spending on direct care.

(4) A nursing facility that fails to meet the minimum staffing requirement of 3.4 hours of direct care per resident day for any quarter is subject to a fine. The department will determine the amount of the fine as follows:

(a) The fine shall be based on the total cost the facility would have incurred had it complied with the 3.4 HRD requirement.

(b) The department will use a formula that calculates a fine based on the cost of certified nurse aid wages and benefits for the missing staff hours.

(c) If the facility believes that application of the standard in subsection (b) to its situation is inequitable, it may explain its position to the department and request consideration of an alternative method of calculating the fine. The department

may grant the facility's request at its sole discretion, without right of appeal or review.

(d) The fine will be one and a half times the additional amount it would have cost the facility to provide direct care at the 3.4 HRD standard for a facility's first violation, and two times the additional amount for each subsequent violation by the facility.

(e) After a facility has been free of violations of the 3.4 HRD requirement for four years its status will be reset and any subsequent violation will be treated as an initial violation.

(5) If a non-compliant facility believes that it made a good-faith effort to meet the minimum staffing requirement and asks that the penalty not be imposed, the department may in its sole discretion waive the penalty. No party shall have a right to appeal or review of the department's decision to enforce or waive a penalty.

(6) If a facility's fine is waived under section (5), its non-compliance with the 3.4 HRD requirement shall not count as a violation for determining whether a future violation is a first violation or a subsequent violation under section (4)(d) and shall not count as a violation for the purposes of resetting a facility's status under section (4)(e).

(7) The amount of money the facility would have been required to spend to reach 3.4 HRD shall be treated as a direct care cost during the annual rate settlement process. The portion of the fine representing the additional one-half or one times that amount is a penalty, and will not be added to the actual costs of the facility in the settlement process.

(8) The department will monitor compliance with the 3.4 HRD minimum staffing requirement for the quarter beginning July 1, 2016, but will not impose any penalties on facilities that do not comply during that quarter. The department instead will notify non-complying facilities what their penalty would otherwise have been, and will require those facilities to submit a written plan for correcting the deficiency. Fines will begin to be imposed for the quarter beginning October 1, 2016. Noncompliance with the 3.4 HRD requirement during the quarter beginning July 1, 2016 shall not count as a first violation for fine calculation purposes under section (4)(d).

(9) Payment of the penalty provided in subsection must be made by check. Penalty checks will be deposited into the nursing facility quality enhancement account in the custody of the state treasurer. The department's secretary, or the secretary's designee, may authorize expenditures from the account. Such expenditures may only be for: technical assistance to nursing facilities, specialized training for nursing facilities, or an increase to the quality enhancement component of the daily medicaid rate provided by RCW 74.46.581.

**WSR 16-10-027**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-86—Filed April 26, 2016, 9:08 a.m., effective April 26, 2016, 9:08 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound scallops.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-06900I; and amending WAC 220-52-069.

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 surplus of pink and spiny scallops exists in the area specified in Puget Sound to allow for commercial harvest. 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: April 26, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-52-06900J Commercial scallop fishery—Puget Sound.** Notwithstanding the provisions of WAC 220-52-069, effective immediately until further notice, it is unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(2) Pink or spiny scallop harvest using shellfish diver gear is allowed in Scallop Area 1, which is defined as the waters of marine fish - shellfish catch reporting areas 20A and 20B within the following boundaries: Point Doughty east along the shoreline of Orcas Island to Lawrence Point, then true north to 48°42'28" N latitude, 122°44'29" W longitude, then northwest to 48°47'18" N latitude, 122°48'8" W longitude, then northwest to 48°50'4" N latitude, 122°50'24" W longitude, then southwest to 48°49'46" N latitude, 122°51'59" W longitude, then southwest to 48°46'4" N latitude, 122°57'3" W longitude, then true south back to Point Doughty, except within 100 feet of any shoreline, or shall

lower than 30 feet below mean lower low water, whichever is further from shore, and within 2500 feet from the shoreline of Orcas Island between Point Doughty and Point Thompson, and those waters of Echo Bay, Sucia Island west of a line projected from Johnson Point to the southeast tip of Ewing Island. Pink or spiny scallop harvest using shellfish diver gear is also allowed in Washington Department of Health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B and 25A.

(3) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(4) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations, or possess any other species of commercial shellfish on a vessel that has pink or spiny scallops on board.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-06900I Commercial scallop fishery—Puget Sound. (16-17)

**WSR 16-10-028**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-85—Filed April 26, 2016, 9:15 a.m., effective May 1, 2016, 6:00 a.m.]

Effective Date of Rule: May 1, 2016, 6:00 a.m.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-051, 220-52-075, and 220-69-240.

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 2016 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 Region 1 and 3 trawl fishery season; (2) opens the pot fishery season for nonspot shrimp with weekly harvest limits; and (3) reflects changes to the shrimp catch reporting and purchase reporting requirements. 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: April 26, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-52-05100M Puget Sound shrimp pot and trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective 6:00 a.m. May 1, 2016, until further 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, 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all non-spot shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) In Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 6:00 a.m. June 16, 2016.

(ii) All waters of Catch Areas 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

(iii) All waters of Shrimp Management Area 1A north of a line projected at 48°31.5' N latitude are closed.

(a) Effective immediately, until 11:59 p.m. May 3, 2016, it is unlawful for the combined total harvest of non-spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W.

(b) Effective 12:01 a.m. May 4, 2016, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher and/or the fisher's alternate operator to exceed 900 pounds per week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W

(c) The shrimp catch accounting week is Wednesday through Tuesday.

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

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south

of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) That portion of Catch Area 22A within SMA 1B is open effective 6:00 a.m. May 16, 2016, until further notice.

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

**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.

#### NEW SECTION

**WAC 220-52-07500R Shellfish harvest logs.** Notwithstanding the provisions of WAC 220-52-075, effective immediately, until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to [shrimpreport@dfw.wa.gov](mailto:shrimpreport@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

**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.

#### NEW SECTION

**WAC 220-69-24000R Duties of commercial purchasers and receivers.** Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: All buyers of shrimp taken by pot gear (including fishers who buy their own catch) are no longer required to report the previous week's purchases by phone or FAX.

