

**WSR 16-14-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-154—Filed June 22, 2016, 3:46 p.m., effective June 22, 2016,  
3:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial salmon troll fishing rules.

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

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

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

Reasons for this Finding: Remaining harvestable quota of salmon for the troll fleet is limited in Areas 3 and 4. Harvestable quota is limited in Areas 1 and 2 as well but sufficient harvest remains to allow for a forty Chinook possession limit. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 22, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-24-04000I 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 deliver or 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 and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

June 24 through June 30, 2016.

(2) Landing and possession limits:

(a) 40 Chinook per vessel per entire open period for the entire Catch Areas 1 and 2.

(b) 14 Chinook per vessel per entire open period for the open portion of Catch Area 4.

(c) No vessel may possess, land or deliver more than 40 Chinook during any open period.

(3) All fishers intending to fish Area 4 must declare that intention before fishing by notifying WDFW at (360) 249-1215 with boat name, approximate time they intend to fish in Area 4 and destination at the end of the trip. All fish from Area 4 must be landed before fishing any other Area. No fish from other Areas may be in possession with fish from Area 4.

(4) Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

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

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

(7) Fishers must deliver and land their catch to Ports within salmon management catch areas 1, 2, 3 or 4, including the Ports of Chinook and Ilwaco. Fishers must complete a Washington State Fish Receiving ticket within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of fish from Area 2 must stay in the closed areas to transit through Areas 3 and 4 to land in La Push or Neah Bay. 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.Beehley@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.Beehley@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.

(a) For the purposes of this section, the term "delivery" means arrival at a port.

(b) For the purposes of this section, the term "land" means the transfer of fish from a fishing vessel or the initiation of a fish receiving ticket to include fishers signature, species, number of fish and pounds of fish.

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

(9) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09' N. lat., 124°06'16" W. long.); on

the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(10) 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.

(11) 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.

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

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

**Reviser's note:** The typographical 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 section of the Washington Administrative Code is repealed:

WAC 220-24-04000H All-citizen commercial salmon troll.  
(16-140)

**WSR 16-14-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-151—Filed June 23, 2016, 9:54 a.m., effective June 23, 2016,  
7:00 p.m.]

Effective Date of Rule: June 23, 2016, 7:00 p.m.

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 220-33-01000M; 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: Sets additional select area commercial seasons to access local spring Chinook. 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 and June 22, 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 wild-

life 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: June 23, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-33-01000M 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) Tongue Point/South Channel**

a) **Dates:** 7 PM June 23 to 7 AM June 24 and 7 PM June 27 to 7 AM June 28, 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) **Allowable Possession:** Salmon and shad

e) **Miscellaneous:** Permanent transportation rules in effect.

**(2) Blind Slough/Knappa Slough Select Area**

a) **Dates:** 7 PM June 27 to 7 AM June 28, 2016.

b) **Area:** Blind Slough and Knappa Slough areas are both open. 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).

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.

d) **Allowable Possession:** Salmon and shad

e) **Miscellaneous:** Permanent transportation rules in effect.

**(3) 24-hour quick reporting** is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

**(4) 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)).

**(5) 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 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 7:00 p.m. June 23, 2016:

WAC 220-33-01000L Columbia River seasons below Bonneville. (16-143)

#### **WSR 16-14-006**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 16-152—Filed June 23, 2016, 10:28 a.m., effective June 23, 2016, 10:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Columbia River recreational fishing rules for sturgeon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000N; 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 Bonneville Pool and adjacent tributaries for the retention of white sturgeon. The harvest guideline of three hundred twenty-five fish has been reached. 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 June 22, 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: June 23, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-20000T Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 220-310-200:

(1) Effective immediately until further notice, 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 through July 31, 2016 in the sturgeon spawning Sanctuary located from The Dalles Dam downstream 1.8 miles.

(2) Effective immediately 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 through July 31, 2016 in the sturgeon spawning Sanctuary located from John Day Dam downstream 2.4 miles.

(3) Effective immediately 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 John Day upstream to McNary Dam. Catch and release is permissible except through July 31, 2016 in the sturgeon spawning Sanctuary located from McNary Dam downstream 1.5 miles under permanent regulations.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000N Exceptions to statewide rules—  
Columbia River sturgeon. (16-121)

**WSR 16-14-007**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 23, 2016, 10:43 a.m., effective June 23, 2016, 10:43 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-980-140 Home care aide (HCA), extending emergency rules filed on February 24, 2016, WSR 16-06-047. Amending the rule to add skills acquisition training to HCA's scope of practice to align with the department of social and health services' (DSHS) rule that implements the Centers for Medicaid and Medicare Services' (CMS) community first choice option (CFCO) program. Rules must be effective for Washington state to receive the enhanced medicaid match rate.

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-140.

Statutory Authority for Adoption: Chapter 18.88B RCW.

Other Authority: 42 C.F.R. 441.510, ESHB 2746 (2014), SSB 6387 (2014), DSHS state work plan.

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

Reasons for this Finding: Under RCW 34.05.350, an agency must find good cause for implementing an emergency rule or amendment. The statutory criteria this rule amendment meets is found under RCW 34.05.350 (1)(b) that states, "That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of rule." This emergency rule amendment meets the criteria per the following:

This emergency rule amendment is in response to a federal deadline for state receipt of federal funds from CMS for Washington state to receive an enhanced medicaid match rate of fifty-six percent beginning July 1, 2015, for state implementation of its CFCO.

*Federal deadline for state receipt of federal funds* - the CFCO program is a medicaid Title XIX entitlement program that is a part of the Affordable Care Act. The federal program provides person-centered services within in-home and community-based settings. Services provided, including the skills acquisition services, must be provided in a manner that is prescribed by 42 C.F.R. 441.510 for states choosing to participate in this federal program. The CFCO program allows the state to receive a higher federal medicaid match rate of fifty-six percent versus fifty percent, and based on state legislation passed in 2014 requiring DSHS to participate in the CFCO

program, DSHS submitted a formal state plan to CMS outlining all federal objectives that will be met starting July 1, 2015. DSHS' state plan under Title XIX of the Social Security Act for the CFCO services goes into effect July 1, 2015, at which time the medicaid match enhancement rate to Washington state begins.

The department of health (DOH) and DSHS jointly administer the home care aide program, also known as long-term care workers in both statute and rules, under chapters 18.88B and 74.39A RCW. DOH must amend WAC 246-980-140 to allow home care aides, also known as long-term care workers, to provide skills acquisition training to elderly and vulnerable clients to align with DSHS rule amendments to meet the federal objectives in Washington's formal state plan. Both DOH and DSHS were required to revise their home care aide rules by July 1, 2015, for Washington state to qualify for the enhanced federal match.

*State laws for state receipt of federal funds requiring immediate adoption of rule* - in addition, SSB 6387 (chapter 139, Laws of 2014) requires DSHS to increase the number of people served on the CFCO medicaid program by replacing the individual and family services program through an expansion of client caseload beginning June 30, 2015. To implement SSB 6387, DSHS must administer the federal CFCO program, which expands HCA's scope of practice to include skills acquisition training. Amending DOH home care aide rules supports DSHS' efforts to implement SSB 6387 and the CFCO program.

In addition, ESHB 2746 (chapter 166, Laws of 2014) directed DSHS to refinance its medicaid personal care services for individuals with developmental disabilities and individuals with long-term care needs through the CFCO program by August 30, 2015. DSHS also cites this bill as authorizing their agency to implement the CFCO program, which began on July 1, 2015.

This filing extends emergency rules filed as WSR 16-06-047 on February 24, 2016. DOH has filed proposed rules on May 4, 2016, WSR 16-10-110, and a public hearing was held on June 13, 2016. The department anticipates filing permanent rules in July 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 22, 2016.

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

**WAC 246-980-140 Scope of practice for long-term care workers.** (1) A long-term care worker performs activities of daily living or activities of daily living and instrumental activities of daily living. A person performing only instrumental activities of daily living is not acting under the long-term care worker scope of practice.

(a) "Activities of daily living" means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. This may include fall prevention, skin and body care.

(b) "Instrumental activities of daily living" means activities in the home and community including cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) A long-term care worker documents observations and tasks completed, as well as communicates observations on the day they were performed to clients, family, supervisors, and, if appropriate, health care providers.

(3) A long-term care worker may perform medication assistance as described in chapter 246-888 WAC.

(4) A long-term care worker may perform nurse delegated tasks, to include medication administration, if he or she meets and follows the requirements in WAC 246-980-130.

(5) A long-term care worker may also provide skills acquisition training that allows individuals in their homes, or residential facilities that are licensed and contracted as an adult family home as defined in RCW 70.128.010, or an assisted living facility as defined in RCW 18.20.020, to acquire, maintain, and enhance skills necessary to accomplish ADLs and IADLs more independently.

**WSR 16-14-010  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-155—Filed June 23, 2016, 11:11 a.m., effective June 23, 2016, 11:11 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

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

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

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

Reasons for this Finding: The 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 pot

fishery season for spot shrimp; (2) implements a spot shrimp biweekly limit for all areas; (3) implements a minimum mesh size restriction for spot shrimp gear; (4) extends the nonspot shrimp pot "clean up" fishery in Shrimp Management Area 2E by one day; and (4) opens the 1B-21A trawl fishery season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 23, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-52-05100R Puget Sound shrimp pot and trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately, 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 2E, 2W and 3 are open to the harvest of all non-spot shrimp species, effective immediately, until 11:59 p.m. June 28, 2016, except as provided for in this section:

(i) All waters of Shrimp Management Area 2E and Catch Areas 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed, with the following exception:

(A) Effective immediately, through 2:00 p.m. June 25, 2016, all waters of Shrimp Management Area 2E are open to the harvest of all non-spot shrimp species.

(b) Effective 12:01 a.m. June 29, 2016, until further notice, all waters Shrimp Management Areas 1A, 1C, 2W, 3 and 5 are open to the harvest of all shrimp species, except as provided for in this section:

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

(ii) All waters of Shrimp Management Area 2W are closed to the harvest of spot shrimp.

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

(c) Effective immediately, through 2:00 p.m. June 25, 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 325 pounds from Shrimp Management Area 2E.

(d) Effective immediately, until 11:59 p.m. June 28, 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 800 pounds from Shrimp Management Area 2W.

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

(i) June 29-July 12, July 13-26 and July 27-August 9.

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

(i) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per biweekly management period in Shrimp Management Area 1A or Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E.

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

(h) 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. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Those portions of Catch Areas 20B and 22A within SMA 1B is open.

(c) That portion of Catch Area 21A within SMA 1B is open effective 6:00 a.m. July 1, 2016, until further notice.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100Q Puget Sound shrimp pot and beam trawl fishery—Season. (16-146)

**WSR 16-14-011  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-153—Filed June 23, 2016, 2:31 p.m., effective June 23, 2016, 2:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, 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 220-310-20000U; and amending WAC 220-310-200.

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: The regulation extends the 2016 summer recreational salmon season in the Columbia River from Megler Astoria Bridge upstream to the Hwy. 395 Bridge. 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. 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 1, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

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

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

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

Date Adopted: June 23, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-20000U Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective Immediately through July 31, 2016.

(a) Open for fishing for salmonids. From the Megler Astoria Bridge upstream to the Hwy. 395 Bridge at Pasco.

(b) Daily salmonid limit is 6 fish (hatchery Chinook, hatchery steelhead, or sockeye), of which no more than 2 may be adults.

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2016:

WAC 220-310-20000U Exceptions to statewide rules—  
Columbia River.

**WSR 16-14-012**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed June 23, 2016, 3:01 p.m., effective June 23, 2016, 3:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is amending rules and creating new rules in order to implement new federal regulations under the federal Patient Protection and Affordable Care Act. This filing is to correctly reference rules that were final January 1, 2014, in the long-term care medical rule in addition to the elimination of the presumptive disability program as an eligibility group. Aging and long-term supports administration is adding a residential waiver program to facilitate discharges from state hospitals. HCA is also amending and creating rules to implement the community first choice (CFC) option effective July 1, 2015, as directed by the Washington state legislature.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-513-1300, 182-513-1301, 182-513-1305, 182-513-1364, 182-513-1365, 182-513-1366 and 182-515-1500; and amending WAC 182-507-0125, 182-512-0400, 182-512-0960, 182-513-1315, 182-513-1320, 182-513-1325, 182-513-1330, 182-513-1340, 182-513-1345, 182-513-1350, 182-513-1363, 182-513-1367, 182-513-1380, 182-513-1395, 182-513-1400, 182-513-1405, 182-513-1415, 182-513-1425, 182-513-1430, 182-513-1445, 182-513-1450, 182-513-1455, 182-515-1505, 182-515-1506, 182-515-1507, 182-515-1508, 182-515-1509, 182-515-1510, 182-515-1511, 182-515-1512, 182-515-1513, and 182-515-1514.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Patient Protection and Affordable Care Act established under Public Law 111-148; and 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. Section 1917 of the Social Security Act.

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

Reasons for this Finding: The agency has been working with client advocates and other stakeholders to craft the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. These emergency rules are needed while the permanent rule-making process is being completed. Although the permanent rule-making process is nearing completion, the permanent rules were delayed due in part to the receipt of final federal rules governing this process. No changes have been made to the emergency rule text since the last filing. The agency conducted both an agency-wide review and an extensive external stakeholder review. As a result, the agency has decided to conduct a second external review before filing the CR-102 for public hearing. This will allow stakeholders another chance to review the changes resulting from the earlier reviews.

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 17, Amended 32, Repealed 7.

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 17, Amended 32, Repealed 7.

Date Adopted: June 23, 2016.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-507-0125 State-funded long-term care services program.** (1) The state-funded long-term care services program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and ~~((disability services))~~ long-term supports administration ~~((ADSA))~~ (AL TSA) that caseload limits will not be exceeded as a result of the authorization.

(2) Long-term care services are defined in this section as services provided in one of the following settings:

(a) In a person's own home, as described in WAC 388-106-0010;

(b) Nursing facility, as defined in WAC 388-97-0001;

(c) Adult family home, as defined in RCW 70.128.010;

(d) Assisted living facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301;

(e) Enhanced adult residential care facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301;

(f) Adult residential care facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301.

(3) Long-term care services will be provided in one of the facilities listed in subsection (2)(b) through (f) of this section unless nursing facility care is required to sustain life.

(4) To be eligible for the state-funded long-term care services program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

(a) Meet the general eligibility requirements for medical programs described in WAC ~~((388-503-0505))~~ 182-503-0505 (2) and (3) ~~((a), (b), (c), and (d)))~~ with the exception of subsection (3)(c) and (d) of this section;

(b) Reside in one of the settings described in subsection (2) of this section;

(c) Attain institutional status as described in WAC ~~((388-513-1320))~~ 182-513-1320;

(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;



(e) Not have a penalty period due to a transfer of assets as described in WAC ((388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366)) 182-513-1363, 182-513-1364, or 182-513-1365;

(f) Not have equity interest in a primary residence more than the amount described in WAC ((388-513-1350 (7)(a)(ii))) 182-513-1350; and

(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter ((388-564)) 182-516 WAC.

(5) An adult who is related to the supplemental security income (SSI) program as described in WAC ((388-475-0050)) 182-512-0050 (1), (2), and (3) must meet the financial requirements described in WAC ((388-513-1325, 388-513-1330, and 388-513-1350)) 182-513-1315.

(6) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC ((388-505-0250 or 388-505-0255)) 182-514-0230.

(7) An adult who is not eligible for the state-funded long-term care services program under categorically needy (CN) rules may qualify under medically needy (MN) rules described in:

(a) WAC ((388-513-1395)) 182-513-1395 for adults related to SSI; or

(b) WAC ((388-505-0255)) 182-514-0255 for adults up to age twenty-one related to family institutional medical.

(8) All adults qualifying for the state-funded long-term care services program will receive CN scope of medical coverage described in WAC ((388-501-0060)) 182-500-0020.

(9) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual residing in a nursing home, see rules described in WAC ((388-513-1380)) 182-513-1380.

(b) For an SSI-related individual residing in one of the other settings described in subsection (2) of this section, see rules described in WAC ((388-515-1505)) 182-515-1505.

(c) For an individual eligible under the family institutional program, see WAC ((388-505-0265)) 182-514-0265.

(10) A person is not eligible for state-funded long-term care services if that person entered the state specifically to obtain medical care.

(11) A person eligible for the state-funded long-term care services program is certified for a twelve month period.

**AMENDATORY SECTION** (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

**WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources.** (1) For SSI-related medical programs, a vehicle is defined as anything used for transportation. In addition to cars and trucks, a vehicle can include boats, snowmobiles, and animal-drawn vehicles.

(2) One vehicle is excluded regardless of its value, if it is used to provide transportation for the ((disabled)) SSI-related person or a member of the person's household.

(3) ((For a person receiving SSI-related institutional coverage who has a community spouse, one vehicle is excluded

regardless of its value or its use. See WAC 182-513-1350 (7)(b).

(4)) A vehicle used as the person's primary residence is excluded as the home, and does not count as the one excluded vehicle under subsection (2) ((or (3))) of this section.

((5) All other vehicles, except those excluded under WAC 182-512-0350 (11) through (14), are treated as nonliquid resources and the equity value is counted toward the resource limit.))

**AMENDATORY SECTION** (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

**WAC 182-512-0960 SSI-related medical—Allocating income—**~~((How the agency considers income and resources when determining eligibility for a person applying for noninstitutional Washington apple health (WAH) when another household member is receiving institutional WAH))~~ **Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS).** ((1) The agency follows rules described in WAC 182-513-1315 for a person considered to be in institutional WAH, which means a person who is either residing in a medical institution, or approved for a home and community based waiver, or approved for the WAH institutional hospice program. The rules in this section describe how the agency considers household income and resources when the household contains both institutional and noninstitutionalized household members.

(2) An institutionalized person (adult or child) who is not SSI-related may be considered under the long-term care for families and children programs described in WAC 182-514-0230 through 182-514-0265.

(3) The agency considers the income and resources of spouses as available to each other through the end of the month in which the spouses stopped living together. See WAC 182-513-1330 and 182-513-1350 when a spouse is institutionalized.

(4) The agency considers income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a boarding home (assisted living, enhanced adult residential center, adult residential center), adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disabilities group home (DDD-GH) facility when:

(a) Only one spouse enters the facility;

(b) Both spouses enter the same facility but have separate rooms; or

(c) Both spouses enter separate facilities.

(5) The agency considers income and resources jointly when both spouses are placed in a boarding home, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

(6) When determining SSI-related WAH categorically needy (CN) or medically needy (MN) eligibility for a community spouse applying for health care coverage, the agency counts:

(a) The separate income of the community spouse; plus

~~(b) One half of any community income received by the community spouse and the institutionalized spouse; plus~~

~~(e) Any amount allocated to the community spouse from the institutionalized spouse. The terms "community spouse" and "institutional spouse" are defined in WAC 182-513-1301.~~

~~(7) For the purposes of determining the countable income of a community spouse applying for health care coverage as described in subsection (6) of this section, it does not matter whether the spouses reside together or not. Income that is allocated and actually available to a community spouse is considered that person's income.~~

~~(8) For the purposes of determining the countable income of a community spouse or children applying for health care coverage under modified adjusted gross income (MAGI) based family, pregnancy or children's WAH programs, the agency uses the following rules to determine if the income of the institutionalized person is considered in the eligibility calculation:~~

~~(a) When the institutionalized spouse or parent lives in the same home with the community spouse and/or children, their income is counted in the determination of household income following the rules for the medical program that is being considered.~~

~~(b) When the institutionalized spouse or parent does not live in the same home as the spouse and/or children, only income that is allocated and available to the household is counted.~~

~~(9) When determining the countable income of a community spouse applying for health care coverage under the WAH MN program, the agency allocates income from the community spouse to the institutionalized spouse in an amount up to the one person effective medically needy income level (MNIL) less the institutionalized spouse's income, when:~~

~~(a) The community spouse is living in the same household as the institutionalized spouse;~~

~~(b) The institutionalized spouse is receiving home and community based waiver or institutional hospice services described in WAC 182-515-1505; and~~

~~(c) The institutionalized spouse has gross income of less than the MNIL.~~

~~(10) See WAC 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related persons. A separate medical assistance unit is always established for persons who meet institutional status described in WAC 182-513-1320.)) (1) General information.~~

~~(a) This section describes how the agency determines household income and resources when the household contains both institutional and noninstitutional household members.~~

~~(b) A separate medical assistance unit is always established for persons who meet institutional status under WAC 182-513-1320. See WAC 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related people.~~

~~(c) The agency follows rules and definitions under chapters 182-513 and 182-515 WAC for a person residing in a medical institution, approved for a home and community based (HCB) waiver, Program of All-Inclusive Care for the~~

Elderly (PACE), roads to community living (RCL), community first choice (CFC), or for the hospice program.

(d) Throughout this section, "home" means "own home" as defined in WAC 388-106-0010.

(e) Eligibility for an institutionalized person who is not SSI-related may be determined under the MAGI-based long-term care program under chapter 182-514 WAC.

(f) The income and resources of each spouse are available to the other through the end of the month in which the spouses stopped living together.

(g) The agency determines income and resources separately starting the first day of the month following the month of separation if spouses stop living together because of placement in an alternate living facility (ALF) and:

(i) Only one spouse enters the ALF;

(ii) Both spouses enter the same ALF but have separate rooms; or

(iii) Both spouses enter separate ALFs.

(h) If spouses share a room in an ALF, the agency determines that they live together.

(2) If the community spouse applies for coverage but the spouse receiving LTSS lives in an institution:

(a) The agency counts income under this chapter, plus any allocation the institutionalized spouse has made available to the community spouse; and

(b) The agency counts resources under this chapter, plus any resources allocated to the community spouse when eligibility for the institutionalized spouse was determined, but that remain in the name of the institutionalized spouse.

(3) If the community spouse applies for coverage while living at home with his or her spouse, and his or her spouse receives HCB waiver, PACE, RCL, or hospice, the agency counts income and resources under this chapter.

(4) If the spousal impoverishment protections community (SIPC) spouse applies for coverage while living at home with his or her spouse, and his or her spouse receives community first choice (CFC), the agency counts income and resources under this chapter.

(5) If the community spouse applies for coverage but his or her spouse receives HCB waiver, PACE, RCL, or hospice in an ALF:

(a) If the community spouse lives at home, in a separate room in the same ALF as his or her spouse, or in a separate ALF:

(i) The agency counts income under this chapter, plus any allocation the institutionalized spouse has made available to the community spouse; and

(ii) The agency counts resources under this chapter, plus any resources allocated to the community spouse when eligibility for the institutionalized spouse was determined, but that remain in the name of the institutionalized spouse.

(b) If the community spouse lives in the same room as his or her spouse, the agency counts income and resources under this chapter.

(6) If the SIPC spouse applies for coverage but his or her spouse receives CFC in an ALF:

(a) If the SIPC spouse lives at home, in a separate room in the same ALF as his or her spouse, or in a separate ALF:

(i) The agency counts income under this chapter; and

(ii) The agency counts resources under this chapter, plus any resources allocated to the SIPC spouse when eligibility for the spousal impoverishment protections institutionalized (SIPI) spouse was determined, but that remain in the name of the SIPI spouse.

(b) If the SIPC spouse lives in the same room as his or her spouse, the agency counts income and resources under this chapter.

(7) If the community spouse is not eligible for categorically needy (CN) coverage:

(a) If the community spouse is not eligible for CN coverage, the agency determines eligibility under the medically needy (MN) program:

(b) The agency allocates income to the institutionalized spouse before comparing the community spouse's income to the medically needy income level (MNIL) if:

(i) The community spouse lives in the same household as the institutionalized spouse;

(ii) The institutionalized spouse is receiving home and community-based waiver services under WAC 182-515-1505 or institutional hospice services under WAC 182-513-1240; and

(iii) The institutionalized spouse has gross income under the MNIL.

(c) The allocation cannot exceed the one-person effective MNIL minus the institutionalized spouse's income.

(8) Modified adjusted gross income (MAGI) determination for households that contain an institutionalized individual.

When determining the countable income of a community spouse or children applying for health care coverage under MAGI-based family, pregnancy, or children's programs, the agency uses rules under WAC 182-506-0010 to determine if the income of the institutionalized person is counted.

## NEW SECTION

**WAC 182-513-1100 Definitions related to long-term services and supports (LTSS).** This section defines the meaning of certain terms used in chapters 182-513, 182-514, and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. Additional medical definitions can be found in chapter 182-500 WAC.

**"Adequate consideration"** means the reasonable value of the goods or services received in exchange for transferred property that approximates the reasonable value of the property transferred.

**"Agency"** means the Washington state health care authority and includes the agency's designee.

**"Aging and long-term support administration (AL TSA)"** means the administration by that name within the Washington state department of social and health services (DSHS).

**"Alternate living facility (ALF)"** is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

(a) An adult family home (AFH) licensed under chapter 70.128 RCW.

(b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) An adult residential rehabilitation center (ARRC) described in WAC 388-865-0235.

(d) An assisted living facility (AL) licensed under chapter 18.20 RCW.

(e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.

**"Authorization date"** means the date payment begins for long-term services and supports (LTSS) described in WAC 388-106-0045.

**"Comprehensive assessment reporting evaluation (CARE) assessment"** means the evaluation process defined in chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

**"Clothing and personal incidentals (CPI)"** means the cash payment (described in WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

**"Community first choice (CFC)"** means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act and described in chapter 388-106 WAC.

**"Community options program entry system (COPES)"** means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act described in chapter 388-106 WAC.

**"Community spouse (CS)"** means the spouse of an institutionalized spouse.

**"Community spouse resource allocation (CSRA)"** means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protection institutionalized (SIPI) spouse to the spousal impoverishment protection community (SIPC) spouse.

**"Community spouse resource evaluation"** means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent institutionalization.

**"Developmental disabilities administration (DDA) home and community based (HCB) waiver"** means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act described in chapter 388-845 WAC authorized by DDA.

**"Dependent"** means an adult child, a parent, or a sibling meeting the definition of a tax dependent under WAC 182-500-0105; or a minor child.

**"Developmental disabilities administration (DDA)"** means an administration within the Washington state department of social and health services (DSHS).

**"Equity"** means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

**"Fair market value (FMV)"** means the price an asset may reasonably be expected to sell for on the open market at the time of transfer or assignment.

**"Home and community based services (HCBS)"** means LTSS provided in the home or a residential setting to persons assessed by the department.

**"Home and community based (HCB) waiver programs"** means programs authorized under Section 1915(c) of the Social Security Act. The waiver authority enables states to waive federal medicaid requirements to provide LTSS to medicaid beneficiaries who would otherwise require the level of care provided in a hospital, nursing facility, or intermediate care facility for the intellectually disabled (ICF-ID).

**"Institutionalized individual"** means a person who has attained institutional status under WAC 182-513-1320.

**"Institutional services"** means services paid for by Washington apple health, and provided:

- (a) In a medical institution;
- (b) Through a home and community based (HCB) waiver; or
- (c) Through programs based on HCB waiver rules for post-eligibility treatment of income described in chapter 182-515 WAC.

**"Institutionalized spouse"** means a person who, regardless of legal or physical separation:

- (a) Has attained institutional status under WAC 182-513-1320; and
- (b) Is legally married to a person who is not in a medical institution.

**"Likely to reside"** means the agency reasonably expects a person will remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

**"Long-term care services"** see "Institutional services."

**"Long-term services and supports"** includes institutional and noninstitutional services authorized by AL TSA and DDA.

**"Look-back period"** means the number of months prior to the month of application that the agency will consider transfers of assets for programs subject to transfer of asset penalties.

**"Medicaid personal care (MPC)"** means a medicaid state plan program authorized under RCW 74.09.520.

**"Most recent continuous period of institutionalization (MRCPI)"** means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is described in WAC 182-513-1320.

**"Noninstitutional medical assistance"** means any Washington apple health medical programs not based on HCB waiver rules in chapter 182-515 WAC, or rules based on residing in an institution thirty days or more.

**"Nursing facility level of care (NFLOC)"** is described in WAC 388-106-0355.

**"Participation"** means the amount a person must pay each month toward the cost of long-term care services they receive each month; it is the amount remaining after the post-eligibility process in WAC 182-513-1380, 182-515-1509, and 182-515-1514.

**"Penalty period"** means the period of time during which a person is not eligible to receive services subject to transfer of asset penalties.

**"Personal needs allowance (PNA)"** means an amount set aside from a person's income that is intended for clothing and other personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, alternate living facility, or at home. Personal needs allowances are found at: <http://hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

**"Residential support waiver (RSW)"** means a 1915(c) medicaid waiver program authorized under RCW 74.39A.-030. Persons eligible for this program may receive long-term care services in a licensed adult family home with a contract to provide specialized behavior services.

**"Short stay"** means residing in a medical institution for a period of twenty-nine days or less.

**"Special income level (SIL)"** means the monthly income standard for the categorically needy (CN) program that is three hundred percent of the SSI federal benefit rate (FBR).

**"Spousal impoverishment"** means financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The spousal allocation process is used to discourage the impoverishment of a spouse due to the need for LTSS by their spouse. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and through December 31, 2018, services authorized under 1915 (i) and (k) of the Social Security Act.

**"Spousal impoverishment protections institutionalized (SIPI) spouse"** means a legally married person who only qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program because of the spousal impoverishment protections in WAC 182-513-1220.

**"Spousal impoverishment protections community (SIPC) spouse"** means the spouse of a SIPI spouse.

**"State spousal resource standard"** means minimum resource standard allowed for a community spouse.

**"Third-party resource (TPR)"** means funds paid to a person by a third party where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. Third-party resources are described under WAC 182-501-0200.

