WSR 16-22-040

EMERGENCY RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 27, 2016, 12:16 p.m., effective October 27, 2016]

Effective Date of Rule: October 27, 2016.

Purpose: The department is amending these rules to implement the nursing facility methodology changes from SHB 1274, found in chapter 2, Laws of 2015 2nd sp. sess.

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 currently under development with stakeholder involvement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 22, Repealed 24.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 22, Repealed 24.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: October 20, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-010 Definitions. Unless the context indicates otherwise, the following definitions apply in this chapter.

"Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

(1) Decision making;

(2) Planning;

(3) Evaluating performance;

(4) Controlling resources and operations; and

(5) External financial reporting to investors, creditors, regulatory authorities, and the public.

"Accrual method of accounting" is a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

"Administration and management" means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

"Allowable costs" are documented costs that are necessary, ordinary, reasonable, and related to the care of medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

((~~**"Allowable depreciation costs"** are depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in WAC 388-96-552.~~))

"Assignment of contract" means:

(1) A new nursing facility licensee has elected to care for medicaid residents;

(2) The department finds no good cause to object to continuing the medicaid contract at the facility; and

(3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

"Bad debts" are amounts considered to be uncollectible from accounts and notes receivable.

"Banked beds" are beds removed from service under chapter 246-310 WAC.

"Beneficial owner" is:

(1) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares one or more of the following:

(a) Voting power which includes the power to vote, or to direct the voting of such ownership interest; ((~~and/~~))or

(b) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(2) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose of effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(3) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership

interest within sixty days, including but not limited to any right to acquire:

(a) Through the exercise of any option, warrant, or right;

(b) Through the conversation of an ownership interest;

(c) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(d) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement; except that, any person who acquires an ownership interest or power specified in (3)(a), (b), or (c) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(4) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(a) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(b) The pledgee agreement, prior to default, does not grant to the pledgee:

(i) The power to vote or to direct the vote of the pledged ownership interest; or

(ii) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

((~~**"Capitalized lease"** means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.~~))

"Building" means the basic structure or shell of a facility and additions thereto. All allowable sections of a building are enclosed on all sides with a roof and are permanent.

"Capital" means the component of the rate that uses a fair market rental system to set a price per bed.

"Cash method of accounting" means a method of accounting in which revenues are recorded when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

"Change of ownership" means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

(1) Events which constitute a change of ownership include, but are not limited to, the following:

(a) Changing the form of legal organization of the contractor, e.g., a sole proprietor forms a partnership or corporation;

(b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether ownership of some or all of the real property and/or personal property assets of the facility are also transferred;

(c) Dissolving of a partnership;

(d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;

(e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction;

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

(a) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

"Charity allowance" means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

"Component rate allocation(s)" means the initial component rate allocation(s) of the rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "component rate allocation(s)," it means the initial component rate allocation(s) of the rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Contract" means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

"Cost report" means all schedules of a nursing facility's cost report submitted according to the department's instructions.

"Courtesy allowances" are reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

"Department" means department of social and health services and its employees.

"Direct care supplies (DCS)" are those supplies:

(1) Used by staff providing direct care to residents;

(2) Consumed during a single accounting period; and

(3) Expensed in that accounting period. Supplies excluded from DCS include but are not limited to the following:

(1) medical equipment (such as IV poles);

(2) Items covered by medicaid fee-for-service system; and

(3) Administrative supplies used by direct care staff (such as pencils, pens, paper, office supplies, etc).

"Donated asset" means an asset the contractor acquired without making any payment for the asset either in cash, property, or services. An asset is not a donated asset if the contractor:

(1) Made even a nominal payment in acquiring the asset; or

(2) Used donated funds to purchase the asset.

((~~**"Essential community provider"** means a facility that is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.~~))

"Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital defined as current assets minus current liabilities.

"Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, **"fiscal year"** may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

"Fixed equipment" means attachments to buildings including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. Generally, fixed equipment is affixed to the building and not subject to transer.

"Gain on sale" means the actual total sales price of all tangible and intangible nursing facility assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

"Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

"Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

"Intangible asset" is an asset that lacks physical substance but possesses economic value.

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

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

((~~**"Large nonessential community providers"** are not essential community providers and have more than sixty licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.~~))

"Leasehold improvements" are betterments and additions made by the lessee to the leased property that become the property of the lessor after the expiration of the lease.