(2) Puget Sound shrimp - Trawl gear: All buyers of shrimp taken by trawl gear (including fishers who buy their own catch) must report the previous day's purchases by 10:00 a.m. the following morning. Reports must be made by text message, e-mail or FAX. Text message and e-mail reports must be submitted to [shrimpreport@dfw.wa.gov](mailto:shrimpreport@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360-302-3031. Reports must include dealer name, fisher name, pounds sold per shrimp species, catch area, date sold, and the complete fish ticket serial number, including the first alphanumeric letter. Violation of this subsection is a gross misdemeanor, punishable under RCW [77.15.560](#).

**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 16-10-030**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed April 26, 2016, 1:33 p.m., effective April 26, 2016, 1:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Emergency rule making was necessary to remove references to billing in thirty minute units from WAC 182-535-1400.

Citation of Existing Rules Affected by this Order: Amending WAC 182-535-1400.

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: Effective January 1, 2016, the American Dental Association/Centers for Medicare and Medicaid Services eliminated the billing code for thirty minute time increments for dental procedures listed in WAC 182-535-1400. The agency became aware of this change in November 2015. Emergency rule making was necessary to implement these changes by January 1, 2016. The agency worked with stakeholders to finalize the language that will be presented at public hearing. The agency is preparing to file the CR-102 and schedule a public hearing in June 2016.

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 1, Repealed 0.

Date Adopted: April 26, 2016.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535-1400 Payment for dental-related services.** (1) The agency considers that a provider who furnishes



covered dental services to an eligible client has accepted the agency's rules and fees.

(2) Participating providers must bill the agency their usual and customary fees.

(3) Payment for dental services is based on the agency's schedule of maximum allowances. Fees listed in the agency's fee schedule are the maximum allowable fees.

(4) The agency pays the provider the lesser of the billed charge (usual and customary fee) or the agency's maximum allowable fee.

(5) The agency pays dental general anesthesia services for eligible clients as follows:

(a) ~~((The initial thirty minutes constitutes))~~ Fifteen-minute increments are billed as one unit of time. When a dental procedure ~~((requiring dental general anesthesia results in))~~ requires multiple ((time)) fifteen-minute units and there is a remainder (less than fifteen minutes), the remainder ((or fraction)) is considered ((as one time)) one unit.

(b) When billing for anesthesia, the provider must show the actual beginning and ending times in the client's medical record. Anesthesia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safely placed under postoperative supervision).

(6) The agency pays "by report" on a case-by-case basis, for a covered service that does not have a set fee.

(7) Participating providers must bill a client according to WAC 182-502-0160, unless otherwise specified in this chapter.

(8) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The exception to this is dentures and partial dentures as described in WAC 182-535-1240 and 182-535-1290.

### WSR 16-10-038

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 16-87—Filed April 27, 2016, 8:13 p.m., effective April 27, 2016, 8:13 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000H; and amending WAC 220-310-200.

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: Closes The Dalles Pool and adjacent tributaries for the retention of white sturgeon. The harvest guideline of one hundred fish is expected to be

reached. The summer period white sturgeon retention season in Bonneville Reservoir remains in place. Catch and release is allowed during nonretention periods, except within the May-July sturgeon spawning sanctuaries. This emergency rule is consistent with the joint Washington-Oregon action of April 27, 2016, and conforms Washington state rules with Oregon state rules. 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: April 27, 2016.

J. W. Unsworth

Director

### NEW SECTION

**WAC 220-310-20000I Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 220-310-200:

(1) June 18 and July 1, 2016, it is permissible to retain white sturgeon between 38-inches minimum and 54-inches maximum fork length caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to sturgeon spawning Sanctuary boundary located 1.8 miles downstream of The Dalles Dam.

(2) Effective immediately until further notice, except for the specific dates described in subsection (1) of this section, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Catch and release is permissible except from May 1 through July 31, 2016 in the sturgeon spawning Sanctuary located from The Dalles Dam downstream 1.8 miles.

(3) Effective April 30, 2016, until further notice, it is unlawful to retain white sturgeon caught in those waters of the Columbia River and in all adjacent Washington tributaries from The Dalles Dam upstream to John Day Dam. Catch and release is permissible except from May 1 through July 31, 2016 in the sturgeon spawning Sanctuary located from John Day Dam downstream 2.4 miles.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000H Exceptions to statewide rules—  
Columbia River sturgeon. (16-71)

**WSR 16-10-039****EMERGENCY RULES****HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed April 28, 2016, 9:30 a.m., effective April 28, 2016, 9:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending this rule to specify that subsection (3) of WAC 182-506-0010 applies only to children age eighteen and younger.

Citation of Existing Rules Affected by this Order: Amending WAC 182-506-0010.

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: As written, WAC 182-506-0010 does not comply with 42 C.F.R. 435.603(f).

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 1, Repealed 0.

Date Adopted: April 28, 2016.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-07-006, filed 3/3/16, effective 4/3/16)

**WAC 182-506-0010 Medical assistance units for MAGI-based programs.** This section applies to applicants or recipients whose financial eligibility for Washington apple health coverage is based on modified adjusted gross income methodology under WAC 182-503-0510 and 182-509-0300.

(1) General medical assistance unit (MAU) rules.

(a) The rules in this section describe how the medicaid agency must determine who is in an applicant's or recipient's MAU.

(b) Each person will have an individualized MAU and may have different eligibility results than other people on the same application.

(c) The countable income used to determine a person's eligibility is the sum of the countable income of everyone in the person's MAU.

(2) Rules regardless of tax filing status.

(a) If a married couple resides together, the agency must include both people in each other's MAU regardless of tax filing status.

(b) If a member of the MAU is pregnant, the number of people in the MAU increases by one for each unborn child.

(c) A deceased person does not count in the MAU of other applicants or recipients except in the month the person died.

(3) (~~People~~) Children residing in an institution under chapter 182-514 WAC. An applicant or recipient is the only person in the MAU if the applicant or recipient is a child age eighteen and younger and:

(a) Has resided in a medical institution, institution for mental diseases (IMD), or inpatient psychiatric facility for thirty consecutive days; or

(b) Based on an assessment by the department of social and health services, is likely to reside in a medical institution, IMD, or inpatient psychiatric facility for thirty consecutive days.

**WSR 16-10-042****EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed April 28, 2016, 11:38 a.m., effective April 28, 2016, 11:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits?, to comply with changes in federal regulations regarding who is considered ineligible for benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-442-0010.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025.

Other Authority: 7 C.F.R. 273.11.