**"Transfer of a resource" or "transfer of an asset"** means changing ownership or title of an asset such as

income, real property, or personal property by one of the following:

- (a) An intentional act that changes ownership or title; or
- (b) A failure to act that results in a change of ownership or title.

**"Transfer date for real property" or "transfer date of interest in real property"** means:

- (a) The date of transfer for real property is the day the deed is signed by the grantor if the deed is recorded; or
- (b) The date of transfer for real property is the day the signed deed is delivered to the grantee.

**"Transfer month"** means the calendar month in which resources are legally transferred.

**"Uncompensated value"** means the fair market value (FMV) of an asset at the time of transfer minus the value of compensation the person receives in exchange for the asset.

**"Undue hardship"** means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria described in WAC 182-513-1367.

**"Value of compensation received"** means the consideration the purchaser pays or agrees to pay. Compensation includes:

- (a) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable purchase agreement whereby the person transfers the asset; and
- (b) The payment or assumption of a legal debt the seller owes in exchange for the asset.

**"Veterans benefits"** means different types of benefits paid by the federal department of veterans affairs (VA). Some may include additional allowances for:

- (a) Aid and attendance for a person needing regular help from another person with the activities of daily living;
- (b) A person who is housebound;
- (c) Improved pension, the newest type of VA disability pension, available to veterans and their survivors whose income from other sources, including service connected disability, is below the improved pension amount;
- (d) Unusual medical expenses (UME), determined by the VA based on the amount of unreimbursed medical expenses reported by the person who receives a needs-based benefit. The VA can use UME to reduce countable income to allow the person to receive a higher monthly VA payment, a one-time adjustment payment, or both;

(e) Dependent allowance veteran's payments made to, or on behalf of, spouses of veterans or children regardless of their ages or marital status. Any portion of a veteran's payment that is designated as the dependent's income is countable income to the dependent; or

(f) Special monthly compensation (SMC). Extra benefit paid to a veteran in addition to the regular disability compensation to a veteran who, as a result of military service, incurred the loss or loss of use of specific organs or extremities.

**"Waiver programs/services"** means programs for which the federal government authorizes exceptions to federal medicaid rules. In Washington state, home and community based (HCB) waiver programs are authorized by the developmental disabilities administration (DDA), or home and community services (HCS).

## NEW SECTION

**WAC 182-513-1200 Long-term services and supports authorized under Washington apple health programs.** (1) Certain long-term services and supports (LTSS) programs are available to people eligible for noninstitutional Washington apple health (WAH) coverage who meet the functional requirements for the program based on either:

- (a) An assessment for either in-home or residential services in an alternate living facility (ALF); or
  - (b) Placement in a medical institution.
- (2) There are no transfer of asset penalties described in WAC 182-513-1363 for the following noninstitutional LTSS programs:

(a) WAC 182-513-1205 noninstitutional apple health in an ALF. This rule describes the SSI-related CN eligibility criteria for people who are eligible for department-contracted services in an ALF or mental health residential treatment facility (ARTF). It also describes the SSI-related MN eligibility criteria for private-pay clients.

(b) WAC 182-513-1210 Community first choice (CFC) —Overview. This program provides LTSS for both in-home and ALF settings for clients who meet nursing facility level of care.

(c) WAC 182-513-1215 Community first choice (CFC) —Eligibility. This section describes the financial eligibility rules for CFC.

(d) WAC 182-513-1220 Community first choice (CFC) —Spousal impoverishment protections for noninstitutional Washington apple health clients. This section describes how spousal impoverishment protections apply to people who are determined functionally eligible for CFC.

(e) WAC 182-513-1225 Medicaid personal care (MPC). This section describes how a person is financially eligible for personal care services if the person doesn't meet the nursing facility level of care criteria for services under CFC.

(3) There are no transfer of asset penalties under the following programs; however, eligibility is determined using institutional rules described in WAC 182-513-1315 and 182-513-1380 or HCB waiver rules described in chapter 182-515 WAC depending on living arrangement:

(a) WAC 182-513-1230 Program of all-inclusive care for the elderly (PACE). This program provides LTSS under a managed care contract and is available for people who reside in the PACE designated service area.

(b) WAC 182-513-1235 Roads to community living (RCL). This program provides LTSS to people discharging from medical institutions to an in-home or ALF setting.

(c) WAC 182-513-1240 Hospice. This WAC describes the eligibility criteria used for a WAH applicant who has made an election of hospice services, but is not otherwise eligible for a noninstitutional CN or MN program as described in WAC 182-503-0510.

(4) A person who is eligible for CN or MN coverage is eligible for rehabilitation skilled nursing services as part of the benefit package associated with the coverage.

(5) Once a person meets institutional status under WAC 182-513-1320 or no longer meets rehabilitation skilled nursing criteria, the person must be assessed and approved by the department for payment of nursing facility care. Eligibility is redetermined using LTC rules described in WAC 182-513-

1315, with the exception of a person who is eligible under a MAGI-based program described in WAC 182-503-0510(2).

#### NEW SECTION

**WAC 182-513-1205 Determining eligibility for non-institutional coverage in an alternate living facility.** This section describes the monthly income standard used to determine eligibility for noninstitutional coverage for a person who lives in a department-contracted alternate living facility (ALF) described in WAC 182-513-1100.

(1) The eligibility criteria for noninstitutional Washington apple health (WAH) in an ALF follows SSI-related medical rules described in WAC 182-512-0050 through 182-512-0960 with the exception of the higher income standard described in subsection (2) of this section.

(2) A person is eligible for noninstitutional coverage under the categorically needy (CN) program if the person's gross monthly income after allowable exclusions described in chapter 182-512 WAC:

(a) Does not exceed the special income level (SIL); and  
 (b) Is less than or equal to the person's assessed state rate at a department contracted facility. To determine the CN standard:  $((y \times 31) + \$38.84)$ , where "y" is the state daily rate. \$38.84 is based on the cash payment standard for a person living in an ALF setting described in WAC 388-478-0006.

(3) A person is eligible for noninstitutional coverage under the medically needy (MN) program if the person's gross monthly income after allowable exclusions described in chapter 182-512 WAC is less than or equal to the person's private rate at a department-contracted facility. To determine the MN standard:  $((z \times 31) + \$38.84)$ , where "z" is the facility's private daily rate. To determine MN spenddown liability, see chapter 182-519 WAC.

(4) A person's nonexcluded resources cannot exceed the standard described in WAC 182-512-0010.

(5) The agency approves CN noninstitutional coverage for twelve months.

(6) The agency approves MN noninstitutional coverage for a period of months described in chapter 182-504 WAC for an SSI-related person, provided the person satisfies any spenddown liability as described in chapter 182-519 WAC.

(7) A person receiving medicaid personal care (MPC) or community first choice (CFC) pays all of their income to the ALF except a personal needs allowance of \$62.79.

(8) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the payment described in this subsection.

#### NEW SECTION

**WAC 182-513-1210 Community first choice (CFC) —Overview.** Community first choice (CFC) is a Washington apple health (WAH) state plan benefit authorized under Section 1915(k) of the Social Security Act. It enables the agency and its contracted entities to deliver person-centered home and community based long-term services and supports (LTSS) to Title XIX medicaid eligible people who meet the institutional level of care described in WAC 388-106-0355. See:

(1) WAC 388-106-0270 through 388-106-0295 for services included within the CFC benefit package.

(2) WAC 182-513-1215 for financial eligibility for CFC services.

#### NEW SECTION

**WAC 182-513-1215 Community first choice (CFC) —Eligibility.** (1) An applicant who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295 is financially eligible to receive CFC services if the applicant is:

(a) Eligible for a noninstitutional Washington apple health program which provides categorically needy (CN) or alternative benefit plan (ABP) scope of care;

(b) A spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1230; or

(c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.

(2) An applicant whose only coverage is through one of the following programs is not eligible for CFC:

(a) Medically needy program under WAC 182-519-0100;

(b) Premium-based children's program under WAC 182-505-0215;

(c) Medicare savings programs under WAC 182-517-0300;

(d) Family planning program under WAC 182-505-0115;

(e) Take charge program under WAC 182-532-0720;

(f) Medical care services program under WAC 182-508-0005;

(g) Pregnant minor program under WAC 182-505-0117;

(h) Alien emergency medical program under WAC 182-507-0110 through 182-507-0120;

(i) State-funded long-term care for noncitizens program under WAC 182-507-0125; or

(j) Kidney disease program under chapter 182-540 WAC.

(3) Transfer of asset penalties under WAC 182-513-1363 does not apply to CFC applicants, unless the applicant is applying for long-term services and supports that are only available through one of the HCB waivers under chapter 182-515 WAC.

(4) Post-eligibility treatment of income rules does not apply if eligible under subsection (1)(a) or (b) of this section. People who reside in a residential facility do pay up to the room and board standard. The room and board amount is based on the effective one-person medically needy income level (MNIL) minus the residential personal needs allowance (PNA) except when eligibility is based on the rules in WAC 182-513-1205.

(5) Post-eligibility treatment of income rules does apply if eligible under subsection (1)(c) of this section and receiving a HCB waiver service.

(6) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

(7) PNA, MNIL, and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

#### NEW SECTION

**WAC 182-513-1220 Community first choice (CFC) —Spousal impoverishment protections for noninstitutional Washington apple health clients.** (1) The agency determines eligibility using spousal impoverishment protections under this section, when an applicant:

(a) Is married to, or marries a person not in a medical institution;

(b) Meets institutional level of care and eligibility for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295;

(c) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program due to spousal deeming rules under WAC 182-512-0920, or due to exceeding the resource limit in WAC 182-512-0010, or both;

(d) Is ineligible for SSI-related noninstitutional medical assistance in an ALF due to combined spousal resources exceeding the resource limit in WAC 182-512-0010; and

(e) Meets the aged, blindness, or disability criteria under WAC 182-512-0050.

(2) The agency determines countable income using the SSI-related income rules under chapter 182-512 WAC but uses only the applicant's separate income and not the income of his or her spouse.

(3) The agency determines countable resources using the SSI-related resource rules under chapter 182-512 WAC:

(a) For the applicant/recipient the resource standard is two thousand dollars.

(b) For the spouse of the applicant/recipient, resources must be at or below the spousal resource transfer maximum resource standard on the first day of each month.

(c) The resources of the spousal impoverishment protections community (SIPC) spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for CFC services is established unless subsection (8) of this section applies.

(4) The CFC recipient has until the end of the month of the first regularly scheduled eligibility review to transfer joint resources in excess of two thousand dollars to his or her spouse.

(5) If the applicant lives at home and the applicant's separate countable income is at or below the SSI categorically needy income level (CNIL) and the applicant is resource eligible, the applicant is a SIPI spouse and is eligible for noninstitutional CN coverage and CFC services.

(6) If the applicant lives in an alternate living facility (ALF) and the applicant's separate countable income is at or below the standard under WAC 182-513-1205(2) and the applicant is resource eligible, the applicant is a SIPI spouse and is eligible for non-institutional CN coverage and CFC services.

(7) If the applicant is employed and the applicant's separate countable income is at or below the standard under WAC 182-511-1060, the applicant is a SIPI spouse and is eligible for noninstitutional CN coverage and CFC services.

(8) Once a person no longer receives CFC services, eligibility is redetermined without using spousal impoverishment protection under WAC 182-504-0125.

(9) If the applicant's separate countable income is above the standards described in subsections (5), (6), and (7) of this section, the applicant is not eligible for CFC services under this section.

(10) The spousal impoverishment protections described in this section are time-limited and expire on December 31, 2018.

(11) Standards described in this section are located at: <http://hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

#### NEW SECTION

##### **WAC 182-513-1225 Medicaid personal care (MPC).**

(1) Medicaid personal care (MPC) is a state-plan benefit available to a person who is determined functionally eligible for MPC services under WAC 388-106-0200 through 388-106-0235.

(2) A person is financially eligible for MPC services if the person is eligible for a noninstitutional categorically needy (CN) or alternative benefit plan (ABP) Washington apple health program.

(3) MPC services may be provided to a person who resides in their own home, in a department-contracted adult family home (AFH), or in a licensed assisted living facility that is contracted with the department of social and health services to provide adult residential care services.

(4) A person who resides in an alternate living facility (ALF) listed in subsection (3) of this section:

(a) Keeps a personal needs allowance (PNA) of \$62.79; and

(b) Pays room and board up to the statewide room and board amount, unless CN eligibility is determined using rules under WAC 182-513-1205.

(5) A person who receives aged, blind, disabled (ABD) cash assistance in an adult family home keeps a clothing and personal incidentals (CPI) of \$38.84 and pays the rest of his or her cash grant and other available income towards room and board.

(6) A person who receives MPC services under the workers with disabilities program described in chapter 182-511 WAC must pay his or her health care for workers with disabilities (HWD) premium in addition to room and board, if residing in a residential setting.

(7) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to room and board.

(8) Current PNA and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

#### NEW SECTION

##### **WAC 182-513-1230 Program of all-inclusive care for the elderly (PACE).**

(1) The program of all-inclusive care for the elderly (PACE) provides long-term services and supports (LTSS), medical, mental health, and chemical dependency treatment through a department-contracted managed care plan using a personalized plan of care for each enrollee.

(2) Program rules governing functional eligibility for PACE are listed under WAC 388-106-0700, 388-106-0705, 388-106-0710, and 388-106-0715.

(3) A person is PACE eligible if the person:

(a) Is age:

(i) Fifty-five or older and disabled under WAC 182-512-0050; or

(ii) Sixty-five or older.

(b) Meets nursing facility level of care under WAC 388-106-0355;

(c) Lives in a designated PACE service area;

(d) Meets financial eligibility requirements under this section; and

(e) Agrees to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

(4) Although PACE is not a home and community based (HCB) waiver program, financial eligibility is determined using the HCB waiver rules under WAC 182-515-1505 when living at home or in an alternate living facility (ALF), with the following exceptions:

(a) PACE enrollees are not subject to the transfer of asset provisions described in WAC 182-513-1363; and

(b) PACE enrollees may reside in a medical institution thirty days or longer and still remain eligible for PACE services. The eligibility rules for institutional coverage are under WAC 182-513-1315 and 182-513-1380.

(5) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

#### NEW SECTION

**WAC 182-513-1235 Roads to community living (RCL).** (1) Roads to community living (RCL) is a demonstration project, funded by a "money follows the person" grant originally authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

(2) Program rules governing functional eligibility for RCL are described in WAC 388-106-0250 through 388-106-0265. RCL services may be authorized by home and community services (HCS) or the developmental disabilities administration (DDA).

(3) A person must have a continuous stay of at least ninety days in a qualified institutional setting (hospital, nursing home, residential habilitation center) to be eligible for RCL. The ninety-day count excludes days paid solely by medicare, must include at least one day of medicaid paid inpatient services, and the person must be eligible to receive medicaid on the day of discharge.

(4) Once a person is discharged to home or a residential setting under RCL, the person remains continuously eligible for medical coverage for a period of three hundred sixty-five days unless the person:

(a) Returns to an institution for thirty days or longer;

(b) Is incarcerated in a public jail or prison;

(c) No longer wants the RCL services;

(d) Moves out-of-state; or

(e) Dies.

(5) A person may receive RCL services under any federally funded categorically needy (CN), medically needy (MN), alternative benefit plan (ABP), noninstitutional medical, or home and community based (HCB) waiver program.

(6) Changes in income and resources during the continuous eligibility period do not affect eligibility for RCL services. Changes in income and deductions may affect the amount a person must pay toward the cost of care.

(7) A person approved for RCL is not subject to transfer of asset provisions under WAC 182-513-1363 during the continuous eligibility period, but transfer penalties may apply if the person needs HCB waiver or institutional services once the continuous eligibility period has ended.

(8) A person who is not otherwise eligible for a noninstitutional program who accesses RCL services using HCB waiver rules under chapter 182-515 WAC must pay participation toward the cost of RCL services. Cost of care calculations are described in:

(a) WAC 182-515-1509 for home and community services (HCS); and

(b) WAC 182-515-1514 for development disabilities administration (DDA) services.

(9) At the end of the continuous eligibility period, the agency redetermines a person's eligibility for other programs under WAC 182-504-0125.

#### NEW SECTION

**WAC 182-513-1240 Hospice.** (1) General information.

(a) The hospice program provides palliative care to people who elect to receive hospice services and are certified as terminally ill by their physician.

(b) Program rules governing election of hospice are under chapter 182-551 WAC.

(c) A person may revoke a hospice election at any time by signing a revocation statement.

(d) Personal needs allowance and income and resource standards for hospice and home and community based (HCB) waiver programs are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(2) When hospice is a covered service.

(a) A person who receives coverage under a categorically needy (CN), medically needy (MN), or alternative benefit plan (ABP) program is eligible for hospice services as part of the program specific benefit package.

(b) A person who receives coverage under the alien emergency medical (AEM) program under WAC 182-507-0110 may be eligible for payment for hospice services if pre-approved by the agency.

(3) The hospice program.

(a) A person who is not otherwise eligible for a CN, MN, or ABP noninstitutional program may be eligible for CN coverage for hospice services using home and community based (HCB) waiver rules under WAC 182-515-1505.

(b) When a person is only eligible for hospice using HCB waiver rules, the agency follows rules under WAC 182-515-1505 through 182-515-1509, and institutional rules under WAC 182-513-1315, except that:



(i) A person on the hospice program is not subject to the transfer of asset provisions under WAC 182-513-1363;

(ii) A person on the hospice program may reside in a medical institution, including a hospice care center, thirty days or longer and remain eligible for hospice services; and

(iii) A person residing at home on hospice with gross income over the special income limit (SIL) is not eligible for CN coverage. The rules under WAC 182-515-1508 (2)(c)(ii) apply only to people who receive an HCB waiver service. If gross income is over the SIL, the agency determines eligibility under WAC 182-519-0100.

(c) A person eligible for hospice using HCB waiver rules may be required to participate income and third-party resources (TPR) under WAC 182-501-0200 toward the cost of hospice services. The cost of care calculation is described in WAC 182-515-1509.

(d) A person may receive HCB waiver services in addition to hospice services. The person's responsibility to participate income and TPR toward the cost of care is applied to the HCB waiver service provider first.

(4) Hospice in a medical institution:

(a) A person who elects hospice who resides in a medical institution for thirty days or longer and has income:

(i) Equal to or less than the SIL is eligible for CN coverage. Eligibility for institutional hospice is determined under WAC 182-513-1315.

(ii) Over the SIL is eligible for MN coverage under WAC 182-513-1245.

(b) A person eligible for hospice in a medical institution may have to pay participation toward the cost of nursing facility or hospice care center services. The cost of care calculation is described in WAC 182-513-1380.

(5) Changes in coverage. The agency redetermines a person's eligibility under WAC 182-504-0125 if the person:

(a) Revokes hospice and is only eligible for coverage using HCB waiver rules described in subsection (3) of this section; or

(b) Loses eligibility under a CN, MN, or ABP program.

#### NEW SECTION

**WAC 182-513-1245 Medically needy hospice in a medical institution.** (1) General information.

(a) To be eligible for hospice when living in a medical institution under the SSI-related medically needy (MN) program, a person must:

(i) Meet program requirements under WAC 182-513-1315;

(ii) Have gross nonexcluded income in excess of the special income level (SIL) but below the monthly department-contracted rate in the institution;

(iii) Meet the financial requirements of subsection (4) or (5) of this section; and

(b) Elect hospice under chapter 182-551 WAC.

(2) Financial eligibility information.

(a) The agency determines a person's resource eligibility, excess resources, and medical expense deductions using WAC 182-513-1350.

(b) The agency determines a person's countable income by:

(i) Excluding income under WAC 182-513-1340;

(ii) Determining available income under WAC 182-513-1325 or 182-513-1330;

(iii) Disregarding income under WAC 182-513-1345; and

(iv) Deducting medical expenses that were not used to reduce excess resources under WAC 182-513-1350.

(3) Determining the department-contracted daily rate in an institution, and the institutional medically needy income level (MNIL).

(a) The agency determines the department-contracted daily rate in an institution and the institutional MNIL based on the living arrangement, and whether the person is entitled to medicare payment for hospice services.

(b) When the person resides in a hospice care center:

(i) If entitled to medicare payment for hospice services, the department-contracted daily rate is the state daily hospice care center rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(ii) If not entitled to medicare payment for hospice services, the department-contracted daily rate is the state daily hospice care center rate, plus the state daily hospice rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(c) When the person resides in a nursing facility:

(i) If entitled to medicare payment for hospice services, the department-contracted daily rate is ninety-five percent of the nursing facility's state daily rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(ii) If not entitled to medicare payment for hospice services, the department-contracted daily rate is ninety-five percent of the nursing facility's state daily rate, plus the state daily hospice rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(4) Eligibility for payment of institutional hospice services and the MN program.

(a) If a person's countable income plus excess resources is less than, or equal to, the department-contracted daily rate, under subsection (3) of this section, times the number of days residing in the facility, the person:

(i) Is eligible for payment of institutional hospice services;

(ii) Is approved MN coverage for a twelve-month certification period; and

(b) Pays income and excess resources towards the cost of care under WAC 182-513-1380.

(5) Eligibility for institutional MN spenddown.

(a) If a person's countable income is more than the department-contracted daily rate times the number of days residing in the facility, but less than the private rate for the same period, the person:

(i) Is not eligible for payment of institutional hospice services; and

(ii) Is eligible for the MN spenddown program for a three- or six-month base period when qualifying medical expenses meet a person's spenddown liability.

(b) Spenddown liability is calculated by subtracting the institutional MNIL from the person's countable income for

each month in the base period. The values from each month are added together to determine the spenddown liability.

(c) Qualifying medical expenses used to meet the spenddown liability are described in WAC 182-519-0110, with the following exception: Only costs for hospice services above the department-contracted daily rate times the number of days residing in the facility are qualifying medical expenses.

(6) Eligibility for MN spenddown.

(a) If a person's countable income is more than the private rate times the number of days residing in the facility, the person is not eligible for payment of institutional hospice services and institutional MN spenddown; and

(b) Eligibility for MN spenddown is determined under chapter 182-519 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1315 ((Eligibility for long-term care (institutional, waiver, and hospice) services.)) General eligibility requirements for Washington apple health long-term care programs.** ((This section describes how the department determines a client's eligibility for medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the aged, blind, or disabled (ABD) cash assistance, medical care services (MCS) and the state funded long-term care services program described in subsection (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 182-503-0505 (2) and (3)(a) through (g);

(b) Attain institutional status as described in WAC 388-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for home and community services (HCS) waiver and nursing facility coverage; or

(d) Meet criteria for division of developmental disabilities (DDD) assessment under chapter 388-828 WAC for DDD waiver or institutional services;

(e) Not have a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365;

(f) Not have equity interest in their primary residence greater than the home equity standard described in WAC 388-513-1350; and

(g) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC:

(i) This is required for all institutional or waiver services and includes those individuals receiving supplemental security income (SSI).

(ii) A signed and completed eligibility review for long-term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the supplemental security income (SSI) program as described in WAC 182-512-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350; or

(b) Be approved and receiving aged, blind, or disabled cash assistance described in WAC 388-400-0060 and meet citizenship requirements for federally funded medicaid described in WAC 388-424-0010; or

(c) Be eligible for CN apple health for kids described in WAC 182-505-0210; or CN family medical described in WAC 182-505-0240; or family and children's institutional medical described in WAC 182-514-0230 through 182-514-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services. Nursing facility services for noncitizen children require prior approval by aging and disability services administration (ADSA) under the state funded nursing facility program described in WAC 182-507-0125; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC 388-400-0005. Clients not meeting disability or blind criteria described in WAC 182-512-0050 are not eligible for waiver services.

(3) The department allows a client to reduce countable resources in excess of the standard. This is described in WAC 388-513-1350.

(4) To be eligible for waiver services, a client must meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPES, New Freedom, PACE, and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers.

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 182-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI-related clients with income over the effective one-person MNIL and gross income at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

~~(a) Eligible for MN children's medical program described in WAC 182-514-0230, 182-514-0255, or 182-514-0260; or~~

~~(b) Related to the SSI program as described in WAC 182-512-0050 and meet all requirements described in WAC 388-513-1395; or~~

~~(c) Eligible for the MN SSI-related program described in WAC 182-512-0150 for hospice clients residing in a home setting; or~~

~~(d) Eligible for the MN SSI-related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.~~

~~(e) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC 388-513-1395.~~

~~(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:~~

~~(a) Considers resource eligibility and standards described in WAC 388-513-1350; and~~

~~(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365.~~

~~(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:~~

~~(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;~~

~~(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;~~

~~(c) Disregards income for the MN program as described in WAC 388-513-1345; and~~

~~(d) Follows program rules for the MN program as described in WAC 388-513-1395.~~

~~(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months.~~

~~(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395 for:~~

~~(a) Institutional services in a medical institution; or~~

~~(b) Hospice services in a medical institution.~~

~~(11) The department determines eligibility for state funded programs under the following rules:~~

~~(a) A client who is eligible for ABD cash assistance program described in WAC 388-400-0060 but is not eligible for federally funded medicaid due to citizenship requirements receives MCS medical described in WAC 182-508-0005. A client who is eligible for MCS may receive institutional services but is not eligible for hospice or HCB waiver services.~~

~~(b) A client who is not eligible for ABD cash assistance but is eligible for MCS coverage only described in WAC 182-508-0005 may receive institutional services but is not eligible for hospice or HCB waiver services.~~

~~(c) A noncitizen client who is not eligible under subsections (11)(a) or (b) and needs long-term care services may be eligible under WAC 182-507-0110 and 82-507-0125. This program must be pre-approved by aging and disability services administration (ADSA).~~

~~(12) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:~~

~~(a) Has attained institutional status as described in WAC 388-513-1320; and~~

~~(b) Is under the age of twenty-one at the time of application; or~~

~~(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or~~

~~(d) Is at least sixty-five years old.~~

~~(13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.~~

~~(14) If an individual under age twenty-one is not eligible for medicaid under SSI-related in WAC 182-512-0050 or ABD cash assistance described in WAC 388-400-0060 or MCS described in WAC 182-508-0005, consider eligibility under WAC 182-514-0255 or 182-514-0260.~~

~~(15) Noncitizen clients under age nineteen can be considered for the apple health for kids program described in WAC 182-505-0210 if they are admitted to a medical institution for less than thirty days. Once a client resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 182-514-0260 and must be preapproved for coverage by ADSA as described in WAC 182-507-0125.~~

~~(16) Noncitizen clients not eligible under subsection (15) of this section can be considered for LTC services under WAC 182-507-0125. These clients must be preapproved by ADSA.~~

~~(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:~~

~~(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380;~~

~~(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;~~

~~(c) For clients receiving DDD CN waiver services see WAC 388-515-1514; or~~

~~(d) For TANF-related clients residing in a medical institution see WAC 182-514-0265.~~

~~(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN medicaid. These groups are described in WAC 182-512-0880.) This section describes how the agency determines a person's eligibility for long-term care coverage for people residing in a medical institution, receiving home and community based (HCB) waiver services, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements under the state-funded medical care services (MCS) program and the state-funded long-term care services program.~~

This chapter includes the following sections:

(1) WAC 182-513-1316, General eligibility requirements for Washington apple health long-term care programs.

(2) WAC 182-513-1317, Income and resource criteria for an institutionalized person.

(3) WAC 182-513-1318, Income and resource criteria for home and community based (HCB) waiver programs and hospice.

(4) WAC 182-513-1319, State-funded programs for non-citizens.

#### NEW SECTION

#### **WAC 182-513-1316 General eligibility requirements for Washington apple health long-term care programs.**

(1) To be eligible for long-term care (LTC) services, a person must:

(a) Meet the general eligibility requirements for medical programs under WAC 182-503-0505;

(b) Attain institutional status under WAC 182-513-1320;

(c) Meet the functional eligibility under:

(i) Chapter 388-106 WAC for a home and community services (HCS) waiver or nursing facility coverage; or

(ii) Chapter 388-828 WAC for developmental disabilities administration (DDA) home and community based (HCB) waiver or institutional services; and

(d) Meet either:

(i) SSI-related criteria under WAC 182-512-0050; or

(ii) MAGI-based criteria under WAC 182-503-0510(2), if residing in a medical institution. A person who is eligible for MAGI-based coverage is not subject to the provisions described in subsection (2) of this section.

(2) A supplemental security income (SSI) person or an SSI-related person who needs LTC services must also:

(a) Not have a penalty period of ineligibility under WAC 182-513-1363;

(b) Not have equity interest in his or her primary residence greater than the home equity standard under WAC 182-513-1350; and

(c) Disclose to the state any interest the applicant or spouse has in an annuity, which must meet annuity requirements under chapter 182-516 WAC.

(3) An SSI recipient must submit a signed health care coverage application form attesting to the provisions described in subsection (2) of this section. A signed and completed eligibility review for long-term care benefits can be accepted for SSI people applying for long-term care services.

(4) To be eligible for HCB waiver services, a person must also meet the program requirements under:

(a) WAC 182-515-1505 through 182-515-1509 for HCS HCB waivers; or

(b) WAC 182-515-1510 through 182-515-1514 for DDA HCB waivers.

(5) The agency determines a person's eligibility as it does for a single person when the person's spouse has already been determined eligible for LTC services.

#### NEW SECTION

**WAC 182-513-1317 Income and resource criteria for an institutionalized person.** (1) This section provides an overview of the income and resource eligibility rules for a person who lives in an institutional setting.