"Movable equipment" includes, but is not limited to, beds, wheelchairs, desks, and X-ray machines. The general characteristics of movable equipment are:

(1) Capable of being moved as distinguished from fixed equipment;

(2) A unit cost sufficient to justify ledger control;

(3) Sufficient size and identity to make control feasible by means of identification tags; and

(4) A minimum life of greater than one year.

"Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

"Nonadministrative wages and benefits" are wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

"Nonallowable costs" are the same as **"unallowable costs."**

"Nonrestricted funds" are funds that are not restricted to a specific use by the donor, e.g., general operating funds.

"Nursing facility occupancy percentage" is a percentage determined by multiplying the number of calendar days for the cost report period by the number of licensed beds, regardless of how many beds are set up, in use, or banked under chapter 70.38 RCW, for the same cost report period. Then, the product is divided into the nursing facility's actual resident days for the same cost report period.

"Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

"Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

"Per diem (per patient day or per resident day) costs" means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

"Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

"Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

"Recipient" means a medicaid recipient.

"Related care" means only those services that are directly related to providing direct care to nursing facility residents including but not limited to:

(1) The director of nursing services;

(2) Nursing direction and supervision;

(3) Activities and social services programs;

(4) Medical and medical records specialists.

(5) Consultation provided by:

(a) Medical directors; and

(b) Pharmacists.

"Relative" includes:

(1) Spouse;

(2) Natural parent, child, or sibling;

(3) Adopted child ((~~or~~)), adoptive parent, or adoptive sibling;

(4) Stepparent, stepchild, stepbrother, stepsister;

(5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;

(6) Grandparent or grandchild; and

(7) Uncle, aunt, nephew, niece, or cousin.

"Related organization" means an entity that is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity or person is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity or person has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable and exercised.

"Renovations" means the cost of the building, building improvements, leasehold improvements, and fixed equipment used to calculate a facility's age. In order to be used to calculate a facility's age, the cost of renovations in a calendar year must be $2,000 or greater per licensed bed.

"Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

((~~**"Small nonessential community providers"** are not essential community providers and have sixty or fewer licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.~~))

"Start up costs" are the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start up costs include:

(1) Administrative and nursing salaries;

(2) Utility costs;

(3) Taxes;

(4) Insurance;

(5) Repairs and maintenance; and

(6) Training costs.

Start up costs do not include expenditures for capital assets.

"Total rate allocation" means the initial rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Unallowable costs" are costs that do not meet every test of an allowable cost.

"Uniform chart of accounts" are account titles identified by code numbers established by the department for contractors to use in reporting costs.

"Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

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

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-022 Due dates for cost reports. (1) The contractor ((~~shall~~)) must submit annually a complete report of costs and financial conditions of the contractor prepared and presented in a standardized manner and in accordance with this chapter and chapter 74.46 RCW.

(2) The department will review the contractor's costs and financial conditions in accordance with the methodology effective at the time the contractor incurred the costs.

(3) Not later than March 31st of each year, each contractor ((~~shall~~)) must submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(((~~(3)~~))) (4) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor ((~~shall~~)) must submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

(((~~(4)~~))) (5) If the cost report is not properly completed or if it is not received by the due date established in subsection (((~~(2)~~))) (3) or (((~~(3)~~))) (4) of this section, all or part of any payments due under the contract may be withheld by the department until such time as required cost report is properly completed and received.

(((~~(5)~~))) (6) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date established in subsection (((~~(2)~~))) (3) or (((~~(3)~~))) (4) of this section.

AMENDATORY SECTION (Amending WSR 89-01-095, filed 12/21/88)

WAC 388-96-107 Requests for extensions. (1) A contractor may request in writing an extension for submitting cost reports. Contractor requests ((~~shall~~)) must:

(a) Be addressed to the manager, ((~~residential~~)) nursing facility rates program;

(b) State the circumstances prohibiting compliance with the report due date; and

(c) Be received by the department at least ten days prior to the due date of the report.

(2) The department may grant two extensions of up to thirty days each, only if the circumstances, stated clearly, indicate the due date cannot be met and the following conditions are present:

(a) The circumstances were not foreseeable by the provider; and

(b) The circumstances were not avoidable by advance planning.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions. (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:

(a) Allowable costs for each year for each medicaid nursing facility are accurately reported;

(b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;

(c) The contractor's revenues, expenditures, ((~~and costs of the building, land, land improvements, building improvements, and movable and fixed equipment~~)) building square footage, building improvements, leasehold improvements, fixed equipment, and age are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;

(d) The contractor is in compliance with the direct care staffing requirements found in this chapter and in chapter 74.42 RCW;

(e) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and

(((~~(e)~~))) (f) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.