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 United States Department of Agriculture, Food and Nutrition Service (FNS) clarified who is considered ineligible for the supplemental nutrition assistance program (SNAP) due to fleeing from the law. Current WAC is in contradiction to federal rules enacted Novem-

ber 1, 2015. Lack of compliance with FNS rules can result in loss of funding for or penalization to SNAP in Washington. Additionally, the current rule makes certain Washington residents ineligible for SNAP benefits who are now eligible based on recently adopted federal regulations.

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: April 26, 2016.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-442-0010** (~~How does being a fleeing felon impact my eligibility for benefits~~) **Am I eligible for benefits if I am fleeing from the law or breaking a condition for parole or probation?** (1) (~~You are a fleeing felon if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.~~

(2)) If you are a fleeing felon(;) or violating a condition of probation or parole (~~as determined by an administrative body or court that has the authority to make this decision,~~) you are not eligible for (~~TANF/SFA~~) temporary assistance for needy families (TANF), state family assistance (SFA), (PWA) pregnant women assistance (PWA), ((ABD)) aged, blind, or disabled (ABD) cash, referral to the ((HEN)) housing and essential needs (HEN) program, or basic food benefits.

(2) You are a fleeing felon if:

(a) A federal, state, or local law enforcement officer presents us with a felony arrest warrant that includes the national crime information center (NCIC) codes for escape (4901), flight to avoid (4902), or flight-escape (4999);

(b) The officer presenting the warrant is acting in an official capacity to obtain information on your location or other information; and

(c) You are the individual named in the warrant.

(3) You are violating a condition of parole or probation when:

(a) An administrative or judicial order has found you in violation of the terms of your parole or probation; and

(b) A law enforcement agency is actively seeking you to enforce the conditions of your parole or probation.

(4) "Actively seeking" as used in subsection (3)(b) of this section means a law enforcement agency intends to arrest you for a probation or parole violation within:

(a) Thirty days from the date we request information about the parole or probation violation; or

(b) Twenty days from the date the law enforcement agency requests information from us.

#### WSR 16-10-047

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 16-88—Filed April 29, 2016, 10:24 a.m., effective April 29, 2016, 10:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational harvest rules for razor clams.

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

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

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

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

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

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

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

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

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

Date Adopted: April 29, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-56-36000Q Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it

is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective 12:01 a.m. May 6 through 11:59 a.m. May 8, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 a.m. May 9 through 11:59 a.m. May 11, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(3) Effective 12:01 a.m. May 12 through 11:59 a.m. May 12, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 1:00 p.m. on May 12, 2016 only.

(4) It is unlawful to dig for razor clams at any time in the Long Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 1:01 p.m. May 12, 2016:

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

**WSR 16-10-053**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-89—Filed April 29, 2016, 4:49 p.m., effective May 1, 2016]

Effective Date of Rule: May 1, 2016.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-621 and 220-56-510.

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

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

Reasons for this Finding: This emergency rule is needed because Endangered Species Act (ESA) coverage for Chinook and steelhead impacts expires April 30, 2016. This emergency rule modifies salmon fisheries to ensure compliance with ESA take coverage for Chinook and steelhead until a permit is approved. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 29, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 232-28-62100C Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective May 1, 2016, until further notice, it is unlawful to fish for salmon in Marine Area 8-2 (including Tulalip Terminal Area Fishery), Marine Area 11, Marine Area 13, and year-round piers (Marine Areas 9, 10, 11, and 13). Unless otherwise amended, all permanent rules remain in effect.

#### [NEW SECTION]

**WAC 220-56-51000C Game fish possession limits and size limits.** Notwithstanding the provisions of WAC 220-56-510, effective May 1, 2016, until further notice, it is unlawful to retain steelhead in Marine Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13. Unless otherwise amended, all permanent rules remain in effect.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 16-10-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-91—Filed April 29, 2016, 4:49 p.m., effective May 1, 2016]

Effective Date of Rule: May 1, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-190.

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

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

Reasons for this Finding: This emergency rule is needed because Endangered Species Act (ESA) coverage for Chinook and steelhead impacts expires April 30, 2016. This emergency rule modifies salmon and gamefish fisheries to ensure compliance with ESA take coverage for Chinook and

steelhead until a permit is approved. 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: April 29, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-1900C Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective May 1, 2016, the following waters are closed to fishing:

- (1) Lake Washington (King Co.)
- (2) Lake Sammamish (King Co.)
- (3) Monte Cristo Lake (Snohomish Co.)
- (4) Cushman Lake (Mason Co.)
- (5) Barney Lake (Skagit Co.)

**WSR 16-10-055**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-90—Filed April 29, 2016, 4:50 p.m., effective May 1, 2016]

Effective Date of Rule: May 1, 2016.

Purpose: Amend freshwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-180 and 220-310-190.

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

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

Reasons for this Finding: This emergency rule is needed because Endangered Species Act (ESA) coverage for Chinook and steelhead impacts expires April 30, 2016. This emergency rule modifies salmon and gamefish fisheries to ensure compliance with ESA take coverage for Chinook and

steelhead until a permit is approved. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 29, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-1900B Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-180, effective May 1, 2016, until further notice all fisheries listed in this WAC are closed except for the following:

1. **Sumas River** (Whatcom Co.) including all tributaries.
2. **Silesia Creek** (Whatcom Co.).
3. **Chilliwack River** (Whatcom Co.) including all tributaries and their tributaries.
4. **Whatcom Creek** (Whatcom Co.): from stone bridge at Whatcom Falls Park to Lake Whatcom.
5. **Kendall Creek** (Whatcom Co.) (tributary to Nooksack River, North Fork): above hatchery grounds.
6. **Canyon Creek** (Whatcom Co.) (tributary to Nooksack River, North Fork) from Canyon Creek Rd. Bridge upstream and all tributaries.
7. **Nooksack River, North Fork** (Whatcom Co.) upstream of Nooksack Falls including all tributaries and their tributaries.
8. **Nooksack River, Middle Fork** (Whatcom Co.) from the diversion dam upstream, including all tributaries and their tributaries.
9. **Cavanaugh Creek** (Whatcom Co.) (Nooksack River, South Fork) from 0.4 miles of the mouth upstream and all tributaries.
10. **Howard Creek** (Whatcom Co.) (Nooksack River, South Fork) from 0.3 miles of the mouth upstream and all tributaries.
11. **Plumbago Creek** (Whatcom Co.) (Nooksack River, South Fork) from Sierra Pacific 140 Rd. Bridge upstream and all tributaries.
12. **Roaring Creek** (Whatcom Co.) (Nooksack River, South Fork) upstream of confluence with Deer Creek and all tributaries.