(2) To determine income eligibility for an SSI-related long-term care (LTC) applicant under the categorically needy (CN) program, the agency:

(a) Considers income available under WAC 182-513-1325 and 182-513-1330;

(b) Excludes income under WAC 182-513-1340 and chapter 182-512 WAC;

(c) Compares remaining gross nonexcluded income to the special income level (SIL). A person's gross income must be equal to or less than the SIL to be eligible for CN coverage.

(3) To determine income eligibility for an SSI-related LTC client under the medically needy (MN) program, the agency follows the income standards and eligibility rules under WAC 182-513-1395.

(4) To be resource eligible under the SSI-related LTC CN or MN program, the person must:

(a) Meet the resource eligibility requirements under WAC 182-513-1350;

(b) Not have a penalty period of ineligibility due to a transfer of asset under WAC 182-513-1363;

(c) Disclose to the state any interest the person or his or her spouse has in an annuity, which must meet the annuity requirements under chapter 182-516 WAC.

(5) A person is eligible for medicaid as a resident in eastern or western state hospital if the person:

(a) Has attained institutional status under WAC 182-513-1320; and

(b) Is under age twenty-one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to his or her twenty-first birthday and the services extend beyond this date and the person has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(6) To determine long-term care CN or MN income eligibility for a person eligible under a MAGI-based program, the agency follows the rules under chapter 182-514 WAC.

(7) There is no asset test for MAGI-based LTC programs under WAC 182-514-0245.

(8) The agency determines a person's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For an SSI-related person residing in a medical institution, see WAC 182-513-1380;

(b) For an SSI-related person on a home and community based waiver, see chapter 182-515 WAC.

#### NEW SECTION

#### **WAC 182-513-1318 Income and resource criteria for home and community based (HCB) waiver programs and hospice.**

(1) This section provides an overview of the income and resource eligibility rules for a person to be eligible for a home and community based (HCB) waiver program described in chapter 182-515 WAC or the hospice program under WAC 182-513-1240 and 182-513-1245.

(2) To determine income eligibility for an SSI-related long-term care (LTC) HCB waiver under the categorically needy (CN) program, the medicaid agency:

(a) Considers income available under WAC 182-513-1325 and 182-513-1330;

(b) Excludes income under WAC 182-513-1340;

(c) Compares remaining gross nonexcluded income to:

(i) The special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); or

(ii) For home and community based (HCB) service programs authorized by aging and long-term supports administration (AL TSA), a higher standard is determined following the rules described in WAC 182-515-1508 if a client's income is above the SIL but net income is below the medically needy income level (MNIL).

(3) A person who receives MAGI-based coverage is not eligible for HCB waiver services unless found eligible based on program rules in chapter 182-515 WAC.

(4) To be resource eligible under the SSI-related LTC CN HCB waiver programs, the person must:

(a) Meet the resource eligibility requirements and standards under WAC 182-513-1350;

(b) Not have a penalty period of ineligibility due to a transfer of asset under WAC 182-513-1363;

(c) Disclose to the state any interest the person or his or her spouse has in an annuity and meet the annuity requirements under chapter 182-516 WAC.

(5) The agency allows an HCB waiver person to use verified unpaid medical expenses to reduce countable resources in excess of the standard under WAC 182-513-1350.

(6) The agency determines a person's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For people receiving HCS HCB waiver services, see WAC 182-515-1509;

(b) For people receiving DDA HCB waiver services, see WAC 182-515-1514.

(7) HCB waiver recipients who are "deemed eligible" for SSI benefits under WAC 182-512-0880 do not pay participation toward their cost of personal care. People living in a residential setting do pay room and board under WAC 182-515-1505 through 182-515-1509 or 182-515-1514.

(8) To be eligible for hospice services under the CN program, see WAC 182-513-1240.

(9) To be eligible for hospice services in a medical institution under the MN program, see WAC 182-513-1245.

#### NEW SECTION

**WAC 182-513-1319 State-funded programs for non-citizens.** (1) This section describes the state-funded programs that are available for noncitizens who do not meet the citizenship criteria under WAC 182-503-0535 for federally funded coverage.

(2) Lawfully residing noncitizens who need nursing facility care or care in an alternate living facility may receive coverage for long-term care (LTC) services if the person meets the eligibility and incapacity criteria of the medical care services (MCS) program under WAC 182-508-0005.

(3) People who receive MCS coverage are not eligible for home and community based (HCB) waiver programs or hospice care.

(4) Noncitizens under age nineteen who are eligible for the Washington apple health for kids program under WAC 182-505-0210 are eligible for LTC services if the person is admitted to a medical institution for less than thirty days. Once the person resides or is likely to reside in a medical

institution for thirty days or more, the agency determines eligibility under WAC 182-514-0260.

(5) Noncitizens age nineteen or older may be eligible for the state-funded long-term care services program described in WAC 182-507-0125. A person must be preapproved by AL TSA for this program due to enrollment limits.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1320 Determining institutional status for long-term care (LTC) services.** ~~((1) Institutional status is an eligibility requirement for long-term care services (LTC) and institutional medical programs. To attain institutional status, you must:~~

~~(a) Be approved for and receiving home and community based waiver services or hospice services; or~~

~~(b) Reside or based on a department assessment is likely to reside in a medical institution, institution for mental diseases (IMD) or inpatient psychiatric facility for a continuous period of:~~

~~(i) Thirty days if you are an adult eighteen and older;~~

~~(ii) Thirty days if you are a child seventeen years of age or younger admitted to a medical institution; or~~

~~(iii) Ninety days if you are a child seventeen years of age or younger receiving inpatient chemical dependency or inpatient psychiatric treatment.~~

~~(2) Once the department has determined that you meet institutional status, your status is not affected by:~~

~~(a) Transfers between medical facilities; or~~

~~(b) Changes from one kind of long-term care services (waiver, hospice or medical institutional services) to another.~~

~~(3) If you are absent from the medical institution or you do not receive waiver or hospice services for at least thirty consecutive days, you lose institutional status-)) (1) To attain institutional status, a person must be approved for and receive:~~

~~(a) Home and community based (HCB) waiver services under chapter 182-515 WAC; or~~

~~(b) Roads to community living (RCL) services under WAC 182-513-1235; or~~

~~(c) Program of all-inclusive care for the elderly (PACE) under WAC 182-513-1230; or~~

~~(d) Hospice services under WAC 182-513-1240(3); or~~

~~(e) Reside, or based on a department assessment, be likely to reside in a medical institution, institution for mental diseases (IMD), or inpatient psychiatric facility for thirty consecutive days.~~

~~(2) Once the agency has determined that the person meets institutional status, the person's status is not affected if the person:~~

~~(a) Transfers between medical facilities; or~~

~~(b) Changes from one kind of long-term care services (HCB waiver, RCL, PACE, hospice or medical institutional services) to another.~~

~~(3) A person loses institutional status if he or she is absent from a medical institution, or does not receive HCB waiver, RCL, PACE, or hospice services, for more than twenty-nine consecutive days.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1325 Determining available income for an SSI-related single client for long-term care (LTC) services (institutional, waiver or hospice).** This section describes income the ((department)) agency considers available when determining an SSI-related single client's eligibility for LTC services (institutional, waiver or hospice).

(1) Refer to WAC ((388-513-1330)) 182-513-1330 for rules related to available income for legally married couples.

(2) The ((department)) agency must apply the following rules when determining income eligibility for SSI-related LTC services:

- (a) WAC 182-512-0600 Definition of income;
- (b) WAC 182-512-0650 Available income;
- (c) WAC 182-512-0700 Income eligibility;
- (d) WAC 182-512-0750 Countable unearned income;
- (e) WAC ((182-514-0840(3))) 182-512-0840(3) Self-employment income-allowable expenses;
- (f) WAC ((388-513-1315(15))) 182-513-1315, Eligibility for long-term care (institutional, HCB waiver, and hospice) services; and
- (g) WAC ((388-450-0155, 388-450-0156, 388-450-0160)) 182-512-0785, 182-512-0790, 182-512-0795, and 182-509-0155 for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1330 Determining available income for legally married couples for long-term care (LTC) services (institutional HCB waiver and hospice).** This section describes income the ((department)) agency considers available when determining a legally married client's eligibility for LTC services.

(1) The ((department)) agency must apply the following rules when determining income eligibility for LTC services:

- (a) WAC 182-512-0600, definition of income SSI-related medical;
- (b) WAC 182-512-0650, available income;
- (c) WAC 182-512-0700, income eligibility;
- (d) WAC 182-512-0750, countable unearned income;
- (e) WAC 182-512-0840(3), self-employment income-allowance expenses;
- (f) WAC 182-512-0960((;)) SSI-related medical ((clients))—Allocating income—Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS); and
- (g) WAC ((388-513-1315,)) 182-513-1315 Eligibility for long-term care (institutional, HCB waiver, and hospice) services.

(2) For an institutionalized ((client married to a community spouse who is not applying or approved for LTC services, the department)) spouse, the agency considers the following income available, unless subsection (4) applies:

- (a) Income received in the ((client's)) institutionalized spouse's name;
- (b) Income paid to a representative on the ((client's)) institutionalized spouse's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The ((department)) agency considers the following income unavailable to an institutionalized ((client)) spouse:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a court order.

(4) For the determination of eligibility only, if available income described in subsection((s)) (2)(a) through (d) of this section minus income exclusions described in WAC ((388-513-1340)) 182-513-1340, exceeds the special income level (SIL)((, then)):

(a) The ((department)) agency follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; ((and))

(c) Considers one-half of all community income available to the institutionalized ((client)) spouse; and

(d) If the total of ((subsection(4))) (c) of this subsection plus the ((client's)) institutionalized spouse's own income is over the SIL, follow subsection (2) of this section; do not determine available income using this subsection.

(5) ((The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

((6) The department)) The agency considers a stream of income, not generated by a transferred resource, available to the ((client not generated by a transferred resource available to the client)) institutionalized spouse, even when the ((client)) institutionalized spouse transfers or assigns the rights to the stream of income to:

(a) The community spouse; or

(b) A trust for the benefit of ((their)) the community spouse.

((8) The department)) (6) The agency evaluates ((the transfer of a resource described in subsection(5) according to WAC 388-513-1363, 388-513-1364, and 388-513-1365 to determine whether a penalty period of ineligibility is required)) income and resource transfers under WAC 182-513-1363.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1340 Determining excluded income for long-term care (LTC) services.** This section describes income the ((department)) agency excludes when determining a ((client's)) person's eligibility and participation in the cost of care for LTC services with the exception described in subsection (31) of this section.

(1) Crime victim's compensation;

(2) Earned income tax credit (EITC) for twelve months after the month of receipt;

(3) Native American benefits excluded by federal statute (refer to WAC ((388-450-0040)) 182-512-0700);

(4) Tax rebates or special payments excluded by other statutes;

(5) Any public agency's refund of taxes paid on real property and/or on food;

(6) Supplemental security income (SSI) and certain state public assistance based on financial need;

(7) The amount a representative payee charges to provide services when the services are a requirement for the ~~((client))~~ person to receive the income;

(8) The amount of expenses necessary for a ~~((client))~~ person to receive compensation, e.g., legal fees necessary to obtain settlement funds;

(9) ~~((Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, and/or other necessary educational expenses at any educational institution))~~ Education benefits described in WAC 182-509-0335;

(10) Child support payments received from an absent parent for a child living in the home are considered the income of the child;

(11) Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);

(12) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;

(13) Assistance (other than wages or salary) received under the Older Americans Act;

(14) Assistance (other than wages or salary) received under the foster grandparent program;

(15) Certain cash payments a ~~((client))~~ person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(16) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;

(17) Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;

(18) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;

(19) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(20) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

(21) Payments made under the Energy Employee Occupational Compensation Program Act of 2000, (EEOICPA) Pub. L. 106-398;

(22) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

(23) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

(24) Payments made from *Susan Walker v. Bayer Corporation, et. al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

(25) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

(26) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

(27) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(28) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

(29) Interest or dividends received by the ~~((client))~~ institutionalized individual is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bonds, or savings accounts. Institutional status is defined in WAC ~~((388-513-1320))~~ 182-513-1320;

(30) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible ~~((client))~~ person, e.g., chore services;

(31) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (32) of this section;

(32) Benefits described in subsection (31)(b) of this section for a ~~((client))~~ person who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the ~~((client))~~ institutionalized individual contributes in the cost of care.

(33) Any other income excluded by federal law.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1345 Determining disregarded income for institutional or hospice services under the medically needy (MN) program.** This section describes income the ~~((department))~~ agency disregards when determining a ~~((client's))~~ person's eligibility for institutional or hospice services under the MN program. The ~~((department))~~ agency considers disregarded income available when determining a ~~((client's))~~ person's participation in the cost of care.

(1) The ~~((department))~~ agency disregards the following income amounts in the following order:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income, unless the income paid to a ~~((client))~~ person is:

(i) Based on need; and

(ii) Totally or partially funded by the federal government or a private agency.

(2) For a ~~((client))~~ person who is related to the supplemental security income (SSI) program as described in WAC 182-512-0050(1), the first sixty-five dollars per month of

earned income not excluded under WAC ((388-513-1340)) 182-513-1340, plus one-half of the remainder.

(3) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (4) of this section.

(4) Benefits described in subsection (3)(b) of this section for a ((~~client~~)) person who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the ((~~client~~)) person contributes in the cost of care.

(5) Income the Social Security Administration (SSA) withholds from SSA Title II benefits for the recovery of an SSI overpayment.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services.** ((This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (9) through (12) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (4) of this section applies.

(2) Effective January 1, 2012 if an individual purchases a qualified long-term care partnership policy approved by the Washington insurance commissioner under the Washington long-term care partnership program, the department allows the individual with the long-term care partnership policy to retain a higher resource amount based on the dollar amount paid out by a partnership policy. This is described in WAC 388-513-1400.

(3) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(4) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(5) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eli-

gibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(6) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(7) The department applies the following rules when determining available resources for LTC services:

(a) WAC 182-512-0300, Resource eligibility;

(b) WAC 182-512-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060, Resources of an alien's sponsor.

(8) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 182-512-0350 through 182-512-0550 and resources excluded by federal law with the exception of:

(i) WAC 182-512-0550 pension funds owned by an:

(I) Ineligible spouse. Pension funds are defined as funds held in an individual retirement account (IRA) as described by the IRS code; or

(II) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

(ii) WAC 182-512-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index urban (CPIU). For current excess home equity standard starting January 1, 2011 and each year thereafter, see <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandards.pna.shtml>.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (3), (6) and (9)(a) or (b) apply, but not if subsection (4) or (5) apply.

(d) For an SSI-related client, excess resources are reduced:



(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the facility that the client owes the expense to.

(ii) As long as the incurred medical expenses:

(A) Were not incurred more than three months before the month of the medicaid application;

(B) Are not subject to third party payment or reimbursement;

(C) Have not been used to satisfy a previous spend down liability;

(D) Have not previously been used to reduce excess resources;

(E) Have not been used to reduce client responsibility toward cost of care;

(F) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, and 388-513-1365; and

(G) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or assisted living facility is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate based on the number of days in the medical institution in the month.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to countable income, the combined total is less than the:

(A) State medical institution rate based on the number of days in the medical institution in the month, plus the amount of recurring medical expenses; or

(B) State hospice rate based on the number of days in the medical institution in the month plus the amount of recurring medical expenses, in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(9) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(10) If subsection (9)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard may change annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long term care standards at <http://www1.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the first day of the month of the current period of institutional status, up to the amount described in subsection (10)(a) of this section; or

(ii) The state spousal resource standard of forty-eight thousand six hundred thirty-nine dollars (this standard may change every odd year on July 1st). This standard is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long term care standards at <http://www1.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>.

(c) Resources are verified on the first moment of the first day of the month institutionalization began as described in WAC 182-512-0300(1).

(11) The amount of the spousal share described in (10)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spou-

sal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(12) The amount of allocated resources described in subsection (10) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(13) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (6) or (14)(a), (b), or (c) of this section applies.

(14) A redetermination of the couple's resources as described in subsection (8) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status; or

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (9)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (10) or (12) to the community spouse by either:

(i) The end of the month of the first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.) (1) General information.

(a) This section describes how the agency defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related LTC services.

(b) The agency uses the term "resource standard" to describe the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not related to SSI, the agency applies the program specific resource rules to determine eligibility.

(d) Institutional resource standards are found at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(2) Resource standards.

(a) The resource standard for the following people is two thousand dollars:

(i) A single person; or

(ii) A legally married institutionalized spouse. (Determine the amount of resources allocated to the community spouse under WAC 182-513-1355.)

(b) The resource standard for a legally married couple is three thousand dollars, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400

may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the agency considers the resources of both spouses available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the institutionalized spouse, then the agency applies the standard described in subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for a couple.

(iv) The agency considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized person marries, the agency redetermines eligibility applying the rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, if WAC 182-513-1355 (1)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (2) or (4), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency determines countable resources using the following sections:

(i) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(ii) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(iii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(iv) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(b) The agency determines excluded resources based on federal law and WAC 182-512-0550 SSI-related medical—All other excluded resources, with the following exceptions:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) WAC 182-512-0350 (1)(b), one home. For long-term services and supports (LTSS), one home is excluded only if it meets the home equity limits of subsection (8) of this section.

(c) The agency adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce resources over the standard by allowing deductions for incurred medical expenses as described in subsection (6) of this section:

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross nonexcluded income must be at or below the special income level (SIL).

(B) In a medical institution, excess resources and gross nonexcluded income must be under the state medicaid rate based on the number of days in the medical institution in the month.

(C) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(6) Allowable medical expenses.

(a) The following incurred medical expenses are allowed to reduce excess resources:

(i) Premiums, deductibles, and coinsurance or copayment charges for health insurance and medicare;

(ii) Medically necessary care recognized under state law, but not covered under the state's medicaid plan;

(iii) Medically necessary care covered under the state's medicaid plan incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that is owed the expense.

(b) To be allowed, the medical expense must meet the following criteria. The expense:

(i) Was not incurred more than three months before the month of the medicaid application;

(ii) Is not subject to third-party payment or reimbursement;

(iii) Has not been used to satisfy a previous spenddown liability;

(iv) Has not previously been used to reduce excess resources;

(v) Has not been used to reduce participation;

(vi) Was not incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Is an amount for which the person remains liable.

(7) Nonallowable medical expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid expenses prior to HCB waiver eligibility to an adult family home (AFH) or assisted living facility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in his or her primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) unless one of the following persons lawfully resides in the home:

(i) The applicant's spouse; or

(ii) A blind, disabled, or dependent child under age twenty-one.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) A person's equity interest equals the fair market value of the home minus encumbrances.

(d) Effective January 1, 2015, the excess home equity limit is five hundred fifty-two thousand dollars. On January 1, 2016, and on January 1 of each year thereafter, this standard may change by the percentage in the consumer price index-urban (CPIU).

(e) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

#### NEW SECTION

**WAC 182-513-1355 Determining the amount of resources allocated to the community spouse when determining resource eligibility for long-term services and supports (LTSS) under WAC 182-513-1350.** (1) For legally married people when only one spouse meets institutional status, the following rules apply. If the person's current period of institutional status began:

(a) Before October 1, 1989, the agency adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; and

(ii) Both spouses.

(b) On or after October 1, 1989, the agency adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; and

(ii) Both spouses.

(2) If subsection (1)(b) of this section applies, the agency determines the amount of resources allocated to the community spouse, before determining countable resources used to establish eligibility for the institutionalized spouse under WAC 182-513-1350, as follows:

(a) If the person's current period of institutional status began on or after October 1, 1989, and before August 1,

2003, the agency allocates the maximum amount of resources ordinarily allowed by law; or

(b) If the person's current period of institutional status began on or after August 1, 2003, the agency allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the first day of the month of the current period of institutional status, up to the amount described in subsection (2)(a) of this section; or

(ii) The state spousal resource standard.

(c) Resources are verified on the first moment of the first day of the month institutionalization began under WAC 182-512-0300(1).

(3) The amount of the spousal share described in subsection (2)(b)(i) of this section can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTSS is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTSS, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTSS if the person was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The person is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(4) The amount of allocated resources described in subsection (2) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in an administrative hearing under chapter 182-526 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(5) The institutionalized spouse has until the end of the month of the first regularly scheduled eligibility review to transfer joint resources in excess of two thousand dollars to his or her community spouse

(6) Standards in this section are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

**AMENDATORY SECTION** (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1363 Evaluating the transfer of assets ((on or after May 1, 2006 for persons)) for people applying for or receiving long-term care (LTC) services.** ((This section describes how the department evaluates asset transfers made on or after May 1, 2006 and their affect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institu-

tion equivalent to nursing facility services, and home and community-based services furnished under a waiver program. Program of all inclusive care of the elderly (PACE) and hospice services are not subject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period.

~~• Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006.~~

~~• Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.~~

~~(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006 on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.~~

~~(2) The department does not apply a penalty period to transfers meeting the following conditions:~~

~~(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month;~~

~~(b) The transfer is an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in subsection (2)(d);~~

~~(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:~~

~~(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.~~

~~(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing evidence must be presented regarding the specific purpose of the transfer.~~

~~(iii) All assets transferred for less than fair market value have been returned to the client.~~

~~(iv) The denial of eligibility would result in an undue hardship as described in WAC 388-513-1367.~~

~~(d) The transfer of ownership of the client's home, if it is transferred to the client's:~~

~~(i) Spouse; or~~

~~(ii) Child, who:~~

~~(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (e); or~~

~~(B) Is less than twenty-one years old; or~~

~~(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided verifiable care that enabled the individual to remain in the home. A physician's statement of needed care is required; or~~

~~(iii) Brother or sister, who has:~~

~~(A) Equity in the home, and~~

~~(B) Lived in the home for at least one year immediately before the client's current period of institutional status.~~

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (2)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(e) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) as the transfer of an asset without adequate consideration.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the individual is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty

period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application for LTC services or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following ten-day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (5) through (7).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services:

(a) We divide the penalty between the two spouses.

(b) If one spouse is no longer subject to a penalty (e.g. the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

~~(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty;~~

~~(b) RCW 74.08.338 Real property transfers for inadequate consideration;~~

~~(c) RCW 74.08.335 Transfers of property to qualify for assistance; and~~

~~(d) RCW 74.39A.160 Transfer of assets—Penalties;))~~

(1) When determining a person's eligibility for long-term care (LTC) services, the agency must evaluate the effect of an asset transfer made within the sixty-month period before the month that the person:

(a) Attained institutional status, or would have attained institutional status; and

(b) Has applied for LTC services.

(2) The agency must evaluate all transfers for recipients of LTC services made on or after the month the recipient attained institutional status.

(3) The agency establishes a period of ineligibility during which the person is not eligible for LTC services if the person, the person's spouse, or someone acting on behalf of either:

(a) Transfers an asset within the time period described in subsection (1) or (2) of this section; and

(b) Does not receive adequate compensation for the asset, unless the transfer meets one of the conditions in subsection (4)(a) through (g) of this section.

(4) The agency does not apply a period of ineligibility because of an uncompensated transfer if:

(a) The total of all transfers in a month does not exceed the average daily private nursing facility rate in that month;

(b) The transfer is an excluded resource under WAC 182-513-1350 with the exception of a home, unless the transfer of the home meets the conditions described in (d) of this subsection;

(c) The asset is transferred for less than fair market value (FMV), and the person can establish one of the following:

(i) An intent to transfer the asset at FMV. To establish such an intent, the agency must be provided with convincing evidence of the attempt to dispose of the asset for FMV;

(ii) The transfer is not made to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery. Convincing evidence must be presented regarding the specific purpose of the transfer;

(iii) All assets transferred for less than FMV have been returned to the person or his or her spouse;

(iv) The denial of eligibility would result in an undue hardship under WAC 182-513-1367;

(d) The asset transferred is a home, if the home is transferred to the person's:

(i) Spouse;

(ii) Child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iii) Child who is less than age twenty-one; or

(iv) Child who lived in the home and provided care, if:

(A) The child lived in the person's home for at least two years;

(B) The child provided verifiable care during the time period in (d)(iv)(A) of this subsection for at least two years;

(C) The period of care described in (d)(iv)(B) of this subsection is immediately before the person's current period of institutional status;

(D) The care was not paid for by medicaid;

(E) The care enabled the person to remain in his or her home; and

(F) The person provided physician's documentation that the in-home care was necessary to prevent the person's current period of institutional status; or

(v) Sibling, who has lived in and has had an equity interest in the home for at least one year immediately before the date the person became an institutionalized individual.

(e) The asset is transferred to the person's spouse; or to the person's child, if the child meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(f) The transfer is to a family member prior to the current period of institutional status, and all the following conditions are met. If all the following conditions are not met, the transfer is an uncompensated transfer:

(i) The transfer is in exchange for care services the family member provided to the person;

(ii) The person had a documented need for the care services provided by the family member;

(iii) The care services provided by the family member are allowed under the medicaid state plan or the department's home and community based waiver services;

(iv) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(v) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(vi) The time for which care services are claimed is reasonable based on the kind of services provided; and

(vii) The assets were transferred as the care services were performed, or with no more time delay than one month between the provision of the service and the transfer.

(g) The transfer meets the conditions described in subsection (5) of this section, and the asset is transferred:

(i) To another party for the sole benefit of the person's spouse;

(ii) From the person's spouse to another party for the sole benefit of the spouse;

(iii) To a trust established for the sole benefit of the person's child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is age sixty-four or younger who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c).

(5) The agency determines the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (4)(g) of this section, if the transfer or trust is established by a legal document that makes the transfer irrevocable, and the document:

(a) Provides that only the person's spouse, blind or disabled child, or another disabled person can benefit from the assets transferred; and

(b) Provides for spending all assets involved for the sole benefit of the person who is actuarially sound, based on the life expectancy of that person or the term of the document, whichever is less, unless the document is a trust that meets

the conditions under WAC 182-516-0100 (6)(a), (b), (7)(a), or (b).

(6) The period of ineligibility described in subsection (3) of this section is calculated by:

(a) Adding together the total uncompensated value of all transfers under subsection (3) of this section; and

(b) Dividing the total in (a) of this subsection by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility;

(7) The period of ineligibility calculated in subsection (6) of this section begins:

(a) For a LTC services applicant: The date the person would be otherwise eligible for LTC services, but for the transfer, based on an approved application for LTC services or the first day after any previous period of ineligibility has ended; or

(b) For a LTC services recipient: The first of the month following ten-day advance notice of the period of ineligibility, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous period of ineligibility has ended; and

(8) The period of ineligibility ends after the number of whole days, calculated in subsection (6) of this section, elapse from the date the period of ineligibility began in subsection (7) of this section.

(9) If the transfer is to the person's spouse, and it includes the right to receive an income stream, the agency determines availability of the income stream under WAC 182-513-1330 (5) and (6).

(10) If the transfer of an asset for which adequate compensation is not received is made to someone other than the person's spouse and includes the right to receive a stream of income not generated by the transferred asset, the length of the period of ineligibility is calculated and applied in the following way:

(a) The amount of reasonably anticipated future monthly income, after the transfer, is multiplied by the actuarial life expectancy (in months) of the person who owned the income. The actuarial life expectancy is based on age of the person in the month the transfer occurs;

(b) The amount in (a) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility; and

(c) The period of ineligibility will begin under subsection (7) of this section and end under subsection (8) of this section.

(11) A period of ineligibility for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses have attained institutional status. When both spouses are institutionalized, the agency divides the penalty equally between the two spouses. If one spouse is no longer subject to a period of ineligibility, the remaining period of ineligibility that applied to both spouses will be applied to the other spouse.

(12) If a person or his or her spouse disagrees with the determination or application of a period of ineligibility, that person may request a hearing under chapter 182-526 WAC.

(13) Additional statutes that apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

**AMENDATORY SECTION** (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1367 Hardship waivers for long-term care (LTC) services.** ((Clients)) People who are denied or terminated from LTC services due to a transfer of asset penalty (described in WAC ((388-513-1363, 388-513-1364 and 388-513-1365)) 182-513-1363), or having excess home equity (described in WAC ((388-513-1350)) 182-513-1350) may apply for an undue hardship waiver. Notice of the right to apply for an undue hardship waiver will be given whenever there is a denial or termination based on an asset transfer or excess home equity. This section:

- Defines undue hardship;
- Specifies the approval criteria for an undue hardship request;
- Establishes the process the department follows for determining undue hardship; and
- Establishes the appeal process for a client whose request for an undue hardship is denied.

(1) When does undue hardship exist?

(a) Undue hardship may exist:

(i) When a transfer of an asset occurs between:

(A) Registered domestic partners as described in chapter 26.60 RCW; or

(B) Same-sex couples who were married in states and the District of Columbia where same-sex marriages are legal; and

(C) The transfer would not have caused a period of ineligibility if made between an opposite sex married couple under WAC ((388-513-1363)) 182-513-1363.

(ii) When a ((client)) person who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian or attorney-in-fact, has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period; and

(iii) The ((client)) person provides sufficient documentation to support their efforts to recover the assets or income; or

(iv) The ((client)) person is unable to access home equity in excess of the standard described in WAC ((388-513-1350)) 182-513-1350; and

(v) When, without LTC benefits, the ((client)) person is unable to obtain:

(A) Medical care to the extent that his or her health or life is endangered; or

(B) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.

(2) Undue hardship does not exist:

(a) When the transfer of asset penalty period or excess home equity provision inconveniences a client or restricts their lifestyle but does not seriously deprive him or her as defined in subsection (1)(a)(iii) of this section;

(b) When the resource is transferred to a person who is handling the financial affairs of the ~~((client))~~ person; or

(c) When the resource is transferred to another person by the individual that handles the financial affairs of the ~~((client))~~ person.