**13. Skookum Creek** (Whatcom Co.) (Nooksack River, South Fork) upstream from confluence with Arlecho Creek and all tributaries.

**14. Cascade Creek** (San Juan Co.).

**15. Backus Creek** (Skagit Co.) (tributary to Skagit River).

**16. Cumberland Creek** (Skagit Co.) (tributary to Skagit River) from forest service road 17 upstream and all tributaries.

**17. O'Toole Creek** (tributary to Skagit River) from Marietta Falls upstream.

**18. Gorge and Diablo lakes tributary streams** (Whatcom Co.) and their tributaries, except Stetattle Creek.

**19. Ross Lake tributary streams (Whatcom Co.)** and their tributaries from one mile upstream of Ross Lake to the headwaters (except Ruby and Big Beaver creeks).

**20. Big Beaver Creek** (Whatcom Co.) (tributary of Ross Lake) from 1/4 miles upstream of Ross Lake markers to headwaters, including tributary streams and beaver ponds.

**21. Ruby Creek tributaries** (Whatcom Co.) (tributary to Ross Lake) all tributaries to Ruby Creek (excluding Ruby Creek).

**22. Baker River** (Skagit/Whatcom Co.) from fish barrier dam to headwaters and all tributaries including the tributaries to Shannon and Baker lakes except Channel Creek.

**23. Channel Creek** (Whatcom Co.) (tributary to the Baker River).

**24. Clear Creek** (Snohomish Co.) (tributary to Sauk River) above Asbestos Creek Falls.

**25. Copper Creek** (Snohomish Co.) (tributary to Clear Creek/Salk River) mouth upstream.

**26. Big Creek** (Skagit/Snohomish Co.) (tributary to Suiattle River) above TeePee Falls.

**27. Grade Creek** (Skagit/Snohomish Co.) (tributary to Suiattle River).

**28. Pilchuck Creek** (Skagit/Snohomish Co.) from Pilchuck Falls upstream including all tributaries and their tributaries, including tributaries to Lake Cavanaugh (Skagit Co.).

**29. Boulder River** (Snohomish Co.) (tributary Stillaguamish River, North Fork) from Boulder Falls upstream.

**30. Stillaguamish River, North Fork** (Skagit/Snohomish Co.) upstream of the falls including all tributaries.

**31. Black Creek** (Snohomish Co.) (tributary to Stillaguamish River, South Fork) from Bear Creek confluence upstream.

**32. Woods Creek, East Fork** (Snohomish Co.) (tributary to Skykomish River) from Old Pipeline Rd. upstream including tributaries.

**33. Youngs Creek** (Snohomish Co.) (tributary to Skykomish River) from Potson Rd (299 Ave SE Bridge) upstream including tributaries.

**34. Sultan River** (Snohomish Co.) (tributary to Sultan River) from diversion dam to 400' below Culmback Dam.

**35. Chaplain Creek** (Snohomish Co.) (Tributary to Sultan River) from above waterfall to the dam at Chaplain Lake including tributaries.

**36. Marsh Creek** (Snohomish Co.) (tributary to Sultan River) from above falls upstream including tributaries.

**37. Wallace River** (Snohomish Co.) from Wallace Falls upstream including all tributaries and their tributaries.

**38. Olney Creek** (Snohomish Co.) (tributary to Wallace River) upstream of Olney Falls, including all tributaries.

**39. Skykomish River, North Fork** (Snohomish Co.) from Deer Falls (about 1/4 mile upstream of Goblin Creek) upstream including all tributaries and their tributaries.

**40. Tye River** (King Co.) (Skykomish River, South Fork) from Alpine Falls upstream.

**41. Green Duwamish** (King Co.) from Friday Creek upstream including all tributaries.

**42. Clover Creek** (Pierce Co.) from Steilacoom Lake upstream and all tributaries.

**43. Nisqually River** (Pierce Co.) from Alder Reservoir upstream including Little Nisqually, Mineral Creek, and north fork Mineral Creek and all other tributaries.

**44. Deschutes River** (Thurston Co.) from the Old Hwy. 99 Bridge on Capitol Blvd. in Tumwater upstream.

**45. Eaton Creek** (Thurston Co.) (Lake St. Clair Tributary).

**46. Kennedy Creek** (Mason/Thurston Co.) from falls upstream and all tributaries.

**47. Beaver Ponds** (Kitsap/Mason Co.) ponds on Tahuya Peninsula west of Hwy 3.

**48. Beaver Ponds** (Kitsap/Mason Co.) ponds on Tahuya Peninsula east of Hwy 3.

**49. Skokomish River South Fork** (Mason Co.) from Rule Creek upstream.

**50. Le Bar Creek** (Mason Co.) (tributary to the Skokomish River, South Fork), upstream of falls at river mile 1.

**51. Church Creek** (Mason Co.) (tributary to the Skokomish River, South Fork), upstream of bridge on USFS road #2361.

**52. Lilliwaup River** (Mason Co.) from falls upstream.

**53. Hamma Hamma River** (Mason Co.) from falls upstream.

**54. Jefferson Creek** (Mason Co.) (tributary to the Hamma Hamma River).

**55. Washington Creek** (Mason Co.) (tributary to the Hamma Hamma River).

**56. Lena Creek** (Mason Co.) (tributary to the Hamma Hamma River).

**57. Fulton Creek** (Mason Co.) upstream of falls at river mile 0.8.

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

#### NEW SECTION

**WAC 220-310-1800S Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-310-190, effective May 1, 2016, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**1. Big Quilcene River** (Jefferson Co.) from mouth to upper boundary of Falls View Campground - closed

**2. Rocky Brook** (Jefferson Co.) (tributary to the Dosewallips River) from mouth to falls - closed.

**3. Little Quilcene River** (Jefferson Co.) from mouth to Little Quilcene River bridge on Penny Creek Rd. - closed.

**4. Jimmycomelately Creek** (Clallam Co.) from mouth to confluence with East Fork - closed.

**5. Dungeness River** (Clallam Co.) from mouth to Gold Creek - closed.

**6. Morse Creek** (Clallam Co.) from mouth to Port Angeles Dam - closed.

**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.

Date Adopted: May 2, 2016.

J. W. Unsworth  
Director

**WSR 16-10-067**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-96—Filed May 2, 2016, 2:57 p.m., effective May 2, 2016, 2:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500Q; 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: Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. Also corrects an error that was in filing WSR 16-10-007. 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.

NEW SECTION

**WAC 220-52-04500R Coastal crab seasons.** 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 the WA/OR border (46°15.00) and the U.S./Canada Border, including Willapa Bay and 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 Copalis River (47°08.00). This area is closed until further notice. The legal 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°08.00 N. Lat.	124°25.50 W. Lon.
(d) Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(4) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. on May 1, 2016. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

• Northeast Corner (Cape Johnson):	47°58.00' N. Lat.	124°40.40' W. Lon.
• Northwest Corner:	47°58.00' N. Lat.	124°49.00' W. Lon.
• Southwest Corner:	47°40.50' N. Lat.	124°40.00' W. Lon.
• Southeast Corner (Destruction Island):	47°40.50' N. Lat.	124°24.43' W. Lon.

(5) It is unlawful for a vessel to use more than 100 pots in the Quileute SMA from 8:00 a.m. May 1, 2016, until 8:00 a.m. June 1, 2016. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at [Carol.Henry@dfw.wa.gov](mailto:Carol.Henry@dfw.wa.gov); or
- Telephone call to Carol Henry at 360-249-1296.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04500Q Coastal crab seasons (16-82)

**WSR 16-10-068**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-95—Filed May 2, 2016, 3:18 p.m., effective May 2, 2016, 3:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: This emergency rule is needed because Endangered Species Act (ESA) coverage for Chinook and steelhead impacts expired April 30, 2016. This emergency rule modifies salmon and gamefish fisheries to ensure compliance with ESA take coverage for Chinook and steelhead until a permit is approved. 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: May 2, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-310-19000E Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provi-

sions of WAC 220-310-190, effective immediately the following waters are closed to fishing:

- (1) Lake Washington (King Co.)
- (2) Lake Union (King Co.)
- (3) Lake Sammamish (King Co.)
- (4) Monte Cristo Lake (Snohomish Co.)
- (5) Cushman Lake (Mason Co.)
- (6) Barney Lake (Skagit Co.)

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19000C Freshwater exceptions to statewide rules—Puget Sound (16-91)

**WSR 16-10-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-94—Filed May 2, 2016, 3:54 p.m., effective May 2, 2016, 3:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend freshwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000S and 220-310-19000B; and amending WAC 220-310-180 and 220-310-190.

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

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

Reasons for this Finding: This emergency rule is needed because Endangered Species Act (ESA) coverage for Chinook and steelhead impacts expired April 30, 2016. This emergency rule modifies salmon and gamefish fisheries to ensure compliance with ESA take coverage for Chinook and steelhead until a permit is approved. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 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: May 2, 2016.

J. W. Unsworth  
Director

## NEW SECTION

**WAC 220-310-19000D Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective immediately until further notice all waterways with the exceptions of Lakes listed in this WAC are closed to fishing except for the following:

1. **Sumas River** (Whatcom Co.) including all tributaries.
2. **Silesia Creek** (Whatcom Co.).
3. **Chilliwack River** (Whatcom Co.) including all tributaries and their tributaries.
4. **Whatcom Creek** (Whatcom Co.): from stone bridge at Whatcom Falls Park to Lake Whatcom.
5. **Kendall Creek** (Whatcom Co.) (tributary to Nooksack River, North Fork): above hatchery grounds.
6. **Canyon Creek** (Whatcom Co.) (tributary to Nooksack River, North Fork) from Canyon Creek Rd. Bridge upstream and all tributaries.
7. **Nooksack River, North Fork** (Whatcom Co.) upstream of Nooksack Falls including all tributaries and their tributaries.
8. **Nooksack River, Middle Fork** (Whatcom Co.) from the diversion dam upstream, including all tributaries and their tributaries.
9. **Cavanaugh Creek** (Whatcom Co.) (Nooksack River, South Fork) from 0.4 miles of the mouth upstream and all tributaries.
10. **Howard Creek** (Whatcom Co.) (Nooksack River, South Fork) from 0.3 miles of the mouth upstream and all tributaries.
11. **Plumbago Creek** (Whatcom Co.) (Nooksack River, South Fork) from Sierra Pacific 140 Rd. Bridge upstream and all tributaries.
12. **Roaring Creek** (Whatcom Co.) (Nooksack River, South Fork) upstream of confluence with Deer Creek and all tributaries.
13. **Skookum Creek** (Whatcom Co.) (Nooksack River, South Fork) upstream from confluence with Arlecho Creek and all tributaries.
14. **Cascade Creek** (San Juan Co.).
15. **Backus Creek** (Skagit Co.) (tributary to Skagit River).
16. **Cumberland Creek** (Skagit Co.) (tributary to Skagit River) from forest service road 17 upstream and all tributaries.
17. **O'Toole Creek** (tributary to Skagit River) from Marietta Falls upstream.
18. **Gorge and Diablo lakes tributary streams** (Whatcom Co.) and their tributaries, except Stetattle Creek.
19. **Ross Lake tributary streams (Whatcom Co.)** and their tributaries from one mile upstream of Ross Lake to the headwaters (except Ruby and Big Beaver creeks).

20. **Big Beaver Creek** (Whatcom Co.) (tributary of Ross Lake) from 1/4 miles upstream of Ross Lake markers to headwaters, including tributary streams and beaver ponds.

21. **Ruby Creek tributaries** (Whatcom Co.) (tributary to Ross Lake) all tributaries to Ruby Creek (excluding Ruby Creek).

22. **Baker River** (Skagit/Whatcom Co.) from fish barrier dam to headwaters and all tributaries including the tributaries to Shannon and Baker lakes except Channel Creek.

23. **Channel Creek** (Whatcom Co.) (tributary to the Baker River).

24. **Clear Creek** (Snohomish Co.) (tributary to Sauk River) above Asbestos Creek Falls.

25. **Copper Creek** (Snohomish Co.) (tributary to Clear Creek/Salk River) mouth upstream.

26. **Big Creek** (Skagit/Snohomish Co.) (tributary to Suitttle River) above TeePee Falls.

27. **Grade Creek** (Skagit/Snohomish Co.) (tributary to Suitttle River).