~~((4))~~ (3) Undue hardship may exist under subsection (2)(b) and (c) of this section if DSHS has found evidence of financial exploitation.

~~((3))~~ (4) How is an undue hardship waiver requested?

(a) An undue hardship waiver may be requested by:

(i) The ~~((client))~~ person;

(ii) The ~~((client's))~~ person's spouse;

(iii) The ~~((client's))~~ person's authorized representative;

(iv) The ~~((client's))~~ person's power of attorney; or

(v) With the consent of the ~~((client or their))~~ person or his or her guardian, a medical institution, as defined in WAC ~~((182-500-0005))~~ 182-500-0050, in which an institutionalized ~~((client))~~ person resides.

(b) Request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address and telephone number. If the request is being made on behalf of a ~~((client))~~ person, then the ~~((client's))~~ person's name, address and telephone number must be included;

(iv) Be made within thirty days of the date of denial or termination of LTC services; and

(v) Returned to the originating address on the denial/termination letter.

~~((4))~~ (5) What if additional information is needed to determine a hardship waiver? ~~((a))~~ A written notice to the ~~((client))~~ person is sent requesting additional information within fifteen days of the request for an undue hardship waiver. Additional time to provide the information can be requested by the ~~((client))~~ person.

~~((5))~~ (6) What happens if my hardship waiver is approved?

(a) The ~~((department))~~ agency sends a notice within fifteen days of receiving all information needed to determine a hardship waiver. The approval notice specifies a time period the undue hardship waiver is approved.

(b) Any changes in a ~~((client's))~~ person's situation that led to the approval of a hardship must be reported to the ~~((department by the tenth of the month following))~~ agency within thirty days of the change per WAC ~~((388-418-0007))~~ 182-504-0110.

~~((6))~~ (7) What happens if my hardship waiver is denied?

(a) The ~~((department))~~ agency sends a denial notice within fifteen days of receiving the requested information. The letter will state the reason it was not approved.

(b) The denial notice will have instructions on how to request an administrative hearing. The ~~((department))~~ agency must receive an administrative hearing request within ninety days of the date of the adverse action or denial.

~~((7))~~ (8) What statute or rules govern administrative hearings? ~~((a))~~ An administrative hearing held under this section is governed by chapters 34.05 RCW and ~~((chapter 388-02))~~ 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision in this section governs.

~~((8))~~ (9) Can the ~~((department))~~ agency revoke an approved undue hardship waiver? ~~((a))~~ The ~~((department))~~ agency may revoke approval of an undue hardship waiver if any of the following occur:

~~((i))~~ (a) A ~~((client))~~ person, or his or her authorized representative, fails to provide timely information and/or resource verifications as it applies to the hardship waiver when requested by the ~~((department))~~ agency per WAC ~~((388-490-0005 and 388-418-0007))~~ 182-503-0050 and 182-504-0120 or 182-504-0125;

~~((ii))~~ (b) The lien or legal impediment that restricted access to home equity in excess of five hundred thousand dollars is removed; or

~~((iii))~~ (c) Circumstances for which the undue hardship was approved have changed.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1380 Determining a ~~((client's))~~ person's financial participation in the cost of care for long-term care (LTC) services.** This rule describes how the ~~((department))~~ agency allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The ~~((department))~~ agency applies rules described in WAC ~~((388-513-1315))~~ 182-513-1315 to define which income and resources must be used in this process.

(1) For a ~~((client))~~ person receiving institutional or hospice services in a medical institution, the ~~((department))~~ agency applies all subsections of this rule.

(2) For a ~~((client))~~ person receiving waiver services at home or in an alternate living facility, the ~~((department))~~ agency applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a ~~((client))~~ person receiving hospice services at home, or in an alternate living facility, the ~~((department))~~ agency applies rules used for the community options program entry system (COPEs) for hospice applicants with gross income under the medicaid special income level (SIL) (three hundred percent of the federal benefit rate (FBR)), if the ~~((client))~~ person is not otherwise eligible for another noninstitutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)



(4) The ~~((department))~~ agency allocates nonexcluded income in the following order and the combined total of ~~((4))~~ (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) Seventy dollars for the following ~~((clients))~~ people who live in a state veteran's home and receive a needs based veteran's pension in excess of ninety dollars:

(A) A veteran without a spouse or dependent child.

(B) A veteran's surviving spouse with no dependent children.

(ii) The difference between one hundred sixty dollars and the needs based veteran's pension amount for persons specified in ~~((subsection (4)))~~ (a)(i) of this ~~((section))~~ subsection who receive a veteran's pension less than ninety dollars.

(iii) One hundred sixty dollars for a ~~((client))~~ person living in a state veterans' home who does not receive a needs based veteran's pension;

(iv) Forty-one dollars and sixty-two cents for all ~~((clients))~~ people in a medical institution receiving aged, blind, disabled, (ABD) or temporary assistance for needy families (TANF) cash assistance.

(v) For all other ~~((clients))~~ people in a medical institution the PNA is fifty-seven dollars and twenty-eight cents.

(vi) Current PNA and long-term care standards can be found at ~~((http://www.dshs.wa.gov/manuals/ez/sections/LongTermCare/LTCstandardspna.shtml))~~ http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx.

(b) Mandatory federal, state, or local income taxes owed by the ~~((client))~~ person.

(c) Wages for a ~~((client))~~ person who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 182-512-0050(1); and

(ii) Receives the wages as part of ~~((a department approved))~~ an agency-approved training or rehabilitative program designed to prepare the ~~((client))~~ person for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The ~~((department))~~ agency allocates nonexcluded income after deducting amounts described in subsection (4) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is for the current month:

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance may change each January based on the consumer price index. Starting January 1, 2008, and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at ~~((http://www1.dshs.wa.gov/manuals/~~

~~ez/sections/LongTermCare/LTCstandardspna.shtml))~~ http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two-person federal poverty level. This standard may change annually on July 1st; and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the ~~((client's))~~ person's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse: ~~((A))~~ For each child, one hundred and fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income). This standard is called the community spouse (CS) and family maintenance standard and can be found at: ~~((http://www.dshs.wa.gov/manuals/ez/sections/LongTermCare/LTCstandardspna.shtml))~~ http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the effective one-person MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the ~~((institutional client))~~ institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC ~~((388-513-1350))~~ 182-513-1350.

(e) Maintenance of the home of a single institutionalized ~~((client))~~ person or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) ~~((For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:~~

~~((a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and is found at: http://www.dshs.wa.gov/manuals/ez/sections/LongTermCare/LTCstandardspna.shtml; and~~

~~((b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:~~

~~((i) Rent;~~

(ii) Mortgage;  
 (iii) Taxes and insurance;  
 (iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance described in WAC 388-450-0195, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8)) A ((client)) person who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(7) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the participation.

(8) A person is only responsible to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person only participates the difference up to the state rate cost of care.

(9) Standards described in this section for long-term care can be found at: (<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

#### NEW SECTION

**WAC 182-513-1385 Determining the spousal and dependent allocation allowed in post-eligibility treatment of income for Washington apple health long-term care (LTC) programs.** (1) This section describes the calculation to determine the monthly maintenance-needs allowance in post-eligibility treatment of income for long-term care (LTC) programs for a community spouse or dependents of the institutionalized individual.

(2) The community spouse maintenance-needs allowance is found in the institutional section of the Washington apple health income and resource standards chart located at <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx> unless a greater amount is allocated as described in subsection (4) of this section. The allowance may change each January based on the consumer price index.

(3) The community spouse maintenance-needs allowance:

(a) Is allowed only to the extent that the institutionalized spouse's income is made available to the community spouse; and

(b) Consists of a combined total of both:

(i) One hundred fifty percent of the two-person federal poverty level (FPL). (This standard may change annually on July 1st); and

(ii) Excess shelter expenses. Excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. To determine this amount:

(A) Add:

(I) Rent, including space rent for mobile homes;

(II) Mortgage;

(III) Real property taxes;

(IV) Homeowner's insurance;

(V) Required maintenance fees for a condominium, cooperative, or homeowner's association that are recorded in a covenant;

(VI) The food assistance standard utility allowance (SUA) under WAC 388-450-0195 minus the cost of any utilities that are included in (b)(ii)(A)(V) of this subsection.

(B) Subtract the standard shelter allocation from the total in (b)(ii)(A) of this subsection. The standard shelter allocation is thirty percent of one hundred fifty percent of the two-person FPL. This standard may change annually on July 1st.

(c) The total of (b) of this subsection is reduced by the community spouse's gross countable income.

(4) The amount allocated to the community spouse may be greater than the amount determined in subsection (3) of this section only if:

(a) There is a court order approving a higher amount for the support of the community spouse; or

(b) An administrative law judge determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(5) The agency determines monthly maintenance-needs allowance for dependents of the institutionalized individual or his or her spouse. The amount the agency allows depends on whether the dependent resides with the community spouse.

(a) For each dependent who resides with the community spouse:

(i) Subtract the dependent's income from one hundred fifty percent of the two-person FPL;

(ii) Divide the amount determined in (a)(i) of this subsection by three;

(iii) The remainder is the amount that can be allocated to the dependent.

(b) For each dependent who does not reside with the community spouse:

(i) The agency determines the effective MNIL standard based on the number of dependent family members in the home;

(ii) Subtracts the dependent's separate income;

(iii) The difference is the amount that can be allocated to the dependents.

(c) Child support received from a noncustodial parent is considered the child's income.

**AMENDATORY SECTION** (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1395 Determining eligibility for institutional ((or hospice)) services for ((individuals)) people living in ((a)) medical institutions under the SSI-related medically needy ((MN)) program.** ((This section describes how the department determines a client's eligibility

for institutional or hospice services in a medical institution and for facility care only under the MN program. In addition, this section describes rules used by the department to determine whether a client approved for these benefits is also eligible for noninstitutional medical assistance in a medical institution under the MN program.

(1) To be eligible for institutional or hospice services under the MN program for individuals living in a medical institution, a client must meet the financial requirements described in subsection (5). In addition, a client must meet program requirements described in WAC 388-513-1315; and

(a) Be an SSI-related client with countable income as described in subsection (4)(a) that is more than the special income level (SIL); or

(b) Be a child not described in subsection (1)(a) with countable income as described in subsection (4)(b) that exceeds the categorically needy (CN) standard for the children's medical program.

(2) For an SSI-related client, excess resources are reduced by medical expenses as described in WAC 388-513-1350 to the resource standard for a single or married individual.

(3) The department determines a client's countable resources for institutional and hospice services under the MN programs as follows:

(a) For an SSI-related client, the department determines countable resources per WAC 388-513-1350.

(b) For a child not described in subsection (3)(a), no determination of resource eligibility is required.

(4) The department determines a client's countable income for institutional and hospice services under the MN program as follows:

(a) For an SSI-related client, the department reduces available income as described in WAC 388-513-1325 and 388-513-1330 by:

(i) Excluding income described in WAC 388-513-1340;

(ii) Disregarding income described in WAC 388-513-1345; and

(iii) Subtracting previously incurred medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(b) For a child not described in subsection (4)(a), the department:

(i) Follows the income rules described in WAC 182-505-0210 for the children's medical program; and

(ii) Subtracts the medical expenses described in subsection (4).

(5) If the income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350 (1), is less than the department contracted rate times the number of days residing in the facility the client:

(a) Is eligible for institutional or hospice services in a medical institution, and medical assistance;

(b) Is approved for twelve months; and

(c) Participates income and excess resources toward the cost of care as described in WAC 388-513-1380.

(6) If the income remaining after the allowed deductions described in WAC 388-513-1380 plus countable resources in

excess of the standard described in WAC 388-513-1350(1) is more than the department contracted rate times the number of days residing in the facility the client:

(a) Is not eligible for payment of institutional services; and

(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.

(7) If the income remaining after the allowed deductions described in WAC 388-513-1380 is more than the department contracted nursing facility rate based on the number of days the client is in the facility, but less than the private nursing rate plus the amount of medical expenses not used to reduce excess resources the client:

(a) Is eligible for nursing facility care only and is approved for a three or six month based period as described in chapter 182-519 WAC. This does not include hospice in a nursing facility; and

(i) Pays the nursing home at the current state rate;

(ii) Participates in the cost of care as described in WAC 388-513-1380; and

(iii) Is not eligible for medical assistance or hospice services unless the requirements in (6)(b) is met.

(b) Is approved for medical assistance for a three or six month base period as described in chapter 182-519 WAC, if:

(i) No income and resources remain after the post eligibility treatment of income process described in WAC 388-513-1380.

(ii) Medicaid certification is approved beginning with the first day of the base period.

(e) Is approved for medical assistance for up to three or six months when they incur additional medical expenses that are equal to or more than excess income remaining after the post eligibility treatment of income process described in WAC 388-513-1380.

(i) This process is known as spenddown and is described in WAC 182-519-0100.

(ii) Medicaid certification is approved on the day the spenddown is met.

(8) If the income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350 is more than the private nursing facility rate times the number of days in a month residing in the facility, the client:

(a) Is not eligible for payment of institutional services.

(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC-)) (1) General information. To be eligible for institutional services when living in a medical institution under the SSI-related medically needy (MN) program, a person must:

(a) Meet program requirements described in WAC 182-513-1315;

(b) Have gross nonexcluded income in excess of the special income level (SIL); and

(c) Meet the financial requirements of subsection (3) or (4) of this section.

(2) Financial eligibility information.

(a) The agency determines a person's resource eligibility, excess resources, and medical expense deductions using WAC 182-513-1350.

(b) The agency determines a person's countable income by:

(i) Excluding income described in WAC 182-513-1340;  
(ii) Determining available income described in WAC 182-513-1325 or 182-513-1330;

(iii) Disregarding income described in WAC 182-513-1345; and

(iv) Deducting medical expenses that were not used to reduce excess resources described in WAC 182-513-1350.

(c) For the purposes of this section only, "remaining income" means all gross nonexcluded income remaining after the post-eligibility calculation described in WAC 182-513-1380.

(3) Eligibility for payment of institutional services and the MN program.

(a) If a person's remaining income plus excess resources is less than, or equal to, the department-contracted daily rate times the number of days residing in the facility, the person:

(i) Is eligible for payment of institutional services and the MN program; and

(ii) Is approved for a twelve-month certification period.

(b) The person must pay income and excess resources towards the cost of care as described in WAC 182-513-1380.

(4) Eligibility for payment of institutional services and MN spenddown. If a person's remaining income is more than the department contracted daily rate times the number of days residing in the facility, but less than the private nursing facility rate for the same period, the person:

(a) Is eligible for payment of institutional services at the department-contracted rate; and

(i) Is approved for a three- or six-month base period;

(ii) Pays income and excess resources towards the department-contracted cost of care as described in WAC 182-513-1380; and

(b) Is eligible for the MN program for the same three- or six-month base period when the total of additional medical expenses incurred during the base period exceeds:

(i) The total remaining income for all months of the base period; minus

(ii) The total department-contracted rate for all months of the base period.

(5) If a person has excess resources and his or her remaining income is more than the department-contracted daily rate times the number of days residing in the facility, the person is not eligible for payment of institutional services and the MN program.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1400 Long-term care (LTC) partnership program (index).** Under the long-term care (LTC) partnership program, ~~((individuals))~~ people who purchase qualified long-term care partnership insurance policies can apply for long-term care medicaid under special rules for determining financial eligibility. These special rules generally allow the ~~((individual))~~ person to protect assets up to the insurance benefits received from a partnership policy so that such assets will not be taken into account in determining financial eligibility for long-term care medicaid and will not subsequently

be subject to estate recovery for medicaid and long-term care services paid. The Washington long-term care partnership program is effective on December 1, 2011.

The following rules govern long-term care eligibility under the long-term care partnership program:

(1) ~~WAC ((388-513-1405))~~ 182-513-1405 Definitions.

(2) ~~WAC ((388-513-1410))~~ 182-513-1410 What qualifies as a LTC partnership policy?

(3) ~~WAC ((388-513-1415))~~ 182-513-1415 What assets can't be protected under the LTC partnership provisions?

(4) ~~WAC ((388-513-1420))~~ 182-513-1420 Who is eligible for asset protection under a LTC partnership policy?

(5) ~~WAC ((388-513-1425))~~ 182-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy that does not have exhausted benefits?

(6) ~~WAC ((388-513-1430))~~ 182-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care?

(7) ~~WAC ((388-513-1435))~~ 182-513-1435 Will Washington recognize a LTC partnership policy purchased in another state?

(8) ~~WAC ((388-513-1440))~~ 182-513-1440 How many of my assets can be protected?

(9) ~~WAC ((388-513-1445))~~ 182-513-1445 How do I designate a protected asset and what proof is required?

(10) ~~WAC ((388-513-1450))~~ 182-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility?

(11) ~~WAC ((388-513-1455))~~ 182-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1405 Definitions.** For purposes of this section, the following terms have the meanings given them. Additional definitions can be found at chapter ~~((388-500))~~ 182-500 WAC and ~~WAC ((388-513-1304))~~ 182-513-1100.

**"Issuer"** means any entity that delivers, issues for delivery, or provides coverage to, a resident of Washington, any policy that claims to provide asset protection under the Washington long-term care partnership act, chapter 48.85 RCW. Issuer as used in this chapter specifically includes insurance companies, fraternal benefit societies, health care service contractors, and health maintenance organizations.

**"Long-term care (LTC) insurance"** means a policy described in Chapter 284-83 WAC.

**"Long-term care services"** means services received in a medical institution, or under a home and community based waiver authorized by home and community services ~~(HCS)~~ or ~~((division of))~~ developmental disabilities administration (DDA). Hospice services are considered long-term care services for the purposes of the long-term care partnership when medicaid eligibility is determined under chapter ~~((388-513 or 388-515))~~ 182-513 or 182-515 WAC.

**"Protected assets"** means assets that are designated as excluded or not taken into account upon determination of long-term care medicaid eligibility described in ~~WAC ((388-513-1315))~~ 182-513-1315. The protected or excluded amount

is up to the dollar amount of benefits that have been paid for long-term care services by the qualifying long-term care partnership policy on the medicaid applicant's or client's behalf. The assets are also protected or excluded for the purposes of estate recovery described in chapter ~~((388-527))~~ 182-527 WAC, in up to the amount of benefits paid by the qualifying policy for medical and long-term care services.

**"Qualified long-term care insurance partnership"** means an agreement between the Centers for Medicare and Medicaid Services (CMS), and the health care authority (HCA) which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(c)(iii) of the act. These policies are described in chapter 284-83 WAC.

**"Reciprocity Agreement"** means an agreement between states approved under section 6021(b) of the Deficit Reduction Act of 2005, Public Law 109-171 (DRA) under which the states agree to provide the same asset protections for qualified partnership policies purchased by an individual while residing in another state and that state has a reciprocity agreement with the state of Washington.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1415 What assets can't be protected under the LTC partnership provisions?** The following assets cannot be protected under a LTC partnership policy.

(1) Resources in a trust described in WAC ~~((388-564-0100))~~ 182-516-0100 (6) and (7).

(2) Annuity interests in which Washington must be named as a preferred remainder beneficiary as described in WAC ~~((388-564-0201))~~ 182-516-0201.

(3) Home equity in excess of the standard described in WAC ~~((388-513-1350))~~ 182-513-1350. Individuals who have excess home equity interest are not eligible for long-term care medicaid services.

(4) Any portion of the value of an asset that exceeds the dollar amount paid out by the LTC partnership policy.

(5) The unprotected value of any partially protected asset (an example would be the home) is subject to estate recovery described in chapter ~~((388-527))~~ 182-527 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy in pay status?** You are not eligible for LTC medicaid when the following applies:

(1) The income you have available to pay toward your cost of care described in WAC ~~((388-513-1380))~~ 182-513-1380, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate at the institution.

(2) The income you have available to pay toward your cost of care on a home and community based (HCB) waiver described in chapter ~~((388-515))~~ 182-515 WAC, combined

with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate in a home or residential setting.

(3) You fail to meet another applicable eligibility requirement for LTC medicaid.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care?** You must report changes described in WAC ~~((388-418-0005))~~ 182-504-0105 plus the following:

(1) You must report and verify the value of the benefits that your issuer has paid on your behalf under the LTC partnership policy upon request by the ~~((department))~~ agency, and at each annual eligibility review.

(2) You must provide proof when you have exhausted the benefits under your LTC partnership policy.

(3) You must provide proof if you have given away or transferred assets that you have previously designated as protected. Although, there is no penalty for the transfer of protected assets once you have been approved for LTC medicaid, the value of transferred assets reduces the total dollar amount that is designated as protected and must be verified.

(4) You must provide proof if you have sold an asset or converted a protected asset into cash or another type of asset. You will need to make changes in the asset designation and verify the type of transaction and new value of the asset.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1445 How do I designate a protected asset and what proof is required?** (1) Complete a DSHS LTCP asset designation form listing assets and the full fair market value that are earmarked as protected at the time of initial application for LTC medicaid.

(a) The full fair market value (FMV) of real property or interests in real property will be based on the current assessed value for property tax purposes for real property. A professional appraisal by a licensed appraiser can establish the current value if the assessed value is disputed.

(b) The value of a life estate in real property is determined using the life estate tables found in: ~~((http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCOappendix2.shtml))~~ http://www.hca.wa.gov/medicaid/manual/Pages/65-310.aspx.

(c) If you own an asset with others, you can designate the value of your ~~((pro-rata))~~ pro rata equity share.

(d) If the dollar amount of the benefits paid under a LTCP policy is greater than the fair market value of all assets protected at the time of the application for long-term care medicaid you may designate additional assets for protection under this section. The DSHS LTCP asset designation form must be submitted with the updated assets indicated along with proof of the current value of designated assets.

(e) The value of your assets protected for you under your LTC partnership policy do not carry over to your spouse should they need medicaid long-term care services during

your lifetime or after your death. If your surviving spouse has their own LTC partnership policy he or she may designate assets based on the dollar amount paid under his or her own policy.

(f) Assets designated as protected under this subsection will not be subject to transfer penalties described in WAC ~~((388-513-1363))~~ 182-513-1363.

(2) Proof of the current fair market value of all protected assets is required at the initial application and each annual review.

(3) Submit current verification from the issuer of the LTCP policy of the current dollar value paid toward long-term care benefits. This verification is required at application and each annual eligibility review.

(4) Any individual or the personal representative of the individual's estate who asserts that an asset is protected has the initial burden of:

(a) Documenting and proving by clear and convincing evidence that the asset or source of funds for the asset in question was designated as protected;

(b) Demonstrating the value of the asset and the proceeds of the asset beginning from the time period the LTC partnership has paid out benefits to the present; and

(c) Documenting that the asset or proceeds of the asset remained protected at all times.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility?** (1) If you transfer an asset within the sixty months prior to the medicaid application or after medicaid eligibility has been established, we will evaluate the transfer based on WAC ~~((388-513-1363))~~ 182-513-1363 and determine if a penalty period applies unless:

(a) You have already been receiving institutional services;

(b) Your LTC partnership policy has paid toward institutional services for you; and

(c) The value of the transferred assets has been protected under the LTC partnership policy.

(2) The value of the transferred assets that exceed your LTC partnership protection will be evaluated for a transfer penalty.

(3) If you transfer assets whose values are protected, you lose that value as future protection unless all the transferred assets are returned.

(4) The value of your protected assets less the value of transferred assets equals the adjusted value of the assets you are able to protect.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?** Assets designated as protected prior to death are not subject to estate recovery for medical or LTC services paid on your behalf as described in chapter ~~((388-527))~~ 182-527 WAC as long as the following requirements are met:

(1) A personal representative who asserts an asset is protected under this section has the initial burden of providing proof as described in chapter ~~((388-527))~~ 182-527 WAC.

(2) A personal representative must provide verification from the LTC insurance company of the dollar amount paid out by the LTC partnership policy.

(3) If the LTC partnership policy paid out more than was previously designated, the personal representative has the right to assert that additional assets should be protected based on the increased protection. The personal representative must use the DSHS LTCP asset designation form and send it to the office of financial recovery.

(4) The amount of protection available to you at death through the estate recovery process is decreased by the FMV of any protected assets that were transferred prior to death.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-513-1300 Payment standard for persons in medical institutions.

WAC 182-513-1301 Definitions related to long-term care (LTC) services.

WAC 182-513-1305 Determining eligibility for noninstitutional medical assistance in an alternate living facility (ALF).

WAC 182-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services.

WAC 182-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997 and before April 1, 2003 for long-term care (LTC) services.

WAC 182-513-1366 Evaluating the transfer of an asset made before March 1, 1997 for long-term care (LTC) services.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-515-1505 ~~((Long-term care home and community based services authorized by home and community services (HCS) and hospice.))~~ Home and community based (HCB) waiver services.** ~~((+))~~ This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) waiver services administered by home and community services (HCS) ~~((and hospice services administered by the health care authority (HCA)))~~. The definitions in WAC 182-513-1100 and chapter 182-500 WAC apply throughout this chapter.

~~((2))~~ (1) The HCB service programs are:

(a) Community options program entry system (COPES);

(b) ~~((Program of all-inclusive care for the elderly (PACE)));~~

~~(c) Washington medicaid integration partnership (WMIP); or~~

~~(d)) New Freedom consumer directed services (New Freedom)(-~~

~~(3) Roads to community living (RCL) services. For RCL services this chapter is used only to determine your cost of care. Medicaid eligibility is guaranteed for three hundred sixty five days upon discharge from a medical institution.~~

~~(4) Hospice services if you don't reside in a medical institution and:~~

~~(a) Have gross income at or below the special income level (SIL); and~~

~~(b) Aren't eligible for another CN or medically needy (MN) medicaid program.~~

~~(5) WAC 388-515-1506 describes the general eligibility requirements for HCS CN waivers.~~

~~(6) WAC 388-515-1507 describes eligibility for waiver services when you are eligible for medicaid using noninstitutional CN rules.~~

~~(7) WAC 388-515-1508 describes the initial financial eligibility requirements for waiver services when you are not eligible for noninstitutional CN medicaid described in WAC 388-515-1507(1).~~

~~(8) WAC 388-515-1509 describes the rules used to determine your responsibility in the cost of care for waiver services if you are not eligible for medicaid under a CN program listed in WAC 388-515-1507(1). This is also called client participation or post eligibility); or~~

~~(c) Residential support waiver (RSW).~~

~~(2) WAC 182-515-1506 describes the general eligibility requirements for HCB waiver services authorized by HCS.~~

~~(3) WAC 182-515-1507 describes financial requirements for eligibility for HCB waiver services authorized by HCS when a person is eligible for a noninstitutional SSI-related categorically needy (CN) medicaid program.~~

~~(4) WAC 182-515-1508 describes the financial eligibility requirements for HCB waiver services authorized by HCS when a person is not eligible for SSI-related noninstitutional CN medicaid described in WAC 182-515-1507.~~

~~(5) WAC 182-515-1509 describes the rules used to determine a person's participation in the cost of care and room and board for HCB waiver services if the person is not eligible under WAC 182-515-1507.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-515-1506 ((~~What are the general eligibility requirements for~~) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((~~and hospice?~~) general eligibility. (1) To be eligible for home and community based (HCB) waiver services ((~~and hospice you~~) a person must:**

**(a) Meet the program and age requirements for the specific program:**

**(i) Community options program entry system (COPEs), per WAC 388-106-0310;**

**(ii) ((~~PACE~~, per WAC 388-106-0705;**

**(iii) WMIP waiver services, per WAC 388-106-0750;**

**(iv)) Residential support waiver (RSW), per WAC 388-106-0310; or**

**(iii) New Freedom, per WAC ((388-106-1410;**

**(v) Hospice, per chapter 182-551-WAC; or**

**(vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260)) 388-106-0338.**

**(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 182-512-0050;**

**(c) Require the level of care provided in a nursing facility described in WAC 388-106-0355;**

**(d) Be residing in a medical institution as defined in WAC 182-500-0050, or be likely to be placed in one within the next thirty days without HCB waiver services provided under one of the programs listed in ((~~subsection (1)) (a) of this subsection;~~**

**(e) ((~~Have attained~~) Attain institutional status as described in WAC ((388-513-1320)) 182-513-1320;**

**(f) Be ((~~determined in need of~~) assessed for HCB waiver services and be approved for a plan of care ((~~as described in subsection (1)) under (a) of this subsection;~~**

**(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted(=**

**(i) Enhanced adult residential care (EARC) facility;**

**(ii) Licensed adult family home (AFH); or**

**(iii) Assisted living (AL) facility.**

**(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365;**

**(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.**

**(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services)) alternate living facility described in WAC 182-513-1100.**

**(2) A person is not eligible for home and community based (HCB) waiver services if the person:**

**(a) Is subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 182-513-1363;**

**(b) Has a home with equity in excess of the requirements described in WAC 182-513-1350.**

**(3) Refer to WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.**

**((~~3~~)) (4) Current income and resource standard charts are located at: ((<http://www.dshs.wa.gov/manuals/ez/sections/LongTermCare/LTCstandardspna.html>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.**

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-515-1507 ((~~What are the financial requirements for~~) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((~~when you are~~)—Financial eligibility if a person is eligible for ((~~a~~) an SSI-related noninstitutional cate-**

~~gorically needy (CN) medicaid program((?)), ((1) You are eligible for medicaid under one of the following programs:~~

~~(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;~~

~~(b) SSI-related CN medicaid described in WAC 182-512-0100 (2)(a) and (b);~~

~~(c) SSI-related health care for workers with disabilities program (HWD) described in WAC 182-511-1000. If you are receiving HWD, you are responsible to pay your HWD premium as described in WAC 182-511-1250;~~

~~(d) Aged, blind, or disabled (ABD) cash assistance described in WAC 388-400-0060 and are receiving CN medicaid.~~

~~(2) You do not have a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365. This does not apply to PACE or hospice services.~~

~~(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.~~

~~(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).~~

~~(5) You do not pay (participate) toward the cost of your personal care services.~~

~~(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.~~

~~(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.~~

~~(b) If subsection (6)(a) applies and you are receiving HWD described in WAC 182-511-1000, you are responsible to pay your HWD premium as described in WAC 182-511-1250, in addition to the ADSA room and board standard.~~

~~(7) If you are eligible for aged, blind or disabled (ABD) cash assistance program described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:~~

~~(a) When you live at home, you keep the cash grant amount authorized under WAC 388-478-0033;~~

~~(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard; or~~

~~(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive an ABD cash grant of thirty-eight dollars and eighty-four cents as described in WAC 388-478-0045, which you keep for your PNA.~~

~~(8) Current resource and income standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.~~

~~(9)) (1) A person is financially eligible for home and community based (HCB) waiver services if:~~

~~(a) Receiving coverage under one of the following supplemental security income (SSI)-related categorically needy (CN) medicaid programs:~~

~~(i) SSI program under WAC 182-510-0001. This includes SSI clients under Section 1619B of the Social Security Act;~~

~~(ii) SSI-related noninstitutional CN program under chapter 182-512 WAC;~~

~~(iii) Health care for workers with disabilities program (HWD) under chapter 182-511 WAC.~~

~~(b) The person does not have a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; and~~

~~(c) The person does not own a home with equity in excess of the requirements described in WAC 182-513-1350.~~

~~(2) A person eligible under this section does not pay participation toward the cost of personal care services, but must pay room and board if living in an alternate living facility.~~

~~(3) A person who lives in a department-contracted alternate living facility described in WAC 182-513-1100:~~

~~(a) Keeps a personal needs allowance (PNA) of sixty-two dollars and seventy-nine cents; and~~

~~(b) Pays remaining available income as room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents.~~

~~(4) A person who is eligible under the HWD program must pay the HWD premium described in WAC 182-511-1250, in addition to room and board if residing in an alternate living facility.~~

~~(5) A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay participation toward the cost of personal care and keeps the following:~~

~~(a) The cash grant amount authorized under WAC 388-478-0033 when living at home;~~

~~(b) A PNA of thirty-eight dollars and eighty-four cents, and pays the remaining income and ABD cash grant to the facility for the cost of room and board up to the room and board standard when living in an adult family home (AFH); or~~

~~(c) The cash grant of thirty-eight dollars and eighty-four cents under WAC 388-478-0006 when living in an assisted living facility or enhanced adult residential center (EARC).~~

~~(6) Current resource, income, PNA and ADSA room and board standards are located at: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/testandardsPNAchart-subfile.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.~~

~~AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)~~

~~WAC 182-515-1508 ((How does the department determine if you are financially eligible for)) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((and hospice if you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1)?))—Financial eligibility using SSI-related institutional rules. (1) If~~



~~((you are))~~ a person is not eligible for ~~((medicaid under))~~ a categorically needy (CN) program ~~((listed in))~~ under WAC ((388-515-1507(4))) 182-515-1507, the ~~((department must))~~ agency determines ((your)) eligibility for home and community based (HCB) waiver services authorized by home and community services (HCS) using institutional medicaid rules. This section explains how ~~((you))~~ a person may qualify using institutional ~~((medicaid))~~ rules described in this section.