28. **Pilchuck Creek** (Skagit/Snohomish Co.) from Pilchuck Falls upstream including all tributaries and their tributaries, including tributaries to Lake Cavanaugh (Skagit Co.)

29. **Boulder River** (Snohomish Co.) (tributary Stillaguamish River, North Fork) from Boulder Falls upstream.

30. **Stillaguamish River, North Fork** (Skagit/Snohomish Co.) upstream of the falls including all tributaries.

31. **Black Creek** (Snohomish Co.) (tributary to Stillaguamish River, South Fork) from Bear Creek confluence upstream.

32. **Woods Creek, East Fork** (Snohomish Co.) (tributary to Skykomish River) from Old Pipeline Rd. upstream including tributaries.

33. **Youngs Creek** (Snohomish Co.) (tributary to Skykomish River) from Potson Rd (299 Ave SE Bridge) upstream including tributaries.

34. **Sultan River** (Snohomish Co.) (tributary to Sultan River) from diversion dam to 400' below Culmback Dam.

35. **Chaplain Creek** (Snohomish Co.) (Tributary to Sultan River) from above waterfall to the dam at Chaplain Lake including tributaries.

36. **Marsh Creek** (Snohomish Co.) (tributary to Sultan River) from above falls upstream including tributaries.

37. **Wallace River** (Snohomish Co.) from Wallace Falls upstream including all tributaries and their tributaries.

38. **Olney Creek** (Snohomish Co.) (tributary to Wallace River) upstream of Olney Falls, including all tributaries.

39. **Skykomish River, North Fork** (Snohomish Co.) from Deer Falls (about 1/4 mile upstream of Goblin Creek) upstream including all tributaries and their tributaries.

40. **Tye River** (King Co.) (Skykomish River, South Fork) from Alpine Falls upstream.

41. **Cherry Creek (King Co.)** from Cherry Creek falls, including all tributaries and beaver ponds

42. **Tolt River, North Fork (King Co.)** from falls upstream and all tributaries

43. **Tolt River, South Fork (King Co.)** from dam upstream

44. **Tokul Creek (King Co.)** from Tokul Rd. SE upstream including tributaries and beaver ponds

**45. Snoqualmie River (King/Snohomish Co.)** from Snoqualmie Falls upstream including **North** and **South** forks

**46. Snoqualmie River Tributaries** upstream of Snoqualmie Falls, and tributaries of North and South forks, (except Tate, Sunday and Phillapa Creeks)

**47. Boxley Creek (King Co.) (South Fork Snoqualmie tributary)** from falls (located approximately river mile 0.9) upstream

**48. Coal Creek (King Co.)** from mouth upstream

**49. Kimball Creek (King Co.)**

**50. Snoqualmie River, Middle Fork (King Co.)** from mouth upstream including all tributaries

**51. Green Duwamish (King Co.)** from Friday Creek upstream including all tributaries.

**52. Clover Creek (Pierce Co.)** from Steilacoom Lake upstream and all tributaries.

**53. Nisqually River (Pierce Co.)** from Alder Reservoir upstream including Little Nisqually, Mineral Creek, and north fork Mineral Creek and all other tributaries.

**54. Deschutes River (Thurston Co.)** from the Old Hwy. 99 Bridge on Capitol Blvd. in Tumwater upstream.

**55. Eaton Creek (Thurston Co.) (Lake St. Clair Tributary).**

**56. Kennedy Creek (Mason/Thurston Co.)** from falls upstream and all tributaries.

**57. Beaver Ponds (Kitsap/Mason Co.)** ponds on Tahuya Peninsula west of Hwy 3.

**58. Beaver Ponds (Kitsap/Mason Co.)** ponds on Tahuya Peninsula east of Hwy 3.

**59. Skokomish River South Fork (Mason Co.)** from Rule Creek upstream.

**60. Le Bar Creek (Mason Co.)** (tributary to the Skokomish River, South Fork), upstream of falls at river mile 1.

**61. Church Creek (Mason Co.)** (tributary to the Skokomish River, South Fork), upstream of bridge on USFS road #2361.

**62. Lilliwaup River (Mason Co.)** from falls upstream.

**63. Hamma Hamma River (Mason Co.)** from falls upstream.

**64. Jefferson Creek (Mason Co.)** (tributary to the Hamma Hamma River).

**65. Washington Creek (Mason Co.)** (tributary to the Hamma Hamma River).

**66. Lena Creek (Mason Co.)** (tributary to the Hamma Hamma River).

**67. Fulton Creek (Mason Co.)** upstream of falls at river mile 0.8.

#### NEW SECTION

**WAC 220-310-18000T Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-310-180, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**1. Big Quilcene River (Jefferson Co.)** from mouth to upper boundary of Falls View Campground - closed

**2. Rocky Brook (Jefferson Co.)** (tributary to the Dosewallips River) from mouth to falls - closed.

**3. Little Quilcene River (Jefferson Co.)** from mouth to Little Quilcene River bridge on Penny Creek Rd. - closed.

**4. Jimmycomelately Creek (Clallam Co.)** from mouth to confluence with East Fork - closed.

**5. Dungeness River (Clallam Co.)** from mouth to Gold Creek - closed.

**6. Morse Creek (Clallam Co.)** from mouth to Port Angeles Dam - closed.

**7. Chimacum Creek (Jefferson Co.)**

**8. Howe Creek (Jefferson Co.)** - Closed.

**9. Leland Creek (Jefferson Co.)** - Closed.

**10. Ripley Creek (Jefferson Co.)** - Closed.

**11. Ludlow Creek (Jefferson Co.)** - Closed.

**12. Shine Creek (Jefferson Co.)** - Closed.

**13. Thorndyke Creek (Jefferson Co.)** - Closed.

**14 Tarboo Creek (Jefferson Co.)** - Closed.

**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.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-310-19000B Freshwater exceptions to statewide rules—Puget Sound (16-90)

WAC 220-310-18000S Freshwater exceptions to statewide rules—Coastal (16-90)

#### **WSR 16-10-088**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 16-92—Filed May 3, 2016, 2:15 p.m., effective May 12, 2016]

Effective Date of Rule: May 12, 2016.