(2) ~~((You))~~ A person must meet ~~((the))~~:

~~((a))~~ General eligibility requirements ((described in WAC 388-513-1315 and 388-515-1506.

~~((3))~~ You must meet the following resource requirements:

~~((a))~~ Resource limits described in WAC 388-513-1350.

~~((b))~~ If you have resources over the standard allowed in WAC 388-513-1350, the department reduces resources over the standard by your unpaid medical expenses described in WAC 388-513-1350 if you verify these expenses.

~~((4))~~ You must meet) under WAC 182-513-1315 and 182-515-1506:

~~((b))~~ The resource requirements under WAC 182-513-1350:

~~((c))~~ The following income requirements:

~~((a))~~ Your) (i) Gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); or

~~((b))~~ For home and community based (HCB) service programs authorized by HCS your gross nonexcluded income is:

~~((i))~~ Above the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and)

~~((ii))~~ (Net) If gross nonexcluded income is above the special income level (SIL), net nonexcluded income is no greater than the effective one-person medically needy income level (MNIL). Net income is calculated by reducing gross nonexcluded income by:

~~((A))~~ Medically needy (MN) disregards found ((in WAC 388-513-1345)) under WAC 182-513-1345; and

~~((B))~~ The average monthly nursing facility state rate ((is five thousand six hundred and twenty six dollars. This rate will be updated annually starting October 1, 2012 and each year thereafter on October 1. This standard will be updated annually in the long term care standard section of the EAZ manual described at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>)).

~~((5))~~ (3) The ((department)) agency follows the rules in WAC ((388-515-1325, 388-513-1330, and 388-513-1340)) 182-513-1325, 182-513-1330, and 182-513-1340 to determine available income and income exclusions.

~~((6))~~ (4) A person eligible under this section may be required to participate available income toward the cost of care as described in WAC 182-515-1509.

~~((5))~~ Current resource ((and)), income standards ((including the SIL, MNIL and FBR)), and the average state nursing facility rate for long-term care are found at: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

~~WAC 182-515-1509 ((How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508?)) Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility.~~ ((If you are only eligible for medicaid under WAC 388-515-1508, the department determines how much you must pay based upon)) (1) The agency determines how much a person must pay toward the cost of care for home and community based (HCB) waiver services authorized by home and community services (HCS) when living at home based on the following:

~~((1))~~ If you are) (a) A single ((and living)) person who lives at home (as defined in WAC 388-106-0010)((-you)) keeps ((all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA))) a personal needs allowance (PNA) of up to the federal poverty level (FPL) and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

~~((2))~~ If you are) (b) A married ((living)) person who lives with his or her spouse at home ((as defined in WAC 388-106-0010, you keep all your income up to the effective one-person medically needy income level (MNIL) for your PNA if your spouse lives at home with you. If you are married and living apart from your spouse, you're allowed to keep your income up to the FPL for your PNA.

~~((3))~~ If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

~~((a))~~ Keep a PNA from your gross nonexcluded income. The PNA is sixty two dollars and seventy nine cents effective July 1, 2008; and

~~((b))~~ Pay for your room and board up to the ADOSA room and board standard.

~~((4))~~ In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction)) (under WAC 388-106-0010, keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

~~((c))~~ A married person who lives at home and apart from his or her spouse keeps a PNA of up to the FPL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

~~((d))~~ A married couple who receive HCB HCS waiver services are each allowed to keep a PNA of up to the FPL and pays the remainder of each of their gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

~~((e))~~ A married couple living at home where each person receives HCB waiver services, one authorized by develop-

mental disabilities administration (DDA) and the other authorized by HCS is allowed the following:

(i) The DDA waiver person pays toward his or her cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The HCS waiver person retains the federal poverty level (FPL) and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions under subsection (3) of this section.

(2) The agency determines how much a person must pay toward the cost of care and room and board when living in a department contracted alternate living facility under WAC 182-513-1100 based on the following:

A single person or a married person who lives apart from his or her spouse:

(a) Keeps a PNA of sixty-two dollars and seventy-nine cents;

(b) Pays room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents; and

(c) Pays the remainder of gross nonexcluded income toward the cost of care after allowable deductions described in subsection (3) of this section.

(3) If income remains after the PNA and room and board liability described in subsections (1) and (2) of this section, the remaining gross nonexcluded income must be paid toward the cost of care after it is reduced by ((allowable)) deductions in the following order:

(a) ((If you are)) For a working person, the ((department)) agency allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income((-));

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from ((your)) the person's income according to a child support order in the month of the garnishment if it is for the current month. If the ((department)) agency allows this as deduction from ((your)) income, the ((department will)) agency does not count it as ((your)) the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for ((your)) the community spouse ((not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(H) Rent, including space rent for mobile homes, plus;

(H) Mortgage, plus;

(H) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative, plus;

(V) The food assistance standard utility allowance (SUA) described in WAC 388-450-0195 provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(VII) Is reduced by your community spouse's gross countable income.

(iii) The amount allocated to the community spouse may be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress)) as determined using the calculation described in WAC 182-513-1385;

(e) A monthly maintenance-needs ((amount)) allowance for each minor or dependent child, dependent parent, ((or)) dependent sibling of ((your)) the institutionalized person, institutionalized person's community spouse, or institutionalized person's institutionalized spouse((-The amount the department allows is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two person FPL minus that child's income and divided by three (child support received from a nonecustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one person MNIL based on the number of dependent family members in the home less their separate income (child support received from a nonecustodial parent is considered the child's income)), as determined using the calculation described in WAC 182-513-1385.

(f) ((Your unpaid)) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC ((388-513-1350)) 182-513-1350 (8)(d).

(g) The total of the following deductions cannot exceed the special income level (SIL ((three hundred percent of the FBR))):

(i) ((Personal needs allowance)) The PNA allowed in subsection ((s)) (1)((;)) or (2) ((and (3)(a) and (b))) of this section; and

(ii) The earned income deduction ((of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4))) in (a) of this subsection; and

(iii) The guardianship fees and administrative costs in ((subsection (4)) (b) of this subsection.

(4) A person may have to pay third-party resources described under WAC 182-501-0200 in addition to the room and board and participation.

(5) ((You)) A person must pay ((your provider the combination of)) his or her provider the sum of the room and

board amount, and the cost of personal care services after all allowable deductions, and any third-party resources.

(6) ~~(You may have to pay third party resources described in WAC 182-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.~~

(7) Current income and resource standards for long-term care (including SIL, MNIL, FPL, FBR) are located at: <http://www.dshs.wa.gov/manuals/ez/sections/LongTermCare/LTCstandardspna.shtml>.

(8) ~~If you are~~) A person is responsible only to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person participates only the difference up to the state rate cost of care.

(7) When a person lives in multiple living arrangements in a month ~~((an example is a move from an adult family home to a home setting on HCB services))~~, the ~~(department)~~ agency allows ~~((you))~~ the highest PNA available based on all the living arrangements and services ~~((you have))~~ the person has in a month.

~~((9) Current PNA and ADSA room and board)~~ (8) Standards described in this section are located at: ~~((http://www.dshs.wa.gov/manuals/ez/sections/LongTermCare/ltcstandardsPNAehartsubfile.shtml))~~ <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

**AMENDATORY SECTION** (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-515-1510** ~~((Division of))~~ **Home and community based (HCB) waiver services authorized by developmental disabilities ((DDD) home and community based services waivers) administration (DDA).** The ~~((four))~~ following five sections ~~((that follow))~~ describe the general and financial eligibility requirements for home and community based (HCB) waivers authorized by the ((division of)) developmental disabilities ((DDD) home and community based services (HCBS) waivers) administration (DDA).

(1) The DDA waiver programs are:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Individual and family services (IFS).

~~((1) WAC 388-515-1511))~~ (2) WAC 182-515-1511 describes the general eligibility requirements ~~((under the DDD-HCBS))~~ for HCB waiver ~~((s))~~ services authorized by DDA.

~~((2) WAC 388-515-1512))~~ (3) WAC 182-515-1512 describes the ~~((financial))~~ general eligibility requirements for ~~((the DDD waivers if you are))~~ HCB waivers authorized by DDA when a person is eligible for ~~((medicaid under the))~~ a noninstitutional SSI-related categorically needy (CN) program ~~((CN))~~.

~~((3) WAC 388-515-1513))~~ (4) WAC 182-515-1513 describes the ~~((initial))~~ financial eligibility requirements for

the ~~((DDD))~~ HCB waiver ~~((s if you are))~~ services authorized by DDA waivers when a person is not eligible for ~~((medicaid under))~~ a noninstitutional SSI-related categorically needy (CN) program ~~((CN listed in))~~ under WAC ~~((388-515-1512(4)))~~ 182-515-1512.

~~((4) WAC 388-515-1514))~~ (5) WAC 182-515-1514 describes the ~~((post eligibility financial requirements for the DDD waivers if you are not eligible for medicaid under a categorically needy program CN listed in))~~ rules used to determine a person's participation in the cost of care and room and board for HCB waiver services authorized by DDA if the person is not eligible under WAC ~~((388-515-1512(4)))~~ 182-515-1512.

**AMENDATORY SECTION** (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-515-1511** ~~((What are the general eligibility requirements for))~~ **Home and community based (HCB) waiver services ((under the division of)) authorized by developmental disabilities ((DDD) home and community based services (HCBS) waivers?) administration (DDA)—General eligibility.** ~~((1) This section describes the general eligibility requirements for waiver services under the DDD home and community based services (HCBS) waivers.~~

~~((2) The requirements for services for DDD HCBS waivers are described in chapter 388-845 WAC. The department establishes eligibility for DDD HCBS waivers.))~~ (1) To be eligible ~~((, you))~~ for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA), a person must:

(a) Meet the program requirements for the specific program as described in chapter 388-845 WAC;

(b) Be an eligible client of the ~~((division of developmental disabilities (DDD)))~~ DDA;

~~((b))~~ (c) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 182-512-0050;

~~((e))~~ (d) Require the level of care provided in an intermediate care facility for the intellectually disabled (ICF/ID);

~~((d))~~ (e) Have attained institutional status ~~((as described in WAC 388-513-1320))~~ under WAC 182-513-1320;

~~((e))~~ (f) Be able to reside in the community and choose to do so as an alternative to living in an ICF/ID;

~~((f) Need waiver services as determined by your))~~ (g) Be assessed for HCB waiver services as determined by the person's plan of care or individual support plan, and:

(i) Be able to live at home with HCB waiver services; or

(ii) Live in a department-contracted facility, which includes:

(A) A group home;

(B) A group training home;

(C) A child foster home, group home, or staffed residential facility;

(D) An adult family home (AFH); or

(E) An adult residential care (ARC) facility.

(iii) Live in ~~((your))~~ his or her own home with supported living services from a certified residential provider; or

(iv) Live in the home of a contracted companion home provider(=and

(g) ~~Be both medicaid eligible under the categorically needy program (CN) and be approved for services by the division of developmental disabilities).~~

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

(a) Is subject to a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363;

(b) Has a home with equity in excess of the requirements under WAC 182-513-1350.

(3) Refer to WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

(4) Current income and resource standard charts are located at: <http://www.hca.wa.gov/medicaid/eligibility/ages/standards.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

**WAC 182-515-1512 ((What are the financial requirements for the DDD waiver services if I am eligible for medicaid under the noninstitutional categorically needy program (CN)?)) Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility if a person is eligible for a noninstitutional SSI-related categorically needy (CN) program. ((=1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for medicaid under a categorically needy program (CN) under one of the following programs:**

**(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have medicaid eligibility determined and maintained by the Social Security Administration;**

**(b) Health care for workers with disabilities (HWD) described in WAC 182-511-1000 through 182-511-1250;**

**(c) SSI-related (CN) medicaid described in WAC 182-512-0100 (2)(a) and (b) or meets the requirements in WAC 182-512-0880 and is (CN) eligible after the income disregards have been applied;**

**(d) CN medicaid for a child as described in WAC 182-505-0210 (1), (2), (7) or (8); or**

**(e) Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060.**

**(2) If you are eligible for a CN medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.**

**(3) If you are eligible for a CN medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).**

**(4) If you are eligible for a CN medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 388-515-1507. Room and board and long-term care standards are located at <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandards.pna.shtml>.**

[www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandards.pna.shtml](http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandards.pna.shtml).

**(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents.**

**(5) If you are eligible for a premium based medicaid program such as health care for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that CN-P program.) (1) A person is financially eligible for HCB waiver services if:**

**(a) Receiving coverage under one of the following SSI-related categorically needy (CN) medicaid programs:**

**(i) Supplemental security income (SSI) program under WAC 182-510-0001. This includes SSI clients under 1619B status;**

**(ii) Health care for workers with disabilities (HWD) under WAC 182-511-1000 through 182-511-1250;**

**(iii) SSI-related noninstitutional (CN) program under chapter 182-512 WAC;**

**(iv) The foster care program under WAC 182-505-0211 and meeting disability requirements described in WAC 182-512-0050.**

**(b) The person does not have a penalty period of ineligibility for the transfer of an asset as under WAC 182-513-1363; and**

**(c) The person does not own a home with equity in excess of the requirements under WAC 182-513-1350.**

**(2) A person eligible under this section does not pay participation toward the cost of services, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.**

**(3) A person who lives in a department-contracted ALF:**

**(a) Keeps a personal needs allowance (PNA) of sixty-two dollars and seventy-nine cents; and**

**(b) Pays remaining available income as room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents.**

**(4) A person who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board if residing in an ALF.**

**(5) A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay participation toward the cost of services and keeps the following:**

**(a) The cash grant amount authorized under WAC 388-478-0033 when living at home;**

**(b) A PNA of thirty-eight dollars and eighty-four cents, and pays the remaining income and ABD cash grant to the facility for the cost of room and board up to the room and board standard when living in an adult family home (AFH); or**

**(c) The cash grant of thirty-eight dollars and eighty-four cents authorized under WAC 388-478-0006 when living in an adult residential center (ARC) or DDA group home.**

**(6) Current resource, income, PNA and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.**

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

~~WAC 182-515-1513 ((How does the department determine if I am financially eligible for DDD waiver service medical coverage if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)?)) Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility using institutional rules. ((If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.~~

~~(1) Resource limits are described in WAC 388-513-1350. If you have resources which are higher than the standard allowed, we may be able to reduce resources by your unpaid medical expenses described in WAC 388-513-1350.~~

~~(2) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through 388-513-1365.~~

~~(d) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.~~

~~(3) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC 388-515-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.~~

~~(4) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards for long term care services.~~

~~(5) Current income and resources standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.) (1) If a person is not eligible for a categorically needy (CN) program under WAC 182-515-1512, the agency determines eligibility for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) using institutional rules described in this section.~~

~~(2) A person must meet:~~

~~(a) General eligibility requirements under WAC 182-513-1315 and 182-515-1511;~~

~~(b) The resource requirements under WAC 182-513-1350.~~

~~(c) Gross nonexcluded income must be at or below the special income level (SIL).~~

~~(3) The agency follows the rules in WAC 182-513-1325, 182-513-1330, and 182-513-1340 to determine available income and income exclusions.~~

~~(4) A person eligible under this section may be required to pay participation toward the cost of care under WAC 182-515-1514.~~

~~(5) Current resource, income standards are found at: <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

~~WAC 182-515-1514 ((How does the department determine how much of my income I must pay towards the cost of my DDD waiver services if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)?)) Home and community based (HCB) services authorized by developmental disabilities administration (DDA)—Client financial responsibility. ((If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:~~

~~(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).~~

~~(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:~~

~~(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents; and~~

~~(b) Pay for your room and board up to the ADSA room and board rate described in <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.~~

~~(3) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction described in (2) above, is reduced by allowable deductions in the following order:~~

~~(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;~~

~~(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;~~

~~(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;~~

~~(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:~~

~~(i) Is allowed only to the extent that your income is made available to your community spouse; and~~

~~(ii) Consists of a combined total of both:~~

~~(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and~~

~~(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:~~

~~(i) Rent, including space rent for mobile homes, plus;~~

(II) Mortgage, plus;  
 (III) Taxes and insurance, plus;  
 (IV) Any required payments for maintenance care for a condominium or cooperative plus;

(V) ~~The food assistance standard utility allowance (SUA) provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;~~

(VI) ~~The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandards/pna.shtml>; and~~

(VII) ~~Is reduced by your community spouse's gross countable income.~~

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b).

(4) If you are eligible for aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the ABD cash program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ADOSA room and board standard described in <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandards/pna.shtml>; or

(e) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(5) You may have to pay third party resourcees (TPR) described in WAC 182-501-0200 in addition to room and board and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.) (1) The agency determines how much a person must pay toward the cost of care for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) when living at home based on the following:

(a) A single person who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the SIL.

(b) A single person who lives at home on roads to community living authorized by DDA keeps a PNA up to the SIL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(c) A married person who lives with his or her spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(d) A married couple living at home where each person receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The DDA waiver person retains the SIL as a PNA and pays the remainder of his or her gross nonexcluded income towards his or her cost of care after allowable deductions in subsection (3) of this section; and

(ii) The HCS waiver person pays toward his or her cost of care under WAC 182-515-1507 or 182-515-1509.

(2) The agency determines how much a person must pay toward the cost of care and room and board when living in a department-contracted ALF based on the following: A single person or a married person who lives apart from his or her spouse:

(a) Keeps a PNA of sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pays room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents; and

(c) Pays the remainder toward the cost of care after allowable deductions described in subsection (3) of this section.

(3) If income remains after the PNA and room and board liability described in subsections (1) and (2) of this section, the remaining income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) For a working person, the agency allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each minor or dependent child, dependent parent, dependent sibling of the institutionalized person, institutionalized person's community spouse, or institutionalized person's institutionalized spouse, as determined using the calculation described in WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 182-513-1350;

(g) The total of the following deductions cannot exceed the SIL:

(i) The PNA described in subsection (1) or (2) of this section;

(ii) The earned income deduction in (a) of this subsection; and

(iii) The guardianship fees and administrative costs in (b) of this subsection.

(4) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

(5) A person must pay his or her provider the sum of the room and board amount, the cost of services after all allowable deductions, and any third-party resources.

(6) A person is only responsible to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person participates only the difference up to the state rate cost of care.

(7) When a person lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services received within the month.

(8) Standards described in this section are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-515-1500 Payment standard for persons in certain group living facilities.

### WSR 16-14-013 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-156—Filed June 23, 2016, 3:51 p.m., effective June 26, 2016, 4:00 a.m.]

Effective Date of Rule: June 26, 2016, 4:00 a.m.

Purpose: Amend fishing rules for Oregon-Washington commercial license reciprocity.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-20-00500A; and amending WAC 220-20-005.

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: An emergency rule is needed because Oregon guides are participating in the Operation Salmon Salute event. The emergency rule change will allow veterans to be safely picked up and dropped off at the point of the event on the Washington shoreline versus having to ferry them across the Columbia to be picked up and dropped off on the Oregon shore. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 23, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-20-00500A Oregon-Washington commercial license reciprocity.** Notwithstanding the provisions of WAC 220-20-005, effective June 26, 2016 from 4:00 a.m. through 3:00 p.m., all valid, licensed Oregon outfitter and guides possessing a valid registration issued under ORS 704.020, that are participating in, and transporting participants of Operation Salmon Salute sponsored by The Fallen Outdoors veteran group may pick up and discharge partici-

pants from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 3:01 p.m. June 26, 2016:

WAC 220-20-00500A Oregon-Washington commercial reciprocity.

**WSR 16-14-016**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-150—Filed June 24, 2016, 9:46 a.m., effective June 24, 2016,  
9:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Puget Sound.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100D, 220-56-51000D and 232-28-62100E; and amending WAC 232-28-621.

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: An emergency rule is needed to reopen areas that had been closed to fishing. State and tribal fishery managers agreed to Puget Sound fishing seasons for 2016 and NOAA has approved the permit to allow salmon and steelhead fishing. Harvestable surplus is available for recreational fishing. 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 3.

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

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

Date Adopted: June 24, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 232-28-62100E Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective immediately through June 30, 2016, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) Tulalip Terminal Area Fishery (Catch Record Card Area 8-2): release coho and wild Chinook.

(2) Catch Record Card Area 11: release coho.

(3) Catch Record Card Area 13: release coho.

(4) Sinclair Inlet Year-round piers (Catch Record Card Area 10): release wild coho.

(5) Year-round piers (Catch Record Card Area 9, 10, 11, 13), excluding Sinclair Inlet year-round piers: release coho.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-28-62100D Puget Sound salmon—Saltwater seasons and daily limits. (16-127)

WAC 220-56-51000D Game fish possession limits and size limits. (16-127)

The following section of the Washington Administrative Code is repealed effective July 1, 2016:

WAC 232-28-62100E Puget Sound salmon—Saltwater seasons and daily limits. (16-150)

**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 16-14-017**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-157—Filed June 24, 2016, 10:01 a.m., effective June 24, 2016,  
10:01 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend freshwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000D, 220-310-18000T, and 220-310-19000G.

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: An emergency rule is needed to reopen areas that had been closed to fishing. State and tribal fishery managers agreed to Puget Sound fishing seasons for 2016 and NOAA has approved the permit to allow



salmon and steelhead fishing. Harvestable surplus is available for recreational fishing. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 24, 2016.

J. W. Unsworth  
Director

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-310-19000D Freshwater exceptions to statewide rules—Puget Sound. (16-94)
- WAC 220-310-18000T Freshwater exceptions to statewide rules—Coastal. (16-94)
- WAC 220-310-19000G Freshwater exceptions to statewide rules—Puget Sound. (16-126)

**WSR 16-14-032**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-162—Filed June 27, 2016, 3:39 p.m., effective June 28, 2016]

Effective Date of Rule: June 28, 2016.

Purpose: Amend recreational fishing rules for the Columbia River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000P and 220-310-20000V; and amending WAC 220-310-200.

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 open the sockeye fishery because the run has exceeded the

preseason forecast of 102,000 fish returning to the river mouth (currently ~240,000 at Bonneville through June 26, 2016, with the total return now projected to reach 400,000). Barring extreme high water temperatures like 2015 that caused unprecedented prespawning mortality, sufficient escapement of fish to meet spawning needs in the Wenatchee and Okanogan rivers should be realized. Opening these areas for sockeye fishing will provide for additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-20000V Exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-310-200:

(1) Effective June 28 through August 15, 2016:

(a) It is permissible to fish for salmon in waters of the Columbia River from the Highway 395 Bridge at Pasco to the Interstate 182 Bridge in Richland.

(b) Daily limit of three salmon, of which no more than one may be adult hatchery Chinook and no more than two may be sockeye. Release wild adult Chinook.

(2) Effective June 28 through August 15, 2016:

(a) It is permissible to fish for salmon in waters of the Columbia River from the Interstate 182 Bridge in Richland to Priest Rapids Dam.

(b) Daily limit of six salmon, of which no more than two may be adult hatchery Chinook and no more than three may be sockeye. Release wild adult Chinook.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective June 28, 2016:

- WAC 220-310-20000P Exceptions to statewide rules—Columbia River. (16-135)

The following section of the Washington Administrative Code is repealed effective August 16, 2016:

WAC 220-310-20000V Exceptions to statewide rules—  
Columbia River.

**WSR 16-14-033**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[16-161—Filed June 27, 2016, 4:16 p.m., effective June 27, 2016, 4:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab fishing rules.

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

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

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

Reasons for this Finding: This emergency rule is needed because a change in the weekly landing limits and periods is necessary to mitigate handling mortality from sorting soft shelled crab and provide for an orderly fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-52-04000T Coastal crab fishery—Weekly trip limits** Notwithstanding the provisions of WAC 220-52-040:

(1) Effective immediately until further notice, it is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess

of 2,500 pounds taken during each of the following coastal crab accounting periods:

July 3 - July 9, 2016;  
July 10 - July 16, 2016;  
July 17 - July 23, 2016;  
July 24 - July 30, 2016;  
July 31 - August 6, 2016;  
August 7 - August 13, 2016;  
August 14 - August 20, 2016;  
August 21 - August 27, 2016;  
August 28 - September 3, 2016;  
September 4 - September 10, 2016;  
September 11 - September 15, 2016.

(2) Any crab taken prior to July 3, 2016, and not landed before 11:59 p.m. July 2, 2016, become part of the July 3 through July 9, 2016 accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

**WSR 16-14-039**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed June 28, 2016, 11:22 a.m., effective June 28, 2016, 11:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is creating new WAC 182-546-4600 for ambulance transportation for involuntary substance use disorder treatment as directed by the Washington state legislature in E3SHB 1713, also known as the Ricky Garcia Act.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB [E3SHB] 1713, chapter 29, Laws of 2016 1st sp. sess.

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

Reasons for this Finding: Directed by the Washington state legislature to implement under E3SHB 1713.

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 1, Amended 0, Repealed 0.

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

Date Adopted: June 28, 2016.

Wendy Barcus  
Rules Coordinator

#### NEW SECTION

**WAC 182-546-4600 Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act.** (1) Definitions. For the purposes of this section, the following definitions and those found in chapter 182-500 WAC apply:

(a) **"Behavioral health organization (BHO)"** - See WAC 182-500-0015.

(b) **"Designated chemical dependency specialist"** means a person appointed by the behavioral health organization (BHO) or by the BHO-designated county substance use disorder treatment program coordinator to perform the duties specified in this section.

(c) **"Detention"** or **"detain"** means the lawful confinement of a person, under the provisions of this chapter.

(d) **"Evaluation and treatment facility"** means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to people suffering from a mental disorder, and which is certified as such by the department of social and health services (DSHS). DSHS may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, DSHS or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility under this chapter.

(e) **"Gravely disabled"** means that a person experiences a loss of cognition or control over the person's actions, is not receiving care essential for the person's health or safety, and is in danger of serious physical harm.

(f) **"Involuntary Treatment Act"** means, for adults, chapter 71.05 RCW; for juveniles, chapter 71.34 RCW. See also chapter 388-865 WAC.

(g) **"Less restrictive alternative treatment"** means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585.

(h) **"Nearest and most appropriate destination"** means the nearest facility able and willing to accept the involuntarily detained person for treatment, not the closest facility based solely on driving distance.