Purpose: Amend recreational fishing rules for South Lewis County Park Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500J; 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: This rule change is necessary to ensure a successful kid's fishing event. Several thousand rainbow trout will be stocked in South Lewis County Park Pond two days prior to the event to acclimate them to ensure they will bite while the kids are fishing. During the event,

only registered kids will be allowed to fish. 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: May 3, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-18500J Exceptions to statewide rules—South Lewis County Park Pond.** Notwithstanding the provisions of WAC 220-310-185, effective 12:01 a.m. May 12 through 2:00 p.m. May 14, 2016, it is unlawful to fish in South Lewis County Park Pond, except as provided in the sections below:

- (1) Open to fishing 8:00 a.m. to 1:00 p.m. May 14, 2016, by juvenile anglers participating in the kids fishing event.
- (2) Daily limit of 5 fish.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 2:01 p.m. May 14, 2016:

WAC 220-310-18500J Exceptions to statewide rules—  
South Lewis County Park Pond.

### **WSR 16-10-119**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed May 4, 2016, 11:24 a.m., effective May 4, 2016, 11:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule-making order amends chapter 16-470 WAC by:

- (1) Adding municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes to the list of commodities regulated under the apple maggot quarantine;
- (2) Establishing a special permit to allow transportation and disposition of municipal solid waste from the area under quarantine for disposal at a solid waste landfill or disposal

facility in the apple maggot and plum curculio pest-free area; and

(3) Establishing a special permit to allow transportation and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes from the area under quarantine for disposal at a solid waste landfill or treatment at a composting facility in the apple maggot and plum curculio pest-free area.

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-101, 16-470-108, 16-470-111, 16-470-113, 16-470-115, 16-470-118, 16-470-122, 16-470-127, and 16-470-130.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.041.

Other Authority: Chapter 34.05 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 permanent rule would be contrary to the public interest.

Reasons for this Finding: The agency had been working with the solid waste industry and other stakeholders regarding reissuance of a special permit under WAC 16-470-130 when it determined that section applied only to special permits for transport of fresh fruit. Without the emergency adoption of a rule allowing issuance of special permits for transport of municipal solid waste, yard debris, organic feedstocks, organic materials, and agricultural wastes to solid waste disposal facilities or composting facilities in the pest-free area, the affected industry stakeholder(s) would lack alternatives to properly dispose of existing waste, creating storage and disposal back-ups with potential health risks and financial risks to the municipal corporations dependent on their contractors to properly and timely dispose of the waste.

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 9, 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 9, Repealed 0.

Date Adopted: May 4, 2016.

Kirk Robinson  
Deputy Director

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-101 Establishing quarantine for apple maggot and plum curculio.** Apple maggot (*Rhagoletis*

*pomonella*) and plum curculio (*Conotrachelus nenuphar*) are insects with a larval (worm) stage that develops within fruit. These insects are capable of attacking many fruit crops grown in Washington. Apple maggot is not established in significant portions of the major fruit production areas east of the Cascade Mountains, and plum curculio is not established anywhere in the state. An increased range for either insect would cause decreased environmental quality and economic loss to the agricultural industries of the state by increasing production inputs and jeopardizing foreign and domestic markets.

(1) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that the regulation and/or exclusion of fresh fruits grown or originating from areas infested with apple maggot or plum curculio is necessary to protect the environmental quality and agricultural crops of the state.

(2) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that municipal solid waste originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such municipal solid waste from the pest free area is necessary to protect the environmental quality and agricultural crops of the state. The transport into and disposition of such municipal solid waste in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(1).

(3) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such waste from the pest free area is necessary to protect the environmental quality and agricultural crops of the state. The transport into and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(2).

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-108 Distribution of infested or damaged fruit is prohibited.** Regulated commodities ~~((described))~~ specified in WAC 16-470-111(1) and 16-470-125(2) that are known or found to be infested or damaged by apple maggot or plum curculio may not be distributed, sold, held for sale, or offered for sale, unless the fruit has undergone cold storage treatment, in compliance with WAC 16-470-113 (1)(a) and (b) or 16-470-127 (1)(a) and (b), and the necessary certificate has been issued by the appropriate plant protection organization.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-111 ((What)) Commodities ((are)) regulated for apple maggot((?)).** (1) All fresh fruit of apple (including crab apple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and

Washington), plum, prune, and quince are regulated under quarantine for apple maggot.

(2) Municipal solid waste as defined in WAC 173-350-100 is regulated under quarantine for apple maggot. Municipal solid waste from the quarantine areas is a host medium for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

(3) Yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 are regulated under quarantine for apple maggot. Yard debris, organic feedstocks, organic materials, and agricultural wastes from quarantine areas are host mediums for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-113 ((What do you need)) Requirements to ship commodities regulated for apple maggot from a state under quarantine into the pest free area for apple maggot((?)).** Shipment of ~~((regulated commodities))~~ fruit, as ~~((described))~~ specified in WAC 16-470-111(1), from an area under quarantine, as ~~((described))~~ specified in WAC 16-470-105(3), into the pest free area for apple maggot, as ~~((described))~~ specified in WAC 16-470-105(1), is prohibited, unless at least one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment is composed of apples, which ~~((have))~~ has undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths (37.9) degrees Fahrenheit or less.

(b) The shipment is composed of ~~((regulated commodities))~~ fresh fruit specified in WAC 16-470-111(1) other than apples, which ~~((have))~~ has undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two (32) degrees Fahrenheit or less.

(c) The shipment is composed of ~~((regulated commodities))~~ fresh fruit specified in WAC 16-470-111(1) from Oregon, Idaho, or Utah, certified by the state of origin in compliance with WAC 16-470-122.

(d) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been ~~((identity))~~ identified and maintained ~~((while))~~ separately from any fruit specified in WAC 16-470-111(1) grown within the area under quarantine. For repacked fruit, the certificate must show the following information:

- (i) State in which the fruit was grown;
- (ii) Point of repacking and reshipment;
- (iii) Amount and kind of commodities comprising the lot or shipment; and
- (iv) Names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for apple maggot and is a reshipment in original, unopened containers. The containers must each bear labels or other

identifying marks evidencing origin outside the area under quarantine.

(3) The fruit is frozen solid.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-115** (~~Within Washington state, what is required to ship fruit~~) **Requirements for shipment of regulated commodities from the quarantine area for apple maggot into the pest free area** (~~(for apple maggot from quarantined areas?)~~) **within Washington state.** Shipment of regulated commodities, as (~~described~~) specified in WAC 16-470-111, from an area under quarantine, as (~~described~~) specified in WAC 16-470-105(2), into the pest free area for apple maggot, as (~~described~~) specified in WAC 16-470-105(1), is prohibited, unless one of the following conditions is met:

(1) The shipment of fresh fruit is accompanied by a permit for movement of fruit issued by the department verifying one of the following:

(a) The fruit came from orchards and production sites that are not threatened with infestation; or

(b) The fruit has completed treatment as specified in WAC 16-470-118(3). If records of treatment verifying compliance with conditions specified in WAC 16-470-118(3) are made available to the department, no reinspection is required by the department.