(2) The medicaid agency pays for transportation services for a person detained for involuntary chemical dependency treatment when the following apply:

(a) The person has been assessed by a designated chemical dependency specialist and found to be:

(i) A danger to self;

(ii) A danger to others;

(iii) Gravely disabled as a result of chemical dependency.

(b) The transportation is from:

(i) The site of the initial detention;

(ii) An evaluation and treatment facility designated by DSHS; or

(iii) A court hearing.

(c) The transportation is to:

(i) An evaluation and treatment facility;

(ii) A less restrictive alternative setting, except when ambulance transport to a client's home is not covered; or

(iii) A court hearing.

(d) The transportation is provided by a qualified transportation provider. The qualified transportation provider must:

(i) Be substance use disorder treatment provider designated as such by:

(A) The local community mental health center; or

(B) The BHO.

(ii) Comply with DSHS requirements for drivers, driver training, vehicle and equipment standards and maintenance.

(3) The transportation must be to the nearest and most appropriate destination. The reason for the diversion to a more distant facility must be clearly documented in the person's file.

(4) The designated chemical dependency specialist authorizes the level of transportation provided to and from covered facilities based on the person's need. A copy of the agency's Authorization for Substance Use Disorder (SUD) Ambulance Transportation form by the designated chemical dependency specialist must be kept in the person's file.

(5) The DSHS chemical dependency division establishes payment for substance use disorder transportation. Providers must clearly identify Involuntary Treatment Act transportation on the claim form when submitting claims to the agency.

#### **WSR 16-14-043**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 16-163—Filed June 28, 2016, 1:41 p.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: Amend Puget Sound recreational crab fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-12-020 and 220-56-335.

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: An emergency rule is needed to allow retention of Tanner crabs in Puget Sound. The current classified species list only names *Chionoecetes tanneri*. Surveys indicate that the species encountered by both commercial and recreational crabbers in Puget Sound is in fact *Chionoecetes bairdi*. Sampling within Puget Sound and adjacent waters of British Columbia indicates that a minimum size of 4.5 inches is appropriate. 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: June 28, 2016.

Ron Warren  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-12-02000C Shellfish—Classification.** Notwithstanding the provisions of WAC 220-12-020, effective July 1, 2016, until further notice, the following species group is classified as shellfish under RCW 77.12.047 and is subject to the provisions of this title:

**Crab**

Tanner crab *Chionoecetes spp.*

#### NEW SECTION

**WAC 220-56-33500A Crab—Unlawful acts—Personal use.** Notwithstanding the provisions of WAC 220-56-335, effective July 1, 2016, until further notice, it is unlawful to take or possess any Tanner crabs for personal use measuring less than 4.5 inches across the widest point of the carapace (shell).

#### **WSR 16-14-050**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed June 29, 2016, 12:00 p.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: The department is adopting these rules to implement the nursing facility methodology changes from SHB 1274.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-96-540, 388-96-552, 388-96-553, 388-96-554, 388-96-558, 388-96-559, 388-96-561, 388-96-562, 388-96-564, 388-96-565, 388-96-572, 388-96-574, 388-96-708, 388-96-744, 388-96-746, 388-96-747, 388-96-748, 388-96-759, 388-96-762, 388-96-767, 388-96-776, 388-96-783, 388-96-784 and 388-96-786; and amending WAC 388-96-010, 388-96-022, 388-96-107, 388-96-205, 388-96-208, 388-96-211, 388-96-218, 388-96-505, 388-96-525, 388-96-534, 388-96-542, 388-96-556, 388-96-560, 388-96-580, 388-96-585, 388-96-709, 388-96-710, 388-96-713, 388-96-758, 388-96-781, 388-96-782, and 388-96-901.

Statutory Authority for Adoption: RCW 74.46.800, 74.46.561(1).

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 statute has a deadline for the new rules of July 1, 2016. There was not enough time to complete a formal rule-making process in the time allowed. Permanent rules are being developed concurrently.

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 3, Amended 22, Repealed 24.

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 3, Amended 22, Repealed 24.

Date Adopted: June 27, 2016.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-16 issue of the Register.

**WSR 16-14-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed June 30, 2016, 8:37 a.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: To implement the Early Start Act of 2015 by establishing twelve month eligibility with limited reporting requirements in working connections child care (WCCC) and seasonal child care (SCC) and making previously existing rules more compatible with the act, and by requiring new and existing WCCC and SCC providers to participate in early achievers and demonstrate quality within statutory time frames in order to be eligible to receive subsidy payments. To implement WCCC and SCC base rate increases negotiated in the state's collective bargaining agreement with SEIU 925 and as funded in the budget. To implement graduated phase out of families receiving WCCC and SCC benefits when income exceeds program limits within a specified window, and to implement WCCC and SCC resource limits, as required by reauthorization of the Child Care Development Block Grant Act.

Citation of Existing Rules Affected by this Order: New WAC 170-290-0022 Eligibility resources and 170-290-3558 Resources.

Thirty-Seven Revised Sections: Subtitle: Part I. Introduction: WAC 170-290-0003 Definitions.

Part II. Working Connections Child Care

Subtitle: Eligibility Requirements: WAC 170-290-0005 Eligibility, 170-290-0012 Verifying consumers' information, 170-290-0014 Verifying information for a provider's payment, and 170-290-0020 Eligibility—Special circumstances.

Subtitle: Rights and Responsibilities: WAC 170-290-0030 Consumers' responsibilities, 170-290-0031 Notification of changes, 170-290-0032 Failure to report changes, and 170-290-0035 DSHS's responsibilities to consumers.

Subtitle: Approved Activities: WAC 170-290-0050 Additional requirements for self-employed WCCC consumers and 170-290-0055 Receipt of benefits when not engaged in approved activities.

Subtitle: Income and Copayment Calculations: WAC 170-290-0082 Eligibility period, 170-290-0085 Change in copayment, and 170-290-0090 Minimum copayment.

Subtitle: Start Dates and Eligibility Period: WAC 170-290-0095 When WCCC benefits start, 170-290-0109 Reapplication, and 170-290-0110 Termination of and redetermining eligibility for benefits.

Subtitle: Eligible Child Care Providers: WAC 170-290-0125 Eligible child care providers and 170-290-0130 In-home/relative providers—Eligibility.

Subtitle: Subsidy Rates and Fees: WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care.

Subtitle: Payment Discrepancies: WAC 170-290-0269 Payment discrepancies—Consumer underpayments and 170-290-0271 Payment discrepancies—Consumer overpayments.

Part III. Seasonal Child Care

Subtitle: Eligibility Requirements: WAC 170-290-3520 Eligibility, 170-290-3550 Eligibility—Special circumstances for two-parent families, and 170-290-3555 Eligibility—Approved activities.

Subtitle: Rights and Responsibilities: WAC 170-290-3565 Consumers' responsibilities, 170-290-3570 Notification of changes, 170-290-3580 Failure to report changes, and 170-290-3590 DSHS's responsibilities to consumers.

Subtitle: Income and Copayment Calculations: WAC 170-290-3640 Determining income eligibility and copayment, 170-290-3650 Change in copayment, and 170-290-3660 Eligibility period.

Subtitle: Start Dates and Eligibility Period: WAC 170-290-3665 When SCC program subsidies start.

Subtitle: Eligible Providers and Rates: WAC 170-290-3750 Eligible child care providers, 170-290-3770 Authorized SCC payments, and 170-290-3790 When additional SCC subsidy payments are authorized.

Subtitle: Review Process: WAC 170-290-3840 New eligibility period.

Subtitle: Payment Discrepancies: WAC 170-290-3855 Termination of and redetermining eligibility for SCC program subsidies.

Statutory Authority for Adoption: RCW 43.215.070; chapter 43.215 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: Emergency rules are necessary for the preservation of the public health, safety, and general welfare because the Early Start Act, passed during the 2015 legislative session, directs the department of early learning to implement these requirements by July 1, 2016. Observing the time requirements of notice and opportunity to comment on the adoption of permanent rules would be contrary to the public interest as a conflict would develop between the statutes and rules. This would create confusion for the agencies administering the program, providers, subsidy recipients and the public in general. These emergency rules are being filed to comply with the legislature's mandate and appropriate procedures to adopt the rules as permanent rules will proceed while these emergency rules are in place.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 37, Repealed 0.

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2016.

Ross Hunter  
Director

**Reviser's note:** WAC 170-290-0030 and 170-290-0269 were mentioned on the CR-102 form but not included in the text of this document. WAC 170-290-0034, 170-290-0138, 170-290-0200, 170-290-0205, 170-290-0210, 170-290-0240 and 170-290-3720 were included in the text of this document, but not mentioned on the CR-102 form. Pursuant to RCW 34.08.040, the document is published in the same form as filed by the agency.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0003 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Able"** means being physically and mentally capable of caring for a child in a responsible manner.

**"Authorization"** means the transaction created by DSHS which allows the provider the ability to claim ((a)) payment ((for child care provided during a family's approved activities)) during ((the current)) a certification period. The transaction may be adjusted based on the family need.

**"Available"** means being free to provide care when not participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.

**"Benefit"** means a regular payment made by a government agency to a person qualified to receive it.

**"Calendar year"** means those dates between and including January 1st and December 31st.

**"Capacity"** means the maximum number of children the licensee is authorized by the department to have in care at any given time.

**"Collective bargaining agreement"** or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

**"Consumer"** means the person receiving:

(a) WCCC benefits as described in part II of this chapter;

or

(b) SCC benefits as described in part III of this chapter.

**"Copayment"** means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care, whether provided under a voucher or contract, each month.

**"Days"** means calendar days unless otherwise specified.

**"DEL"** means the department of early learning.

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

**"Early achievers"** means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

**"Eligibility"** means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

**"Employment"** or **"work"** means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by DSHS, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

**"Existing child care provider"** means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

**"In-home/relative provider"** or **"license-exempt provider,"** referred to in the collective bargaining agreement as **"family, friends and neighbors provider"** or **"FFN provider,"** means a provider who meets the requirements in WAC 170-290-0130 through 170-290-0167.

**"In loco parentis"** means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

**"New child care provider"** means a licensed or certified provider who did not receive a state subsidy payment between July 1, 2015, and June 30, 2016.

**"Night shift"** means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

**"Nonschool age child"** means a child who is six years of age or younger and is not enrolled in public or private school.

**"Phase out period"** means a three-month eligibility period a consumer may be eligible for at reapplication when the consumer's household income is greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG.

**"Preschool age child"** means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

**"Private school"** means a private school approved by the state under chapter 28A.195 RCW.

**"SCC"** means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

**"School age child"** means a child ((not less than)) who is between five years of age through twelve years of age and who is attending ((kindergarten or elementary school)) public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

**"Seasonally available agricultural related work"** means work that is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

**"Self-employment"** means engaging in any legal income generating activity that is taxable under the United

States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

**"Waiting list"** means a list of applicants or reapplicants eligible to receive subsidy benefits but funding is not available.

**"WCCC"** means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining subsidy for child care (~~((subsidies for approvable activities outside the consumer's home))~~).

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0005 Eligibility.** (1) At application and reapplication, to be eligible for WCCC, the ((person applying for benefits)) applicant or reapplicant must:

- (a) Have parental control of one or more eligible children;
- (b) Live in the state of Washington;
- (c) Be the child's:
  - (i) Parent, either biological or adopted;
  - (ii) Stepparent;
  - (iii) Legal guardian verified by a legal or court document;
  - (iv) Adult sibling or step-sibling;
  - (v) Nephew or niece;
  - (vi) Aunt;
  - (vii) Uncle;
  - (viii) Grandparent;
  - (ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or
  - (x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;
- (d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;
- (e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;
- (f) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than ~~((two hundred percent of the FPG;~~
- ~~((g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;~~
- ~~((h)) eighty-five percent of the state median income or if resources exceed one million dollars;~~
- (g) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and
- ~~((i))~~ (h) Meet eligibility requirements for WCCC described in Part II of this chapter.

- (2) **Children.** To be eligible for WCCC, the child must:
  - (a) Belong to one of the following groups as defined in WAC 388-424-0001:
    - (i) A U.S. citizen;
    - (ii) A U.S. national;
    - (iii) A qualified alien; or
    - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
  - (b) Live in Washington state, and be:
    - (i) Less than thirteen years of age; or
    - (ii) Less than nineteen years of age, and:
      - (A) Have a verified special need, according WAC 170-290-0220; or
      - (B) Be under court supervision.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0012 Verifying consumers' information.** (1) A consumer must provide all required information to DSHS to determine eligibility when the consumer initially applies or reapplies for benefits.

~~((2) ((A consumer must provide verification to DSHS to determine continued eligibility for benefits when there is a change of circumstances under WAC 170-290-0031 during the eligibility period.~~

~~((3))~~ (3) All verification that is provided to DSHS must:
 

- (a) Clearly relate to the information DSHS is requesting;
- (b) Be from a reliable source; and
- (c) Be accurate, complete, and consistent.

~~((4))~~ (3) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:
 

- (a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or
- (b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

~~((5))~~ (4) The verification that the consumer gives to DSHS includes, but is not limited to, the following:
 

- (a) A current WorkFirst individual responsibility plan (IRP) for consumers receiving TANF;
- (b) Employer name, address, and phone number;
- (c) State business registration and license, if self-employed;
- (d) Hourly wage or salary;
- (e) Either the:
  - (i) Gross income for the last three months;
  - (ii) Self-attestation of anticipated wages for new employment and third-party verification of the wages within sixty days of the date DSHS approved the consumer's application or reapplication for WCCC benefits;

~~((6))~~ (ii) Federal income tax return for the preceding calendar year; or

~~((7))~~ (iv) DSHS employment verification form;

(f) Monthly unearned income the household receives, such as supplemental security income (SSI) benefits or child

support. Child support payment amounts are verified as follows:

(i) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order;

(ii) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(iii) For applicants or consumers who have an informal verbal or written child support agreement, the amount as verified by the written agreement signed by the noncustodial parent (NCP);

(iv) For applicants or consumers who cannot provide a written agreement signed by the NCP, the amount received for child support verified by a written statement from the consumer that documents why they cannot provide the statement from the NCP.

(g) If the other parent is in the household, the same information for them;

(h) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.

~~((6))~~ (5) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

~~((7))~~ (6) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

~~((8))~~ (7) If a consumer does not provide all of the verification requested within thirty days from the application date, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0014 Verifying information for a provider's payment.** (1) A consumer must provide all required information ~~((to DSHS to determine eligibility))~~ for payment to be authorized to their provider.

(2) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(3) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting, or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(4) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) Name and phone number of the licensed child care provider; and

(b) For the in-home/relative child care provider, a:

(i) Completed and signed criminal background check form;

(ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(iii) Legible copy of the proposed provider's valid Social Security card; ~~((and))~~

(iv) All other information required by WAC 170-290-0135;

(c) Self-attestation of work, school or training schedule when the consumer requests child care for non-TANF activities. An authorization based on a self-attested schedule is subject to change if DSHS subsequently receives more accurate, complete, or consistent third-party information.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0020 Eligibility—Special circumstances.** (1) ~~((Child care provided at the consumer's place of work.))~~ At application, reapplication and change reporting:

(a) A consumer is not eligible for WCCC benefits for the consumer's children when child care is provided at the same location where the consumer works.

(b) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for approved activities without the spouse or live-in partner's availability to provide care being considered unless the spouse or live-in partner is also named on the permanent custody order.

(i) Eligibility for WCCC benefits is based on:

(A) The consumer's work or approved activities schedule;

(B) The child's need for care;

(C) The child's income eligibility; and

(D) Family size based on number of children under guardianship and needing care.

(ii) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(c) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or stepparents.

(i) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she:

(A) Has a written, signed agreement between the parent and the caregiver assuming custodial responsibility; or

(B) Receives a TANF grant on behalf of the eligible child.

(ii) Eligibility for WCCC benefits is based on:

(A) The consumer's work schedule;

(B) The child's need for care;

(C) The child's income eligibility; and



(D) Family size based on number of children under in loco parentis and needing care.

(iii) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

**(2) ((Consumer's child care employment.)) At application and reapplication:**

(a) A consumer may be eligible for WCCC benefits while working in a child care center if the consumer does not provide direct care in the same classroom to the consumer's children during work hours.

(b) A consumer is not eligible for WCCC benefits while working in a family home child care where the consumer's children are also receiving subsidized child care.

(c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

~~(d) ((A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.~~

**(3) Two-parent family.**

(a)) A consumer may be eligible for WCCC if the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.

~~((b))~~ (e) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from an acceptable medical source (see WAC 388-449-0010) that states the:

(i) Reason the parent is not able to care for the children;  
(ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and

(iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.

~~((4) Single-parent family.))~~ (f) A consumer is not eligible for WCCC benefits when the consumer is the only parent in the family and will be away from the home for more than thirty days in a row.

**(5) Legal guardians.**

~~(a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for approved activities without the spouse or live-in partner's availability to provide care being considered unless the spouse or live-in partner is also named on the permanent custody order.~~

~~(b) Eligibility for WCCC benefits is based on the consumer's:~~

~~(i) Work or approved activities schedule;  
(ii) The child's need for care;  
(iii) The child's income eligibility; and  
(iv) Family size based on number of children under guardianship and needing care.~~

~~(c) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.~~

**(6) In loco parentis custodians.**

~~(a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step-parents.~~

~~(b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:~~

~~(i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or~~

~~(ii) Receives a TANF grant on behalf of the eligible child.~~

~~(c) Eligibility for WCCC benefits is based on the consumer's:~~

~~(i) Work schedule;~~

~~(ii) The child's need for care;~~

~~(iii) The child's income eligibility; and~~

~~(iv) Family size based on number of children under in loco parentis and needing care.~~

~~(d) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.~~

**(7) WorkFirst sanction.**

(a)) (3) A consumer may be eligible for WCCC if the consumer is participating in an approved activity needed to remove a sanction penalty or to reopen the consumer's WorkFirst case.

~~((b) A WorkFirst participant who loses a TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.))~~ (4) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(5) When a consumer's monthly copayment is higher than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005:

(a) The consumer's eligibility period may continue; and

(b) DSHS will not authorize payment to the provider until the copayment becomes lower than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005.

## NEW SECTION

### **WAC 170-290-0022 Eligibility—Resources.** (1)

Effective October 1, 2016, to be eligible for WCCC, the consumer applying or receiving benefits must have countable resources less than one million dollars. The resources count if:

(a) The consumer has control over the resource;

(b) The consumer could legally sell the resource or convert it into cash;

(c) The resource belongs to the consumer or dependents that are part of the household and applying for or receiving WCCC.

(2) Resources that count include both liquid and nonliquid resources:

(a) Liquid resources easily convert into cash. Some examples of liquid resources include:

- (i) Value of all bank accounts;
- (ii) Cash on hand;
- (iii) Money market accounts, IRAs, certificate of deposits (CDs), stocks, bonds, annuities, mutual funds less early withdrawal penalties including taxes;
- (iv) Available trust accounts;
- (v) If a consumer owns a resource with someone not part of his or her household, we count the portion of the resource that the consumer owns.
- (b) Nonliquid resources do not easily convert to cash. Some examples of nonliquid resources include:
  - (i) Value of any additional vehicles not excluded. Vehicle value determined by applying WAC 388-470-0075;
  - (ii) A house the consumer does not live in or intend to return to;
  - (iii) Property the consumer does not live on.
- (3) Excluded resources include:
  - (a) Legal guardians resources;
  - (b) In loco parentis custodians resources;
  - (c) Resources with a legal barrier, which include:
    - (i) Resources tied up in a divorce proceeding;
    - (ii) Jointly owned resources that the consumer has no clear access to obtain the resource;
    - (iii) If the consumer cannot overcome the barrier to obtain the resource;
    - (iv) The consumer must petition the courts for access of the resource;
    - (v) Making the resource available would place the consumer at risk of harm.
  - (d) For a one-parent household, one vehicle, defined as a motorized device the consumer can use as a regular means of transportation. For a two-parent household, two vehicles, defined as a motorized device the consumers can use as a regular means of transportation;
  - (e) One home and the surrounding property the consumer and consumer's dependents live in;
  - (f) Personal effects;
  - (g) Household goods;
  - (h) Life insurance policies, including a policy with cash surrender value;
  - (i) Federal law resources:
    - (i) Child nutrition act for Women, Infants, and Children (WIC) including day care and school lunch programs (P.L. 89-642);
    - (ii) Reimbursement from the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646);
    - (iii) Payments from the Domestic Volunteer Services Act of 1973 (P.L. 93-113);
    - (iv) Disaster or emergency payments under the Disaster Relief Act of 1974 (P.L. 93-288) from:
      - (A) Federal Emergency Management Agency (FEMA);
      - (B) States or local governments; or
      - (C) Disaster assistance organizations.
    - (v) Disaster assistance payments to farmers under the Disaster Relief Act of 1974 (P.L. 93-288 as amended by 100-387);
    - (vi) Home energy assistance payments under the Low-Income Home Energy Assistance Act (P.L. 99-425);

- (vii) Housing and Urban Development (HUD) community development block grant funds;
- (viii) Title IV financial assistance other than room, board, and dependent care provided by the Higher Education Act (P.L. 99-498 as amended by 100-50);
- (ix) Restitution payments under the Civil Liberties Act of 1988 to certain Asian Americans and Aleuts interned during World War II (P.L. 100-383);
- (x) Yearly disability payments to veterans or lump sum payments to survivors of a deceased veteran retroactive to January 1, 1989, from the Agent Orange Settlement Fund (P.L. 101-201). These are different funds than those from the Agent Orange Act of 1991, which are not excluded (P.L. 102-4);
- (xi) Payments received by an injured person, the surviving spouse, children, grandchildren, or grandparents under the Radiation Exposure Compensation Act (P.L. 101-426);
- (xii) Payments to victims of Nazi persecution (P.L. 103-286); and
- (xiii) Payments to crime victims from a federal or federally funded state or local program including Washington state crime victims compensation program (P.L. 103-322, section 23022).
- (j) Native American resources:
  - (i) II compensation including cash, stock, partnership interest, land, and interest in land under the Alaska Native Claims Settlement Act (P.L. 92-203 & 100-241);
  - (ii) Funds held in trust, restricted lands and the first two thousand dollars of each per capita judgment award (P.L. 93-134 as amended by 97-458, 98-64 & 103-66);
  - (iii) Relocation assistance payments to members of the Navajo and Hopi tribes (P.L. 93-531, section 22);
  - (iv) Payments to certain Indian tribal members, regarding submarginal land held in trust by the U.S. (P.L. 94-114). Call state office for a list of affected tribes;
  - (v) Funds distributed per capita or held in trust under the Sac and Fox Indian Claims Agreement (P.L. 94-189);
  - (vi) Payments from the disposition of funds to the Grand River Band of Ottawa Indians (P.L. 94-540);
  - (vii) Payments to the Confederate Tribe of the Yakama Indian Nation and the Apache Tribe from the Indian Claims Commission (P.L. 95-433);
  - (viii) Payments under the Maine Indian Claims Settlement Act of 1980 (P.L. 96-420);
  - (ix) Payments and certain funds held in trust for Chipewewa Indians (P.L. 97-403, 98-102, 99-146, 99-264, 99-346, & 99-377);
  - (x) Payments under the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41) as follows:
    - (A) Annuity fund established by P.L. 101-41 made to a Puyallup Tribal member upon reaching age twenty-one; and
    - (B) Payments made to a Puyallup tribe member from the trust fund established by P.L. 101-41;
  - (xi) Payments to the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (P.L. 103-436) including:
    - (A) Real or personal property purchased directly with such funds; and
    - (B) Appreciation in value of the initial investment.

(xii) Payments to the Blackfeet, Gros Ventre, and Assiniboine tribes, Montana; and the Papag, Arizona (P.L. 97-408 & 98-124);

(xiii) Per capita shares to heirs of two thousand dollars or less under the Old Age Assistance Claims Settlement Act (P.L. 98-500);

(xiv) Financial assistance provided by the Bureau of Indian Affairs under the Higher Education Act (P.L. 99-498 as amended by 100-50);

(xv) Loans provided under the Tribal Development Student Assistance Revolving Loan Program of the Higher Education Act (P.L. 99-498 as amended by 102-325). These payments are counted for SSI-related medical; and

(xvi) Payments under the Seneca Nation Settlement Act (P.L. 101-503).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0031 Notification of changes. (1)**

When a consumer applies for or receives WCCC benefits, he or she must:

~~((1) Notify DSHS, within five days, of any change in providers;~~

~~(2)) (a) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider;~~

~~(b) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age or older who lives with the provider when care occurs outside of the child's home;~~

~~(c) Notify DSHS, within five days, of any change in providers;~~

~~(d) Notify DSHS, within ten days, of changes of the address and telephone number of the consumer's in-home/relative provider;~~

~~(e) Notify DSHS, within ten days, when the consumer's countable income increases and exceeds eighty-five percent of state median income as provided in WAC 170-290-0005;~~

~~(f) Notify DSHS, within ten days, when the consumer's countable resources exceed one million dollars as provided in WAC 170-290-0005; and~~

~~(g) Notify the consumer's provider, within ten days, when DSHS changes the consumer's child care authorization(;~~

~~(3))~~

~~(2) When a consumer receives WCCC benefits, he or she may notify DSHS ((within ten days of any significant change related to the consumer's copayment or eligibility, including) when:~~

~~(a) The number of child care hours the consumer needs ((more or less hours)) increases;~~

~~(b) ((The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-~~

~~0085;)) The household income changes, which may lower the consumer's copayment under WAC 170-290-0085;~~

~~(c) The ((consumer's)) household size ((such as any family member moving in or out of the home);~~

~~(d) Employment, school or approved TANF activity (starting, stopping or changing);~~

~~(e) The address and telephone number of the consumer's in-home/relative provider;~~

~~(f) The consumer's home address and telephone number; and~~

~~(g)) increases, which may lower the copayment; or~~

~~(d) The consumer's legal obligation to pay child support(;~~

~~(4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about the consumer's in-home/relative provider; and~~

~~(5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home)) increases, which may lower the copayment.~~

~~(3) Effective dates of changes are as follows:~~

~~(a) Copayment changes are effective as provided in WAC 170-290-0085;~~

~~(b) Changes under subsection (1)(c) and (d) of this section are effective:~~

~~(i) The date of change, if reported within five days; or~~

~~(ii) The date the change was reported, if not reported within five days.~~

~~(c) Changes to consumer information described in WAC 170-290-0012 are effective:~~

~~(i) The date the change was reported, if reported within ten days from the date of change or if received within ten days from the date of request for verification; or~~

~~(ii) The date verification is received, if verification is not received within ten days from the date the change is reported or if not received within ten days from the request of verification.~~

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0032 Failure to report changes. (1)** A consumer's failure to report changes as required in WAC 170-290-0031 within the stated time frames may cause:

~~((+)) (a) A copayment error. The consumer may be required to pay a higher copayment as stated in WAC 170-290-0085; or~~

~~((2)) (b) A WCCC payment error. If an overpayment occurs, the consumer may receive an overpayment for what the provider has correctly billed, including absent days (see publications "Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers," "Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers" and "Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers").~~

~~(2) If a consumer receives an overpayment for failure to report changes or failure to provide required verification, they will be required to repay any overpayment as provided in WAC 170-29-0271.~~

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0034 Providers' responsibilities.** Child care providers who accept child care subsidies must do the following:

- (1) Comply with:
  - (a) All of the DEL child care licensing or certification requirements as provided in chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified; or
  - (b) All of the requirements in WAC 170-290-0130 through 170-290-0167, 170-290-0250, and 170-290-0268, for child care providers who provide in-home/relative care;
- (2) Report pending charges or convictions to DSHS as provided in:
  - (a) Chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified; or
  - (b) WAC 170-290-0138 (2) and (3), for child care providers who provide in-home/relative care;
  - (3) Keep complete and accurate daily attendance records for children in their care, and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:
    - (a) Current attendance records (including records from the previous twelve months) must be available immediately for review upon request by DEL.
    - (b) Attendance records older than twelve months to five years must be provided to DSHS or DEL within two weeks of the date of a written request from either department.
    - (c) Failure to make available attendance records as provided in this subsection may:
      - (i) Result in the immediate suspension of the provider's subsidy payments; and
      - (ii) Establish a provider overpayment as provided in WAC 170-290-0268;
  - (4) Keep receipts for billed field trip/quality enhancement fees as follows:
    - (a) Receipts from the previous twelve months must be available immediately for review upon request by DEL;
    - (b) Receipts from one to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department;
    - (5) Allow consumers access to their child at all times while the child is in care;
    - (6) Collect copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment to the provider within the previous sixty days;
    - (7) Follow billing procedures:
      - (a) As described in the most current version of "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*"; or
      - (b) As described in the most current version of "*Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers*"; or
      - (c) As described in the most current version of "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*."

- (8) Not claim a payment in any month(~~(=~~  
~~(a))~~) a child has not attended at least one day within the authorization period in that month(~~(=~~  
~~and~~  
~~(b) The day attended is within the authorization period~~)).
- (9) Invoice the state no later than one calendar year after the actual date of service;
- (10) For both licensed and certified providers and in-home/relative providers, not charge subsidized families the difference between the provider's customary rate and the maximum allowed state rate; and
- (11) For licensed and certified providers, not charge subsidized families for:
  - (a) Registration fees in excess of what is paid by subsidy program rules;
  - (b) Absent days on days in which the child is scheduled to attend and authorized for care;
  - (c) Handling fees to process consumer copayments, child care services payments, or paperwork;
  - (d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or
  - (e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0035 DSHS's responsibilities to consumers.** DSHS is responsible to:

- (1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;
- (2) Determine a consumer's eligibility within thirty days from the date the consumer applied (application date as described in WAC 170-290-0095). Under WAC 170-290-0012 (5)(e)(ii), a determination made within thirty days of application using self-attestation of new employment wages is compliant with this subsection even if third-party verification is provided more than thirty days after the date of application;
- (3) Allow a consumer to choose his or her provider as long as the provider meets the requirements in WAC 170-290-0125;
- (4) Review a consumer's chosen in-home/relative provider's background check results;
- (5) Authorize payments only to child care providers who allow a consumer to access his or her children whenever they are in care;
- (6) (~~(Only)~~) Authorize payment when no adult in a consumer's family (under WAC 170-290-0015) is able or available (under WAC 170-290-0003) to care for the consumer's children at application and reapplication;
- (7) Inform a consumer of:
  - (a) His or her rights and responsibilities under the WCCC program at the time of application and reapplication;
  - (b) The types of child care providers DSHS can pay;
  - (c) The community resources that can help a consumer select child care when needed; and
  - (d) Any change in a consumer's copayment during the authorization period except under WAC 170-290-0120(5).

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

- (a) WCCC eligibility;
- (b) Copayment; or
- (c) Providers.

(9) Provide prompt child care payments to a consumer's child care provider;

(10) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer;

(11) Ensure that Social Security cards, driver's licenses, or other government-issued identification for in-home/relative providers are valid and verified; and

(12) For providers who care for children in states bordering Washington, verify that they are currently complying with their state's licensing regulations.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0050 Additional requirements for self-employed WCCC consumers.** (1) **Self-employment generally.** To be considered self-employed, a WCCC consumer must:

(a) Earn income directly from the consumer's trade or business, not from wages paid by an employer;

(b) Be responsible to pay the consumer's self-employment Social Security and federal withholding taxes;

(c) Have a work schedule, activities or services that are not controlled in an employee-employer relationship;

(d) Participate directly in the production of goods or services that generate the consumer's income; and

(e) At application and reapplication, work outside of the home (~~during~~) the amount of hours for which the consumer requests WCCC benefits. If a consumer's self-employment activities are split between the home and outside of the home, only self-employment and other approved activities outside of the home will be eligible for child care benefits.

(2) **Self-employed consumers receiving TANF.** If a consumer receives TANF and is also self-employed, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC benefits a consumer receives for self-employment is equal to the number of hours in the consumer's approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(3) **Self-employed consumers not receiving TANF.** If a consumer does not receive TANF and requests WCCC benefits for the consumer's self-employment, the consumer may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) A consumer who does not receive TANF cash assistance and requests WCCC benefits for self-employment must provide DSHS with the consumer's:

(i) Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(ii) Uniform business identification (UBI) number for the state of Washington, or, for self-employment in bordering states, the registration or filing number;

(iii) Completed self-employment plan that is written, signed, dated and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity including time needed for transportation and the location of work activity;

(iv) Profit and loss statement, projected profit and loss statement if starting a new business; and

(v) Either federal self-employment tax reporting forms for the most current reporting year or DSHS self-employment income and expense declaration form.

(b) (~~During~~) At application and reapplication, the first six consecutive months of starting a new self-employment business, the number of hours (~~of care the~~) a consumer is eligible to receive is based on the consumer's report of how many hours are needed, up to sixteen hours per day. A consumer is eligible to receive this provision only once during the consumer's lifetime and must use the benefit provided by this provision within the consumer's authorization period.

(c) At application and reapplication, DSHS determines (~~a consumer's need for care~~) the number of care hours the consumer is eligible to receive after receiving WCCC self-employment benefits for six consecutive months as provided in (b) of this subsection by:

(i) Dividing the consumer's gross monthly self-employment income by the federal or state minimum wage, whichever is lower, to determine the average monthly hours of care needed by the consumer; and

(ii) Adding the consumer's additional (~~child care needs for other~~) approved employment, education, training, or travel to the total approved self-employment hours.

(d) If both parents in a two-parent family are self-employed, at the same or a different business, each parent must report the parent's own self-employment earnings and self-employment plan. If the requested verification is not provided, then WAC 170-290-0012 applies to determining eligibility.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0055 Receipt of benefits** (~~when not engaged in approved activities~~) **during fourteen-day wait period.** (1) **Fourteen-day wait period.** DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.

(2) (~~Twenty-eight day gap period.~~ DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in employment or approved activity. The consumer may be eligible for this twenty-eight day gap period:

- (a) Twice in a calendar year; and

~~(b) For the same number of units open while the consumer is in the approved activity not to exceed full-time care.~~

~~(3) The twenty-eight day gap period must be used within the consumer's current eligibility period and is not an approved activity for the purpose of determining eligibility.~~

~~(4) In order for a consumer to qualify for the twenty-eight day gap period:~~

~~(a) The consumer must be currently receiving WCCC benefits;~~

~~(b) The consumer must report to DSHS within ten days the loss of employment or approved activity; and~~

~~(c) The consumer must:~~

~~(i) Be looking for another job; or~~

~~(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight day gap period.~~

~~(5) A consumer is eligible for the minimum copayment during the fourteen-day wait period or twenty-eight day gap period.~~

~~(6)) If the consumer does not enter the fourteen-day wait period activity, DSHS will terminate the consumer's case, as provided in WAC 170-290-0110.~~

~~(3) In the situation described in subsection (1) of this section, the child needs to attend at least one day in the calendar month for the provider to bill.~~

~~(4) DSHS does not prorate the copayment.~~

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0082 Eligibility period.** (1) A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for twelve months. The twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1).

(2) Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

~~((2))~~ (3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(4) The twelve-month eligibility period begins:

(a) When the benefits begin under WAC 170-290-0095;

or

(b) Upon reapplication under WAC 170-290-0109.

(5) A consumer's eligibility may be for less than twelve months if:

(a) Requested by the consumer; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

~~((3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.~~

~~(4) The twelve-month eligibility period begins:~~

~~(a) When benefits begin under WAC 170-290-0095; or~~

~~(b) Upon reapplication under WAC 170-290-0109(4).))~~

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0085 Change in copayment.** (1) A consumer's copayment may change when:

(a) The consumer's monthly income decreases;

(b) The consumer's family size increases and causes the copayment to decrease;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of application, reapplication, or when reporting a change in circumstances;

(e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;

(f) DEL makes a mass change in benefits due to a change in law or program funding; or

(g) The consumer is approved for a new eligibility period(~~;~~ or

~~(h) The consumer is approved for the fourteen-day wait period or twenty-eight day gap period as provided in WAC 170-290-0055)).~~

(2) Copayment changes are effective on the first day of the month immediately following the date the copayment change was made.

(3) DSHS does not increase a consumer's copayment during the current eligibility period when countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005(~~;~~ and:

~~(a) The consumer's monthly countable income increases; or~~

~~(b) The consumer's family size decreases)).~~

(4) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0090 Minimum copayment.** (1) The minimum copayment is paid when the consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines.

(2) **First application.** The consumer pays the minimum copayment at first application for WCCC when benefits are paid. The consumer pays the minimum copayment:

(a) Beginning in the month that DSHS pays for WCCC child care services(~~;~~); and

(b) The first full calendar month thereafter.

(3) **Reapplication.** The consumer pays the minimum copayment at reapplication for WCCC after a break of at least thirty days in the consumer's approved activities. The consumer pays the minimum copayment:

(a) Beginning in the month that DSHS pays for WCCC services(~~;~~); and

(b) The first full calendar month thereafter.

(4) The consumer pays the minimum copayment when he or she is a minor parent, and:

(a) Receives TANF; or

(b) Is part of the parent's or relative's TANF assistance unit.

(5) ~~((Two-parent families automatically qualify for the minimum copayment during a twenty-eight day gap period in~~

~~WAC 170-290-0055 only if both parents meet the gap requirements. Otherwise, eligibility workers must determine the change in copayment based on the family's countable income and family size, as specified in WAC 170-290-0065 and 170-290-0085.~~

~~(6)) DSHS does not prorate the copayment.~~

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0095 When WCCC benefits start.** (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application for WCCC benefits, except in the case of new employment or new non-TANF activities. In those cases, under WAC 170-290-0012 and 170-290-0014, the consumer must provide third-party verification within sixty days of DSHS approving the application or reapplication;

(b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055; and

(c) The consumer needs child care for approved activities within at least thirty days of the date of application for WCCC benefits.

(2) If a consumer fails to turn in all information within thirty days from the application date, the consumer must restart the application process, except in the case of new employment or new non-TANF activities. In those cases, under WAC 170-290-0012 and 170-290-0014, the consumer must provide third-party verification within sixty days of DSHS approving the application or reapplication.

(3) The consumer's application date is whichever of the following is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0109 Reapplication.** (1) If a consumer wants to receive uninterrupted child care benefits for another eligibility period, the consumer must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) Effective October 1, 2016, if a consumer's household has countable income greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG, the consumer may be eligible for a three-month eligibility period called Income Phase-Out. In determining eligibility for the Income Phase-Out period, the following rules apply:

(a) All countable income must be between two hundred and two hundred twenty percent of the FPG. If the countable income exceeds two hundred twenty percent of the FPG, DSHS denies the reapplication;

(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;

(c) There is no break between the twelve-month eligibility period and the Income Phase-Out period;

(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;

(e) DSHS certifies the consumer for a three-month eligibility period;

(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month Income Phase-Out period; and

(g) The consumer will not be eligible for a second, back-to-back Income Phase-Out period if the countable income of the consumer's household remains between two hundred and two hundred twenty percent of the FPG at the end of the first three-month Income Phase-Out period.

(4) If DSHS determines that a consumer is eligible for WCCC benefits based on reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

~~((4))~~ (5) When a consumer submits a reapplication after the last day of the current eligibility period, the consumer's benefits begin:

(a) On the date that the consumer's reapplication is date-stamped as received in DSHS's community service office or entered into the DSHS automated system, whichever date is earlier;

(b) When the consumer is working or participating in an approved activity; and

(c) The consumer's child is being cared for by an eligible WCCC provider.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0110 Termination of and redetermining eligibility for benefits.** (1) DSHS stops a consumer's eligibility for WCCC benefits when the consumer does not:

~~(a) ((The consumer's monthly copayment is higher than the state maximum monthly rate, including special needs payment, but not including registration, field trip and non-standard hours bonus payments, for all of the consumer's children in care under WAC 170-290-0005; or~~

~~(b) The consumer does not;~~

~~(i)) Comply with the copayment requirements of WAC 170-290-0030 (3) and (4);~~

~~((iii))~~ (b) Complete the requested application or reapplication before the deadline noted in WAC 170-290-0109 (2)(a);

~~((iii))~~ Meet other WCCC eligibility requirements related to family size, income and approved activities; or

~~(iv))~~ (c) Enter the approved activity at the end of the fourteen-day wait period;

(d) Complete the WorkFirst orientation process when approved for TANF;

(e) Return the requested income verification of new employment by the sixtieth day as provided in WAC 170-290-0012; or

(f) Cooperate with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

(2) A consumer may be eligible for WCCC again beginning on the date that the consumer:

(a) Meets all WCCC eligibility requirements;

(b) Complies with the copayment requirements of WAC 170-290-0030 (3) and (4); and

(c) Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0125 Eligible child care providers.** To receive payment under the WCCC program, a consumer's child care provider must be:

(1) An in-home/relative provider. Providers other than those specified in subsection (2) of this section must meet the requirements in WAC 170-290-0130; or

(2) **A licensed, certified, or DEL-contracted provider.**

(a) Licensed providers must:

(i) Be currently licensed as required by chapter 43.215 RCW and as described by chapters 170-295, 170-296A, or 170-297 WAC; or

(ii) Meet the provider's state's licensing regulations, for providers who care for children in states bordering Washington. DSHS pays the lesser of the following to qualified child care facilities in bordering states:

(A) The provider's private pay rate for that child; or

(B) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.

(b) Certified providers are exempt from licensing but certified by DEL, such as:

(i) Tribal child care facilities that meet the requirements of tribal law;

(ii) Child care facilities on a military installation; and

(iii) Child care facilities operated on public school property by a school district.

(c) New child care providers, as defined in WAC 170-290-0003, who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:

(i) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment. A pro-

vider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care.

(A) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(B) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(ii) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care;

(iii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(iv) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(v) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(d) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

(i) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(A) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(B) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019;

(iv) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the



department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(v) Maintain an up-to-date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(e) If a child care provider serving nonschool age children, as defined in WAC 170-290-0003, and receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

(f) DEL-contracted seasonal day camps (~~has~~) have a contract with DEL to provide subsidized child care.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0130 In-home/relative providers—Eligibility.** (1) To be eligible as an in-home/relative provider to care for children under WCCC, the applicant must be:

- (a) Eighteen years of age or older;
- (b) A citizen or legal resident of the U.S.; and
- (c) Meet all of the requirements listed in WAC 170-290-0135.

(2) Additionally, eligible in-home/relative providers must:

- (a) Meet all applicable background check requirements in part II of this chapter;
- (b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs; and
- (c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS and used by the parent (~~(for approved activities)~~).

(3) The following eligible in-home/relative providers, except those providers residing with a disqualified person, may provide care in either their home or the child's home:

- (a) Adult siblings that live outside the child's home;
- (b) Extended tribal family members;
- (c) Grandparents or great-grandparents; or
- (d) Aunts or uncles, or great-aunts or great-uncles.

(4) All other eligible providers, including other family members, friends, neighbors, or nannies must provide care in the child's home only.

(5) The following persons are not eligible to provide in-home/relative care under part II of this chapter:

- (a) The child's biological, adoptive, or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner;
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner; or
- (d) An individual who has a revoked child care license.

(6) WCCC consumers may have up to two in-home/relative providers authorized for payment during the consumer's eligibility period plus one back-up provider, either licensed or in-home/relative, also authorized to care for the consumer's children.

(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. WCCC consumers must ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, unless exempt under department of health regulations.

(8) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(9) In-home/relative provider payments cannot begin prior to the receipt of all required background checks indicating no disqualifying information.

(10) WCCC consumers must be in an approved activity at application and reapplication and the requirements in WAC 170-290-0020 pertain for the in-home/relative provider to be eligible for subsidy payments.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0138 In-home/relative providers—Responsibilities.** An in-home/relative provider must:

- (1) Provide care, supervision, and daily activities based on the child's developmental needs;
- (2) Report to DSHS within ten days any changes to their legal name, address or telephone number;
- (3) Report to DSHS within twenty-four hours any pending charges or convictions they have;
- (4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider, including any person sixteen years of age or older who newly resides with the provider, when the provider cares for the child in the provider's home. Background checks must be completed for these persons as provided in WAC 170-290-0143;
- (5) Report a revoked child care license;
- (6) Bill only for actual hours of care provided. Those hours:

- (a) Must be authorized by DSHS(~~(-and)~~);
- (b) Must be used by the consumer (~~(for approved activities)~~); and
- (c) Can be claimed whether or not the consumer is present during the hours of care.

(7) Bill for no more than six children at one time during the same hours of care;

(8) Track attendance documenting the days and hours of care provided and keep records for five years:

- (a) If paper attendance records are used, the provider must have the consumer sign and date the attendance records at least weekly, verifying the accuracy of the dates and times.

(b) Providers may use an electronic attendance system as provided in WAC 170-290-0139 to record attendance in lieu of a paper sign-in record;

(9) Repay any overpayments under WAC 170-290-0268; and

(10) Have at least one working telephone accessible in the home for incoming and outgoing calls during all times that subsidized child care is provided. The telephone must have 911 emergency services calling access.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care.** (1) DSHS may authorize and pay for the following:

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day;

(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;

(c) Hourly child care for in-home/relative child care;

(d) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means the following:

(i) For licensed care or certified facilities, twenty-three full-day units if the child needs five or more hours of care per day, or thirty half-day units if the child needs fewer than five hours of care per day; and

(ii) Two hundred thirty hours for in-home/relative child care;

(e) A registration fee (under WAC 170-290-0245);

(f) A field trip fee (under WAC 170-290-0247);

(g) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(h) A nonstandard hours bonus under WAC 170-290-0249.

(2) Beginning September 1, 2016, and applicable to school-age children, DSHS will authorize and pay for child care as follows:

(a) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and

(b) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year until the following June. If the consumer's schedule has changed and more care is needed, the consumer must request an increase, and DSHS will verify the need for increased care. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025;

(3) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

((3)) (4) DSHS authorizes overtime care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.

(5) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps.** (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

|                |          | Infants<br>(One month - 11 mos.)  | Toddlers<br>(12 - 29 mos.)        | Preschool<br>(30 mos. - 6 yrs not<br>attending kindergarten<br>or school) | School-age<br>(5 - 12 yrs attending<br>kindergarten or school) |
|----------------|----------|-----------------------------------|-----------------------------------|---|--|
| Region 1       | Full-Day | <del>\$(31.47)</del> <u>32.10</u> | <del>\$(26.47)</del> <u>27.00</u> | <del>\$(25.00)</del> <u>25.50</u>   | <del>\$(23.55)</del> <u>24.02</u>                              |
|                | Half-Day | <del>\$(15.74)</del> <u>16.05</u> | <del>\$(13.24)</del> <u>13.50</u> | <del>\$(12.50)</del> <u>12.75</u>   | <del>\$(11.78)</del> <u>12.01</u>                              |
| Spokane County | Full-Day | <del>\$(32.19)</del> <u>32.84</u> | <del>\$(27.07)</del> <u>27.62</u> | <del>\$(25.58)</del> <u>26.10</u>   | <del>\$(24.09)</del> <u>24.58</u>                              |
|                | Half-Day | <del>\$(16.10)</del> <u>16.42</u> | <del>\$(13.54)</del> <u>13.81</u> | <del>\$(12.79)</del> <u>13.05</u>   | <del>\$(12.05)</del> <u>12.29</u>                              |
| Region 2       | Full-Day | <del>\$(31.79)</del> <u>32.44</u> | <del>\$(26.53)</del> <u>27.06</u> | <del>\$(24.61)</del> <u>25.10</u>   | <del>\$(21.76)</del> <u>22.20</u>                              |
|                | Half-Day | <del>\$(15.90)</del> <u>16.22</u> | <del>\$(13.27)</del> <u>13.53</u> | <del>\$(12.31)</del> <u>12.55</u>   | <del>\$(10.88)</del> <u>11.10</u>                              |
| Region 3       | Full-Day | <del>\$(42.07)</del> <u>42.92</u> | <del>\$(35.08)</del> <u>35.78</u> | <del>\$(30.30)</del> <u>30.92</u>   | <del>\$(29.42)</del> <u>30.02</u>                              |
|                | Half-Day | <del>\$(21.04)</del> <u>21.46</u> | <del>\$(17.54)</del> <u>17.89</u> | <del>\$(15.15)</del> <u>15.46</u>   | <del>\$(14.71)</del> <u>15.01</u>                              |

|          |          | Infants<br>(One month - 11 mos.) | Toddlers<br>(12 - 29 mos.) | Preschool<br>(30 mos. - 6 yrs not<br>attending kindergarten<br>or school) | School-age<br>(5 - 12 yrs attending<br>kindergarten or school) |
|----------|----------|----------------------------------|----------------------------|---|--|
| Region 4 | Full-Day | \$((48.96)) <u>49.94</u>         | \$((40.88)) <u>41.70</u>   | \$((34.30)) <u>35.00</u>  | \$((30.89)) <u>31.52</u>                                       |
|          | Half-Day | \$((24.48)) <u>24.97</u>         | \$((20.44)) <u>20.85</u>   | \$((17.15)) <u>17.50</u>  | \$((15.45)) <u>15.76</u>                                       |
| Region 5 | Full-Day | \$((35.90)) <u>36.62</u>         | \$((30.89)) <u>31.52</u>   | \$((27.20)) <u>27.74</u>  | \$((24.14)) <u>24.62</u>                                       |
|          | Half-Day | \$((17.95)) <u>18.31</u>         | \$((15.45)) <u>15.76</u>   | \$((13.60)) <u>13.87</u>  | \$((12.07)) <u>12.31</u>                                       |
| Region 6 | Full-Day | \$((35.30)) <u>36.02</u>         | \$((30.30)) <u>30.92</u>   | \$((26.47)) <u>27.00</u>  | \$((25.89)) <u>26.42</u>                                       |
|          | Half-Day | \$((17.65)) <u>18.01</u>         | \$((15.15)) <u>15.46</u>   | \$((13.24)) <u>13.50</u>  | \$((12.95)) <u>13.21</u>                                       |

(Chart effective ((01/01/15)) 07/01/16)

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 and 170-295-0050 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers.** (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table.

|                |          | Infants<br>(Birth - 11 mos.) | Enhanced<br>Toddlers<br>(12 - 17 mos.) | Toddlers<br>(18 - 29 mos.) | Preschool<br>(30 mos. - 6 yrs not<br>attending kindergarten<br>or school) | School-age<br>(5 - 12 yrs attending<br>kindergarten or<br>school) |
|----------------|----------|------------------------------|--|----------------------------|---|---|
| Region 1       | Full-Day | \$((26.80))                  | \$((26.80))                            | \$((23.30))                | \$((23.30))   | \$((20.73))   |
|                | Half-Day | <u>29.62</u>                 | <u>29.62</u>                           | <u>25.76</u>               | <u>23.78</u>  | <u>21.14</u>  |
| Spokane County | Full-Day | \$((13.40))                  | \$((13.40))                            | \$((11.65))                | \$((11.65))   | \$((10.37))   |
|                | Half-Day | <u>14.81</u>                 | <u>14.81</u>                           | <u>12.88</u>               | <u>11.89</u>  | <u>10.57</u>  |
| Region 2       | Full-Day | \$((27.40))                  | \$((27.40))                            | \$((23.83))                | \$((23.83))   | \$((21.18))   |
|                | Half-Day | <u>30.32</u>                 | <u>30.32</u>                           | <u>26.36</u>               | <u>24.32</u>  | <u>21.60</u>  |
| Region 3       | Full-Day | \$((13.70))                  | \$((13.70))                            | \$((11.92))                | \$((11.92))   | \$((10.59))   |
|                | Half-Day | <u>15.16</u>                 | <u>15.16</u>                           | <u>13.18</u>               | <u>12.16</u>  | <u>10.80</u>  |
| Region 4       | Full-Day | \$((28.30))                  | \$((28.30))                            | \$((24.61))                | \$((22.04))   | \$((22.01))   |
|                | Half-Day | <u>30.66</u>                 | <u>30.66</u>                           | <u>26.66</u>               | <u>24.44</u>  | <u>22.46</u>  |
| Region 5       | Full-Day | \$((14.15))                  | \$((14.15))                            | \$((12.31))                | \$((11.04))   | \$((11.01))   |
|                | Half-Day | <u>15.33</u>                 | <u>15.33</u>                           | <u>13.33</u>               | <u>12.22</u>  | <u>11.23</u>  |
| Region 6       | Full-Day | \$((37.54))                  | \$((37.54))                            | \$((32.36))                | \$((28.48))   | \$((25.89))   |
|                | Half-Day | <u>41.98</u>                 | <u>41.98</u>                           | <u>35.54</u>               | <u>35.54</u>  | <u>28.80</u>  |
| Region 7       | Full-Day | \$((18.77))                  | \$((18.77))                            | \$((16.18))                | \$((14.24))   | \$((12.95))   |
|                | Half-Day | <u>20.99</u>                 | <u>20.99</u>                           | <u>17.77</u>               | <u>17.77</u>  | <u>14.40</u>  |
| Region 8       | Full-Day | \$((44.17))                  | \$((44.17))                            | \$((38.41))                | \$((32.36))   | \$((31.06))   |
|                | Half-Day | <u>53.30</u>                 | <u>53.30</u>                           | <u>44.42</u>               | <u>39.98</u>  | <u>31.68</u>  |
| Region 9       | Full-Day | \$((22.09))                  | \$((22.09))                            | \$((19.21))                | \$((16.18))   | \$((15.53))   |
|                | Half-Day | <u>26.65</u>                 | <u>26.65</u>                           | <u>22.21</u>               | <u>19.99</u>  | <u>15.84</u>  |
| Region 10      | Full-Day | \$((29.78))                  | \$((29.78))                            | \$((25.89))                | \$((24.61))   | \$((22.01))   |
|                | Half-Day | <u>36.34</u>                 | <u>36.34</u>                           | <u>31.60</u>               | <u>26.66</u>  | <u>22.46</u>  |
| Region 11      | Full-Day | \$((14.89))                  | \$((14.89))                            | \$((12.95))                | \$((12.31))   | \$((11.01))   |
|                | Half-Day | <u>18.17</u>                 | <u>18.17</u>                           | <u>15.80</u>               | <u>13.33</u>  | <u>11.23</u>  |

|          |          | Infants<br>(Birth - 11 mos.) | Enhanced<br>Toddlers<br>(12 - 17 mos.) | Toddlers<br>(18 - 29 mos.) | Preschool<br>(30 mos. - 6 yrs not<br>attending kindergarten<br>or school) | School-age<br>(5 - 12 yrs attending<br>kindergarten or<br>school) |
|----------|----------|------------------------------|--|----------------------------|---|---|
| Region 6 | Full-Day | <del>\$(29.78)</del>         | <del>\$(29.78)</del>                   | <del>\$(25.89)</del>       | <del>\$(25.89)</del>  | <del>\$(24.61)</del>  |
|          | Half-Day | <u>32.68</u>                 | <u>32.68</u>                           | <u>28.42</u>               | <u>26.66</u>  | <u>25.10</u>  |
|          |          | <del>\$(14.89)</del>         | <del>\$(14.89)</del>                   | <del>\$(12.95)</del>       | <del>\$(12.95)</del>  | <del>\$(12.31)</del>  |
|          |          | <u>16.34</u>                 | <u>16.34</u>                           | <u>14.21</u>               | <u>13.33</u>  | <u>12.55</u>  |

(Chart effective ~~(01/01/15)~~ 07/01/16)

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen years of age or older, the provider must follow WAC 170-296A-0050 and 170-296A-5625 and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 13-21-113, filed 10/22/13, effective 11/22/13)

**WAC 170-290-0210 Tiered reimbursement and quality improvement awards.** (1) Starting September 1, 2013, providers receiving payment under the WCCC program will receive a two percent increase in the subsidy rate, calculated on the base rate, for enrolling in level 2 in the early achievers program. Providers must complete level 2, advance to level 3 within thirty months, and maintain a level 3 rating in order to maintain this increase.

(2) Quality improvement awards, as described by chapter 43.215 RCW, are reserved for early achievers participating providers offering programs to an enrollment population consisting of at least five percent of nonschool age children receiving a state subsidy.

(a) Qualifying state subsidy programs include working connections child care (WCCC), seasonal child care (SCC), children's administration (CA) child care programs, homeless child care program (HCCP), ECLIPSE and medicare child care programs. Participants providing homeless child care program, ECLIPSE, or medicare services must present DEL with information indicating that services were provided under these programs.

(b) Percent subsidy calculations are derived from a monthly average of the number of children receiving state subsidy divided by the monthly average licensed capacity of a specific provider over a twelve-month period.

(i) The twelve-month period utilized for the above calculation will include the twelve months prior to the formal release of a facility's early achievers rating.

(ii) Facilities must have provided care at least one day in a given month for that month to be utilized in the above calculation.

AMENDATORY SECTION (Amending WSR 14-24-070, filed 11/26/14, effective 1/1/15)

**WAC 170-290-0240 Child care subsidy rates—In-home/relative providers.** (1) **Base rate.** When a consumer employs an in-home/relative provider, DSHS pays the lesser of the following to an eligible in-home/relative provider for child care:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy rate of two dollars and ~~((forty-two))~~ forty-seven cents per hour for the child who needs the greatest number of hours of care and two dollars and ~~((thirty-nine))~~ forty-four cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DSHS pays the employer's share of the following:

- (a) Social Security and medicare taxes (FICA) up to the wage limit;
- (b) Federal Unemployment Taxes (FUTA); and
- (c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-0271 Payment discrepancies—Consumer overpayments.** (1) DSHS establishes overpayments for past or current consumers when the consumer:

- (a) Received benefits when the consumer was not eligible;
- (b) ~~((Used care for an unapproved activity or for children not in the consumer's WCCC household;))~~ Was determined eligible at application or reapplication based on the consumer's participation in an approved activity and used benefits while never participating in said activity;

(c) Failed to report ~~((information))~~ changes under the requirements of WAC 170-290-0031 to DSHS resulting in an

error in determining eligibility, amount of care authorized, or copayment;

(d) Used a provider that was not eligible per WAC 170-290-0125; ~~((e))~~

(e) Received benefits for a child who was not eligible per WAC 170-290-0005, 170-290-0015 or 170-290-0020;

(f) Failed to enter their approved activity at the end of the fourteen-day wait period;

(g) Failed to have TANF approved and enter an approved WorkFirst activity; or

(h) Failed to return, by the sixtieth day, the requested income verification of new employment as provided in WAC 170-290-0012.

(2) DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) If a consumer is not eligible under WAC 170-290-0030 through 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3520 Eligibility.** (1) ~~((Parents.))~~ To be eligible for SCC the person applying for benefits must:

(a) Not currently be receiving temporary aid for needy families (TANF);

(b) Live in one of the following Washington state counties: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom, or Yakima;

(c) At application and reapplication, have parental control of one or more children;

(d) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian as verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Aunt;

(vi) Uncle;

(vii) Niece or nephew;

(viii) Grandparent; or

(ix) Any of the above relatives in (v), (vi), or (viii) of this subsection, with the prefix "great," such as great-aunt(~~;~~).