(2) The shipment of fresh fruit is accompanied by a permit issued by the department in fulfillment of WAC 16-470-118 (2) and (3), which specifies conditions for shipment from orchards and production sites that are infested or threatened with infestation.

(3) The shipment of municipal solid waste from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate disposal or treatment facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(1).

(4) The shipment of yard debris, organic feedstocks, organic materials, or agricultural wastes from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate treatment or composting facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(2).

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-118** **Requirement within Washington state** (~~(, what is required)~~) **to ship fruit into, within, or through the pest free area for apple maggot from an orchard or production site that is infested or threatened with infestation** (~~(?)~~). All (~~regulated commodities~~) fresh fruit, as (~~described~~) specified in WAC 16-470-111(1), from an orchard or production site that is infested or threatened with infestation by apple maggot must be inspected (~~(except graded culls—See subsection (4) of this section)~~) by the department following accepted agency standards.

(1) If (~~regulated commodities are~~) the fruit is inspected and found free of apple maggot, the shipment must be accom-

panied by a permit for movement of fruit issued by the department.

(2) If (~~regulated commodities are~~) the fruit is found to be infested with apple maggot, a permit from the department, which specifies conditions for handling and shipment, is required to transport the fruit within or through the pest free area. No permit may be issued under this subsection for transportation of (~~regulated commodities~~) fresh fruit found to be infested with apple maggot into the pest free area for apple maggot.

(3) If (~~regulated commodities are~~) the fruit is found to be infested with apple maggot, one or more of the following treatments must be performed and verified by the department as specified in WAC 16-470-115 (1)(b) before the (~~commodity~~) fruit is moved from area(s) designated or quarantined by the department:

(a) Apples (including crab apples) cold treated as specified in WAC 16-470-113 (1)(a).

(b) (~~Regulated commodities~~) Fruit other than apples cold treated as specified in WAC 16-470-113 (1)(b).

(c) Other methods as prescribed in writing by the department.

(4) If the shipment contains graded culls, it must comply with the conditions specified in WAC 16-470-113 (1)(a) (~~and~~) or (b), dependent on the category of fruit.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-122** (~~What are the~~) **Requirements to ship regulated articles from Oregon, Idaho, or Utah into the pest free area for apple maggot** (~~(?)~~). Commercially grown fresh fruit from Oregon, Idaho, or Utah may be shipped into the pest free area for apple maggot if both of the subsections of this section are complied with:

(1) A permit has been agreed to by the plant protection organization of the state of origin and the department. The permits must specify that the plant protection organization of the state of origin has conducted an adequate apple maggot detection program, which includes immediate written notification to the department of detections in counties where apple maggot has not previously been detected.

(2) The plant protection organization of the state of origin certifies that the fruit originated in areas in which apple maggot is not established, was grown in a commercial orchard, and has not been placed under quarantine.

#### NEW SECTION

**WAC 16-470-124** **Special permits for solid waste and organic waste transport and disposition.** (1) The director may issue special permits admitting or allowing transportation and distribution of municipal solid waste for disposal at a solid waste landfill or appropriate disposal facility in the pest free area from the area under quarantine established in WAC 16-470-101, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "solid waste" and "solid waste landfill" or "disposal facility" refer to solid waste and solid waste facilities

regulated under chapters 70.95 RCW and 173-351 WAC by the Washington state department of ecology.

(2) The director may issue special permits admitting or allowing transportation and distribution of yard debris, organic feedstocks, organic materials, or agricultural wastes for treatment at a composting facility in the pest free area from the area under quarantine established in WAC 16-470-101, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "yard debris," "organic feedstocks," "organic materials," and "agricultural wastes" or "composting facility" refer to waste and composting facilities regulated under chapters 70.95 RCW and 173-350 WAC by the Washington state department of ecology.

(3) When the owner of the waste identified in subsections (1) and (2) of this section transfers ownership of the waste to a different person receiving the waste for disposal or treatment in the pest free area, both owners must apply for and receive special permits under this section. A special permit to transport will not be issued to the transporting owner unless a special permit is concurrently issued to the receiving facility owner under conditions specified by the director.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-127 ((What do you need)) Requirements to ship commodities regulated for plum curculio into Washington((?))**. Shipment into the state of Washington of regulated commodities described in WAC 16-470-125 from states under quarantine for plum curculio is prohibited, unless one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment consists of apples, which have undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths ((~~37.9~~)) degrees Fahrenheit or less.

(b) The shipment consists of regulated commodities, which have undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two ((~~32~~)) degrees Fahrenheit or less.

(c) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been identity maintained while within the area under quarantine. For repacked fruit, the certificate must show the following information:

- (i) State in which the fruit was grown;
- (ii) Point of repacking and reshipment;
- (iii) Amount and kind of commodities comprising the lot or shipment; and
- (iv) Names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for plum curculio and is a reshipment in original, unopened containers. The containers must each bear labels or other

identifying marks evidencing origin outside the area under quarantine.

(3) The shipment consists of fresh fruit from Utah counties where plum curculio is established and is made in compliance with terms of a permit agreed upon by both the Utah and Washington plant protection organizations.

(4) The shipment consists of fresh fruit from Utah counties where plum curculio is not established, and all of the following conditions are complied with:

(a) The Utah plant protection organization has conducted an adequate plum curculio detection program, which includes immediate written notification to the department of detections in counties where plum curculio has not previously been detected; and

(b) The Utah plant protection organization certifies that the fruit originated in areas in which plum curculio is not established, was grown in a commercial orchard, and has not been placed under quarantine.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-130 Special permits for fresh fruit transport and distribution**. The director may issue special permits admitting, or allowing transportation and distribution of, regulated commodities described in WAC 16-470-111(1) and 16-470-125(2), which would not otherwise be eligible for entry from the area under quarantine, or for transportation or distribution, subject to conditions and provisions which the director may prescribe to prevent introduction, escape or spread of the quarantined pests.