(e) At application and reapplication, participate in an approved activity under WAC 170-290-3555;

(f) Have countable income at or below the maximum eligibility limit described in WAC 170-290-0005. The consumer's eligibility shall end if the consumer's countable income is greater than eighty-five percent of the state median income or if resources exceed one million dollars;

(g) Complete the application for child care and DSHS verification process, regardless of other program benefits or services received; and

(h) Meet eligibility requirements for SCC described under part III of this chapter.

(2) **Children.** To be eligible for SCC, the child receiving SCC must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005; and

(b) Live in Washington state and be:

(i) Less than ~~((age))~~ thirteen years of age; or

(ii) Less than ~~((age))~~ nineteen years of age and:

(A) Have a verified special need according to WAC 170-290-0220; or

(B) Be under court supervision.

~~((3) Consumers are not eligible for SCC program subsidies if they:~~

~~(a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state child care rate for all of the consumer's children in care;~~

~~(b) Are receiving TANF benefits; or~~

~~(c) Are the only parent in the household and will be away from the home for more than thirty days in a row.))~~

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3550 Eligibility—Special circumstances ~~((for two-parent families))~~.** (1) A consumer may be eligible for the SCC program when the consumer is a parent in a two-parent family and both parents currently work in seasonally available agricultural related work.

(2) A consumer may be eligible for SCC if the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is currently working or participating in approved seasonally agricultural related work.

(3) If a consumer claims one parent is not able to care for the children, the consumer must provide written documentation from an acceptable medical source (see WAC 388-449-0010) that states the:

(a) Reason the parent is not able to care for the children; and

(b) Expected duration and severity of the condition that keeps the parent from caring for the children.

(4) Single-parent family. A consumer is not eligible for SCC benefits when the consumer is the only parent in the family and will be away from the home for more than thirty days in a row.

(5) When a consumer's monthly copayment is higher than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005:

(a) The consumer's eligibility period may continue; and

(b) DSHS will not authorize payment to the provider until the copayment becomes lower than the state maximum

rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3555 Eligibility—Approved activities.**

(1) A consumer may be eligible for SCC program subsidies for up to sixteen hours per day for the time the consumer is involved in seasonally available agricultural related work in Washington state.

(2) When the consumer is part of a two-parent family, both parents must be employed as described in subsection (1) of this section~~((;))~~.

(3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(4) The twelve-month eligibility period begins:

(a) When benefits begin under WAC 170-290-0095; or

(b) Upon reapplication under WAC 170-290-0109.

(5) DSHS may authorize care for:

(a) Travel time only between the child care location and the employment location; or

(b) ~~((Job search, of no more than five days per month, if the consumer's seasonally available agricultural related work ends and the consumer is still eligible and continues to need child care; or~~

~~((e)))~~ Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.

NEW SECTION

**WAC 170-290-3558 Resources.** DSHS verifies a consumer's resource as provided in WAC 170-290-0022.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3565 Consumers' responsibilities.** (1)

When a person applies for or receives SCC program subsidies, the applicant or consumer must, as a condition of receiving those subsidies:

(a) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(b) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

~~((Leave the consumer's children with the eligible provider while the consumer is in SCC approved activities outside of the consumer's home;~~

~~((d)))~~ Pay the provider for child care services when the consumer requests additional child care ~~((for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS))~~ outside of the current authorization;

~~((e)))~~ (d) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

~~((f)))~~ (e) Document their child's attendance in child care by having the consumer or other person authorized by the consumer to take the child to or from child care:

(i) If the provider uses a paper attendance record, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure; or

(ii) Record the child's attendance using an electronic system if used by the provider;

~~((g)))~~ (f) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it could affect the consumer's benefits;

~~((h)))~~ (g) Cooperate (provide the information requested) with the child care subsidy audit process.

(i) A consumer becomes ineligible for SCC benefits upon a determination of noncooperation and remains ineligible until he or she meets child care subsidy audit requirements.

(ii) The consumer may become eligible again when he or she meets SCC requirements in Part III of this chapter and cooperates.

(iii) Care can begin on or after the date the consumer cooperated and meets SCC requirements in Part III of this chapter.

~~((i)))~~ (h) Ensure that their children who receive subsidized child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(i) A department of health (DOH) medical exemption form signed by a health care professional; or

(ii) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization;

~~((j)))~~ (i) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider; and

~~((k)))~~ (j) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late.

(2) In cases of overdue or past due copayments, the consumer, as a condition of maintaining eligibility, must do one of the following:

(a) Pay past or overdue copayments;

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a signed return receipt for correspondence not responded to, or a returned document that was not picked up.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3570 Notification of changes.** (1) When a consumer applies for or receives SCC program subsidies, the consumer must:

~~((+))~~ (a) Notify DSHS, within five days, of any change in providers;

~~((2))~~ (b) Notify DSHS, within ten days, when the consumer's countable income increases and the change would cause the consumer's countable income to exceed eighty-five percent state median income as provided in WAC 170-290-0005;

(c) Notify DSHS, within ten days, when the consumer's countable resources exceed one million dollars as provided in WAC 170-290-3558;

(d) Notify DSHS, within ten days, when the consumer's home address or telephone number changes; and

(e) Notify the consumer's provider, within ten days, when DSHS changes the consumer's child care authorization;

~~(3) Notify DSHS within ten days of any change in the consumer's;~~

(2) When a consumer receives SCC benefits, he or she may notify DSHS when:

(a) The number of child care hours (~~needed~~) the consumer needs changes (more or less hours);

(b) (Child's eligibility for migrant Head Start or another child care program;

~~(c) Household income (including any new receipt of a TANF grant or child support increases or decreases))~~ decreases, which may lower the copayment;

~~((+))~~ (c) Household size such as any family member moving in or out of the consumer's home;

(e) ~~Employment hours such as starting, stopping or changing employers;~~

(f) ~~Home address and telephone number),~~ which may lower the copayment; or

~~((g))~~ (d) The consumer's legal obligation to pay child support (payments made by the consumer) changes.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3580 Failure to report changes.** (1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, DSHS may establish an overpayment to the consumer per WAC 170-290-3850, the consumer may have to pay additional costs, such as a higher copayment, or DSHS may terminate benefits.

(2) If an overpayment occurs, the consumer may receive an overpayment for what the provider has correctly billed, including absent days (see publication "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*" and "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*").

(3) If a consumer receives an overpayment for failure to report changes or failure to provide required verification, they will be required to repay any overpayment as provided in WAC 170-290-0271.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3590 DSHS's responsibilities to consumers.** DSHS must:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Complete applications for SCC program subsidies based on information the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;

(3) Accept a variety of forms of verification and may not specify the type of documentation required;

(4) Authorize payments only to a licensed or certified child care provider the consumer chooses who meets the requirements in WAC 170-290-3750;

(5) At application and reapplication, authorize payments ~~(only)~~ when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-0003;

(6) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing;

(7) Provide prompt child care authorizations to a consumer's child care provider;

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) SCC eligibility;

(b) Copayment; or

(c) Providers; and

(9) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3640 Determining income eligibility and copayment.** (1) For the SCC program, DSHS determines a consumer's family's income eligibility and copayment by:

(a) The consumer's family size as defined under WAC 170-290-3540;

(b) The consumer's average monthly income as calculated under WAC 170-290-3620; and

(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG) ~~(and~~

~~(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075).~~

(2) At application and reapplication, if a consumer's family's income is above the maximum eligibility limit as provided in WAC 170-290-0005, the consumer's family is not eligible for the SCC program.

(3) The FPG is updated every year. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(4) SCC shall assign a copayment amount based on the family's countable income. The consumer pays the copayment directly to the provider.

(5) SCC does not prorate the copayment (~~((when a consumer uses care for part of a month))~~).

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3650 Change in copayment.** (1) A consumer's SCC program copayment could change when:

(a) DEL makes a mass change in subsidy benefits due to a change in law or program funding;

(b) The consumer's family size increases and causes the copayment to decrease;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of (~~((eligibility determination or application/reapplication))~~) application and reapplication; or

(e) The consumer is approved for a new eligibility period.

(2) If a consumer's copayment changes during the eligibility period, the change is effective(~~(-~~

~~(a))~~) on the first day of the month immediately following the date the copayment change(~~(-when:~~

~~(i) The report is made to DSHS or the information is learned by DSHS ten or more days after the change as provided in WAC 170-290-3570; and~~

~~(ii) The consumer receives ten days written notice; or~~

~~(b) On the first day of the month that the change occurred when:~~

~~(i) The report is made to DSHS or the information is learned by DSHS within ten days or less after the change as provided in WAC 170-290-3570; and~~

~~(ii) The copayment is decreasing))~~ was made.

(3) DSHS does not prorate (~~((when a consumer uses care for part of a month))~~) the copayment.

(4) DSHS does not increase a consumer's copayment during the current eligibility period when countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005.

**AMENDATORY SECTION** (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-3660 Eligibility period.** (1) A consumer who meets all of the requirements of part III of this chapter is eligible to receive SCC subsidies for (~~((six))~~) twelve months before having to redetermine (~~((his or her income))~~) eligibility. The (~~((six-month))~~) twelve-month eligibility period applies only if enrollments in the SCC program are capped as provided in WAC 170-290-0001(1) and 170-290-3501. Regard-

less of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-3570.

(2) A consumer's eligibility may be for less than (~~((six))~~) twelve months if requested by the consumer.

(3) A consumer's eligibility may end sooner than (~~((six))~~) twelve months if:

(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3665 When SCC program subsidies start.** (1) SCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required SCC application and verification process as described under WAC 170-290-0012 and 170-290-0014 within thirty days of the date DSHS received the consumer's application for SCC benefits, except in the case of new employment. In that case, under WAC 170-290-0012, the consumer must provide third-party verification within sixty days of application or reapplication;

(b) The consumer is working or participating in an approved activity under WAC 170-290-3555 at application and reapplication; and

(c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for SCC benefits.

(2) If a consumer fails to turn in all information within thirty days from the application date, the consumer must restart the application process, except in the case of new employment. In that case, under WAC 170-290-0012, the consumer must provide third-party verification within sixty days of application or reapplication.

(3) The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

**AMENDATORY SECTION** (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3720 Notice of payment changes.** DSHS provides SCC consumers with at least ten days written notice of changes to payments related to the (~~((suspension;))~~) reduction, or termination of benefits, in child care arrangements, except as noted in WAC 170-290-3730.

**AMENDATORY SECTION** (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3750 Eligible child care providers.** To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter 43.215 RCW and 170-295, 170-296A, or 170-297 WAC;



(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

- (a) The provider's private pay rate for that child; or
- (b) The state maximum child care subsidy rate for the DSHS region where the child resides; or
- (3) Exempt from licensing but certified by DEL, such as:
  - (a) Tribal child care facilities that meet the requirements of tribal law;
  - (b) Child care facilities on a military installation; and
  - (c) Child care facilities operated on public school property by a school district.

(4) New child care providers, as defined in WAC 170-290-0003, who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care:

(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care;

(c) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(d) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(e) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-

295, 170-296A, or 170-297 WAC, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;

(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(e) Maintain an up to date rating by renewing their facility rating every three years and maintaining a rating level 3 or higher. If a provider fails to renew their facility rating or maintain a rating level 3 or higher, they will lose eligibility to receive state subsidy payments nonschool age child care.

(6) If a child care provider serving nonschool age children, as defined in WAC 170-290-0003, and receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3770 Authorized SCC payments.** The SCC program may authorize payments to licensed or certified child care providers for:

(1) Basic child care either full-day or half-day, at rates listed in the chart in WAC 170-290-0200 and 170-290-0205:

(a) A full day of child care when a consumer's children need care (~~(is needed)~~) for five to ten hours per day;

(b) A half day of child care when a consumer's children need care (~~(is needed)~~) for less than five hours per day;

(c) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means twenty-three full day units if the child needs five or more hours of care per day or thirty half-day units if the child needs fewer than five hours of care per day;

(d) Beginning September 1, 2016, for school-aged children, DSHS will authorize and pay for child care as follows:

(i) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and

(ii) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year, until the following June. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025. If the consumer's schedule has changed and the child continues to need full-day care during the school year, the consumer must request the increase and verify the need for full-day care.

(2) A registration fee, according to WAC 170-290-0245;

(3) Subsidy rates for five-year old children according to WAC 170-290-0185;

(4) The field trip/quality enhancement fees in WAC 170-290-0247;

(5) The nonstandard hours bonus in WAC 170-290-0249; and

(6) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 170-290-0220, 170-290-0225, and 170-290-0230.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

**WAC 170-290-3790 When additional SCC subsidy payments are authorized.** DSHS may authorize additional child care when:

(1) Needed to accommodate a family's work schedule;

(2) ~~((Employer))~~ Verification of work schedule is presented; and

(3) More than ten hours of care is needed per day ~~((for the consumer to participate in an approved activity))~~ ~~((for the consumer to participate in an approved activity))~~ (up to a maximum of sixteen hours a day) and the provider's written policy is to charge all families for these ~~((extra))~~ hours of care in excess of ten hours per day.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3840 New eligibility period.** (1) If a consumer wants to receive SCC program subsidies for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current SCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for SCC program subsidies for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-3670 and 170-290-3750; and

(c) The consumer meets all SCC eligibility requirements.

(3) Effective October 1, 2016, if a consumer's household has countable income greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG, the consumer may be eligible for a three-month eligibility period called income phase-out. In determining eligibility for the income phase-out period, the following rules apply:

(a) All countable income must be between two hundred and two hundred twenty percent of the FPG. If the countable income exceeds two hundred twenty percent of the FPG, DSHS denies the reapplication;

(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;

(c) There is no break between the twelve-month eligibility period and the income phase-out period;

(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;

(e) DSHS certifies the consumer for a three-month eligibility period;

(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month income phase-out period; and

(g) The consumer will not be eligible for a second, back-to-back income phase-out period if the countable income of the consumer's household remains between two hundred and two hundred twenty percent of the FPG at the end of the first three-month income phase-out period.

(4) If DSHS determines that a consumer is eligible for SCC program subsidies based on the consumer's reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

~~((4))~~ (5) If a consumer fails to contact DSHS on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies, he or she must reapply according to WAC 170-290-3665.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

**WAC 170-290-3855 Termination of and redetermining eligibility for SCC program subsidies.** (1) A consumer's continued eligibility for SCC ~~((program subsidies))~~ benefits stops when the consumer:

~~((a) ((The consumer's monthly copayment is equal to or higher than the state maximum monthly child care rate, including special needs payment, but not including registration, field trip, and nonstandard hours bonus payments, for all of the consumer's children in care; or~~

~~((b) The consumer:~~

~~((c))~~ Does not complete the requested application or reapplication before the deadline provided in WAC 170-290-3665 and 170-290-3840;

(b) At application and reapplication, is not participating in an approved activity as defined in WAC 170-290-3555;

~~((iii))~~ (c) Does not meet other SCC eligibility requirements related to family size, income and ~~((approved activities))~~ resources as provided in WAC 170-290-3558;

~~((iii))~~ (d) Does not return the requested income verification of new employment by the sixtieth day as provided in WAC 170-290-0012;

(e) Does not comply with the copayment requirements of WAC 170-290-3565 ~~((6) and (7))~~; or

~~((iv))~~ (f) Refuses to cooperate with the child care subsidy audit process or the DSHS office of fraud and accountability (OFA).

(2) A consumer might be eligible for SCC program subsidies again beginning on the date that the consumer:

(a) Meets all SCC program eligibility requirements;

(b) Complies with the copayment requirements of WAC 170-290-3565 ~~((6))~~; and

(c) Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

### WSR 16-14-056

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 16-164—Filed June 30, 2016, 9:46 a.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

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

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

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

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

Reasons for this Finding: Addresses an emergency need to prevent new and multiple wildfires during this period of extreme fire danger, and reduces the risk to life, health and property. Provides fire protection consistency with department of natural resources burn ban enacted July 1, 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 3, Repealed 0.

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

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

Date Adopted: June 29, 2016.

Ron Warren  
for J. W. Unsworth  
Director

#### NEW SECTION

#### **WAC 232-13-0500C Operating chainsaws, welding, or operating an acetylene or other torch with open flame.**

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

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

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

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

**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 232-13-07000E Fires, campfires and smoking.**

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

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

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

#### NEW SECTION

#### **WAC 232-13-15000D Operating a motor vehicle off developed roadways.**

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

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

**WSR 16-14-057**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-165—Filed June 30, 2016, 11:31 a.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: Amend freshwater recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
 Amending WAC 220-55-220, 220-56-124, 220-56-180, 220-56-195, and 232-28-621.

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

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 5, Repealed 0.

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

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

Date Adopted: June 30, 2016.

James B. Scott, Jr.  
 for J. W. Unsworth  
 Director

NEW SECTION

**WAC 220-55-22000A Two-pole endorsement.** Notwithstanding the provisions of WAC 220-55-220, effective July 1, 2016, until further notice anglers who possess a valid two-pole endorsement may fish for salmon with two lines in Marine Area 12 south of Ayock point, excluding Hoodspport Hatchery Zone.

**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 220-56-12400Q Seasons and areas—Hoodspport Hatchery.** Notwithstanding the provisions of WAC 220-56-124, effective July 1, 2016, until further notice anglers may harvest up to 4 hatchery Chinook as part of their daily limit.

NEW SECTION

**WAC 220-56-18000A Salmon statewide rules.** Notwithstanding the provisions of WAC 220-56-180, effective July 1, 2016, until further notice Chinook salmon must not be less than 20 inches in length in Marine Area 12 south of Ayock Point, excluding Hoodspport Hatchery Zone.

NEW SECTION

**WAC 220-56-19500B Closed areas—Saltwater salmon angling.** Notwithstanding the provisions of WAC 220-56-195, effective July 1 through July 31, 2016 Southern Rosario Strait and Eastern Strait of Juan de Fuca is open to salmon fishing.

NEW SECTION

**WAC 232-28-62100F Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621: effective July 1, 2016, until further notice:

(1) **Catch Record Card Area 5:** July 1 through August 15: release coho. August 16 until further notice: closed.

(2) **Catch Record Card Area 6:** July 1 through August 15: release coho. August 16 until further notice: closed.

(3) **Catch Record Card Area 7:** July 1 through July 31: 2 hatchery Chinook may be harvested as part of the daily limit; release coho and wild Chinook; Southern Rosario Strait and Eastern Strait of Juan de Fuca closure as described in WAC 220-56-195(7) is rescinded. August 1 until further notice: release coho.

(4) **Catch Record Card Area 8-1:** Closed.

(5) **Catch Record Card Area 8-2:** Closed, except in Tualip Bay. Tualip Bay: release coho and wild Chinook.

(6) **Catch Record Card Area 9:** July 1 through August 15: release coho. July 16 through August 15: no more than one may be a Chinook. August 16 until further notice: closed. South of a line from Olele Point to Foulweather Bluff: closed.

(7) **Catch Record Card Area 10:** July 1 through July 15: 2 salmon limit; release coho, Chinook and chum. July 16 through August 15: 2 salmon limit; no more than one may be a Chinook; release coho, chum and wild Chinook. August 16 until further notice: closed. Sinclair Inlet: July 1 until further notice: 3 salmon limit; release wild Chinook and wild coho.

(8) **Catch Record Card Area 11:** July 1 through August 31: release coho. September 1 until further notice: closed.

(9) **Catch Record Card Area 12 (north of Ayock Point):** July 1 through August 15: closed. August 16 until further notice: 4 salmon limit; release chum and Chinook.

(10) **Catch Record Card Area 12 (south of Ayock Point):** July 1 until further notice: 4 hatchery Chinook may be harvested as part of the daily limit.

(11) **Catch Record Card Area 13:** July 1 through August 31: release coho. September 1 until further notice: closed.

(12) **Year-round Piers (Edmonds Public Fishing Pier, Elliott Bay Fishing Pier at Terminal 86, Seacrest Pier, Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier, Point Defiance Boathouse Dock, Fox Island Public Fishing Pier):** July 1 through August 31: release coho. September 1 until further notice: closed.

(13) **Year-round Piers located in Sinclair Inlet (Waterman Pier, Bremerton Boardwalk, Illahee State Park):** release wild coho.

#### NEW SECTION

**WAC 220-56-13800A Exposed tideland closures.** Notwithstanding the provisions of Chapter 220-56 WAC, effective July 1, 2016, through September 30, 2016, free-flowing freshwater is closed to fishing for finfish downstream of the mouth of the Dewatto, Dosewallips, Duckabush, Hamma Hamma, and Skokomish rivers.

**WSR 16-14-061  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-166—Filed June 30, 2016, 2:20 p.m., effective July 5, 2016, 6:00 a.m.]

Effective Date of Rule: July 5, 2016, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100W; and amending WAC 220-32-051.

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: Allows the sale of fish caught in Zone 6 Columbia River tribal net, platform and hook and line gear for the summer season. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open

under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. Three weekly gillnet fishing periods during the summer season have also been set. The preseason forecast for summer Chinook is ninety-three thousand three hundred fish, and twenty-nine thousand one hundred seventy-five harvestable fish are available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on June 9 and 30, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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 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 1, Amended 0, Repealed 1.

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

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

Date Adopted: June 30, 2016.

James B. Scott, Jr.  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

(1) Open Area: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: 6:00 AM Tuesday July 5 to 6:00 PM Friday July 8, 2016  
6:00 AM Monday July 11 to 6:00 PM Thursday July 14, 2016

(b) Gear: Gillnets. 7-inch minimum mesh size.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

(2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: Immediately until 11:59 PM Sunday July 31, 2016

(b) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect, except Spring Creek.

(3) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Wind River, Drano Lake, Icicle Creek, Yakima River and Klickitat River.

(c) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line. Gill nets may only be used in Drano Lake.

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: Immediately until 11:59 PM July 31, 2016. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

(6) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. July 5, 2016:

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. (16-142)

**WSR 16-14-062**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-167—Filed June 30, 2016, 2:23 p.m., effective June 30, 2016,  
 2:23 p.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 220-33-01000N; 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: Sets additional select area commercial seasons to access local spring Chinook. 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 and June 30, 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: June 30, 2016.

James B. Scott, Jr.  
 for J. W. Unsworth  
 Director

**NEW SECTION**

**WAC 220-33-01000P 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) Tongue Point/South Channel**

(a) **Dates:** 7 PM June 30 to 7 AM July 1 and 7 PM July 5 to 7 AM July 6, 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) **Allowable Possession:** Salmon and shad

(e) **Miscellaneous:** Permanent transportation rules in effect.

**(2) Blind Slough/Knappa Slough Select Area**

(a) **Dates:** 7 PM June 30 to 7 AM July 1 and 7 PM July 5 to 7 AM July 6, 2016.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. 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).

(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.

(d) **Allowable Possession:** Salmon and shad

(e) **Miscellaneous:** Permanent transportation rules in effect.

**(3) 24-hour quick reporting** is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

**(4) 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)).

**(5) 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 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 220-33-01000N Columbia River seasons below Bonneville. (16-151)

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-33-01000N is probably intended to be WAC 220-33-01000M.

**WSR 16-14-080  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 16-168—Filed July 1, 2016, 3:18 p.m., effective July 1, 2016, 3:18 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: July 1, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-310-19000H Exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190 effective July 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 County): Closed waters from the Highway 101 Bridge to the electric weir at Quilcene National Fish Hatchery.

(2) Clear Creek (Snohomish County) (Sauk River tributary): Open above Asbestos Creek Falls.



(3) Fox Creek (Pierce County) (Puyallup River tributary): Open upstream from Fiske Road East.

(4) Kendall Creek (Whatcom County) (N.F. Nooksack tributary): Open above the hatchery grounds. Selective gear rule is rescinded.

(5) Kennedy Creek (Mason County): From the Highway 101 Bridge to 400 feet below the falls, selective gear rules apply; trout catch and release only.

(6) McAllister Creek (Thurston County): Release coho.

(7) Nisqually River (Pierce County): From the mouth to Military Tank Crossing Bridge: Release coho.

(8) Nisqually River (Pierce County): From Alder Reservoir upstream including all tributaries to mainstem and reservoir: Open: Selective gear rules apply; Trout minimum length 14 inches.

(9) Samish River (Skagit County): From the I-5 Bridge to the Old Highway 99 Bridge: Closed from the Old Highway 99 Bridge to the WDFW salmon rack; Open the first Saturday in June through August 30: Selective gear rules apply; Release all fish except mandatory hatchery steelhead retention.

(10) Samish River (Skagit County): From the WDFW hatchery rack to Hickson Bridge upstream: Open: Selective gear rules apply; Release all fish except mandatory hatchery steelhead retention.

(11) Samish River (Skagit County): From Hickson Bridge upstream: Open: Selective gear rules apply; Mandatory hatchery steelhead retention.

(12) Sauk River (Skagit/Snohomish counties): From the mouth to Darrington Bridge: Open: It is unlawful to fish from a floating device equipped with an internal combustion motor.

(13) Sauk River (Skagit/Snohomish counties): From Darrington Bridge to the mouth of the White Chuck River: Open.

(14) Sauk River (Skagit/Snohomish counties): From the Whitechuck River to the headwaters, including the North Fork from mouth to North Fork Falls and the South Fork from mouth to Elliot Creek: Open.

(15) Skagit River (Skagit County): From Gilligan Creek to The Dalles Bridge at Concrete: night closure in effect.

(16) Skokomish River (Mason County): From mouth to Bonneville Power lines (approx. 47°18.88N, 123°11.26W): Closed.

(17) Skykomish River (Snohomish County): For the entire mainstem, trout minimum length 14 inches, except anglers may retain Dolly Varden/Bull trout with a minimum length of twenty inches as part of the trout limit.

(18) Skykomish River (Snohomish County): From the mouth to the mouth of Wallace River, salmon fishing through July 31 with a 4 hatchery Chinook only limit; no more than two may be adults.

**WSR 16-14-093**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-170—Filed July 5, 2016, 11:31 a.m., effective July 5, 2016, 11:31 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend freshwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500M; and amending WAC 220-310-195.

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: The Clear Lake Dam spillway has been closed to all fishing for many years to protect Endangered Species Act-listed bull trout that congregate in the pool at the base of the spillway trying to migrate upstream into Clear Lake. This closure was inadvertently omitted from the "Stream Strategy" rule changes adopted in July 2015. As currently written in the 2016-17 fishing pamphlet, anglers may interpret the rules to allow fishing in the spillway channel up to the USFS Road 740 Bridge that crosses the spillway channel, which was not the intent of the Washington department of fish and wildlife. This emergency rule is needed for clarification for angling in the spillway channel. 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: July 5, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-310-19500M Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective immediately through August 15, 2016, the following waters are closed to fishing:

**Clear Lake (Yakima Co.)** Dam spillway channel from Clear Lake downstream to the confluence with the mainstem North Fork Tieton River.

Date Adopted: July 5, 2016.

Ron Warren  
for J. W. Unsworth  
Director

### REPEALER

The following section of the Washington Administrative Code is repealed effective August 16, 2016:

WAC 220-310-19500M Exceptions to statewide rules—  
Columbia River.

**WSR 16-14-103**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-171—Filed July 5, 2016, 4:47 p.m., effective July 5, 2016, 4:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial salmon troll fishing rules.

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

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

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

Reasons for this Finding: Harvestable quota of salmon for the troll fleet exists in Areas 1, 2, 3, and 4, and sufficient harvest remains to allow for an eighty Chinook possession limit in Areas 1 and 2 and a sixty Chinook possession limit in Areas 3 and 4. 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 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 220-24-04000J 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 deliver or 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 4 open:

July 8 through July 14;

July 22 through July 28;

August 1 through August 7;

August 15 through August 23, 2016.

(2) Landing and possession limits:

(a) 80 Chinook per vessel per entire open period for the entire Catch Areas 1 and 2.

(b) 60 Chinook per vessel per entire open period for the entire Catch Areas 3 and 4.

(c) No vessel may possess, land or deliver more than 80 Chinook during any open period.

(3) Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed. Grays Harbor Control Zone is closed beginning August 8.

(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, and it is unlawful to possess chum salmon north of Cape Alava, Washington in August.

(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 to Ports within salmon management catch areas 1, 2, 3 or 4, including the Ports of Chinook and Ilwaco. Fishers must complete a Washington State Fish Receiving ticket 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.Beehley@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.Beehley@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.

(a) For the purposes of this section, the term "deliver" means arrival at a port.

(b) For the purposes of this section, the term "land" means the transfer of fish from a fishing vessel or the initiation of a fish receiving ticket to include fisher's signature, species, number of fish and pounds of fish.

(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 Grays Harbor Control Zone is defined as the area within and east of a line drawn from the Westport Lighthouse (46°53'18" N. lat., 124°07'01" W. long.) to Buoy #2 (46°52'42" N. lat., 124°12'42" W. long.) to Buoy #3 (46°55'00" N. lat., 124°14'48" W. long.) to the Grays Harbor north jetty (46°55'36" N. lat., 124°10'51" W. long.).

(10) 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.

(11) 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.

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

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000I All-citizen commercial salmon troll.  
(16-154)

### **WSR 16-14-104 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 16-172—Filed July 5, 2016, 5:03 p.m., effective July 5, 2016, 5:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Baker Lake.

Citation of Existing Rules Affected by this Order: 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: Baker Lake sockeye have returned in greater numbers, earlier in the season, than anticipated. Therefore the fishery is being opened prior to the pre-season set date of July 10 providing additional angling opportunity.

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: July 5, 2016.

Ron Warren  
for J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-310-19000I Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-310-190, effective immediately until fur-

ther notice, it is permissible to fish for sockeye salmon in waters of Baker Lake upstream of the log barrier in front of upper Baker Dam to the mouth of the Baker River. Daily limit of 5 adult sockeye greater than 18 inches in length.