(2) The department ((~~shall~~)) must examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department ((~~shall~~)) must determine the scope of the examination.

(3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care((~~, therapy care, and support services~~)) under WAC 388-96-211 (3) and (4) or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments ((~~shall~~)) must be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments ((~~shall be~~)) are subject to review under WAC 388-96-901 and 388-96-904.

(4) Audits of resident trust funds and receivables ((~~shall~~)) must be reported separately and in accordance with the provisions of this chapter and chapter 74.46 RCW.

(5) The contractor ((~~shall~~)) must:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) ((~~Prepare a reconciliation of the cost report with:~~

~~(i) Applicable federal income and federal and state payroll tax returns; and~~

~~(ii) The records for the period covered by the cost report.~~

~~(c)~~)) Make available to the department staff an individual or individuals to respond to questions and requests for information from department staff. The designated individual or individuals ((~~shall~~)) must have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information; and

(c) Prepare a reconciliation of the cost report with:

(i) Applicable federal income and federal and state payroll tax returns; and

(ii) The records for the period covered by the cost report.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records ((~~shall~~)) must be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department ((~~shall~~)) must notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-208 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds. (1) The methodology in subsections (2) through (6) of this section is effective for services provided on or before June 30, 2016.

(2) The department ((~~shall~~)) must reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(((~~(2)~~))) (3) The contractor ((~~shall~~)) must make any payment owed the department as determined by reconciliation and/or settlement at the lower of cost or rate in direct care, therapy care, and support services component rate allocations within sixty days after the department notifies the contractor of the amount owed.

(((~~(3)~~))) (4) The department ((~~shall~~)) must pay the contractor within sixty days after it notifies the contractor of an underpayment.

(((~~(4)~~))) (5) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest ((~~shall~~)) must be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(((~~(5)~~))) (6) The department ((~~shall~~)) may withhold funds from the contractor's payment for services and ((~~shall~~)) may take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor.

(7) The methodology in subsections (8) through (12) of this section is effective for services provided on or after July 1, 2016.

(8) The department must reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(9) The contractor must make any payment owed the department as determined by either reconciliation, settlement, or both at the lower of cost or rate in the direct care component rate allocation within sixty days after the department notifies the contractor of the amount owed.

(10) The department must pay the contractor within sixty days after it notifies the contractor of an underpayment.

(11) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest must be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(12) The department may withhold funds from the contractor's payment for services and may take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination must delay recovery from the contractor or payment to the contractor.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-211 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates. (1) The methodology in subsections (2) through (6) of this section is effective for services provided on or before June 30, 2016.

(2) Contractors ((~~shall~~)) must submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department ((~~shall~~)) must accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(((~~(2)~~))) (3) Contractors ((~~shall not be~~)) are not required to refund payments made in the operations, variable return, property, and financing allowance component rates in excess of the adjusted costs of providing services corresponding to these components.

(((~~(3)~~))) (4) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the examination and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed one percent of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection (((~~(4)~~))) (5) of this section. Facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" ((~~shall~~)) must be defined by federal survey regulations.

(((~~(4)~~))) (5) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, ((~~shall~~)) must be done separately for each rate component, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center ((~~shall~~)) must be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor-retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection (((~~(3)~~))) (4) of this section, ((~~shall~~)) must be calculated and applied after all shifting is completed.

(((~~(5)~~))) (6) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW ((~~shall~~)) represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

(7) The methodology in subsections (8) through (11) of this section is effective for services provided on or after July 1, 2016.

(8) Contractors must submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department must accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(9) Contractors are not required to refund payments made in the indirect care, capital, and quality enhancement component rates in excess of the adjusted costs of providing services corresponding to these components.

(10) The facility will return to the department any overpayment amounts in the direct care rate component that the department identifies following the examination and settlement procedures as described in this chapter. The contractor may retain any overpayment that does not exceed one percent of the facility's direct care component rate, however facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care component rate. The terms "not in substantial compliance" and "substandard quality of care" must be defined by federal survey regulations.

(11) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-218 Proposed, preliminary, and final settlements. (1) The methodology in subsections (2) through (14) of this section is effective for services provided on or before June 30, 2016.

(2) For each component rate, the department ((~~shall~~)) must calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter and chapter 74.46 RCW.

(((~~2~~))) (3) As part of the cost report, the proposed settlement report is due in accordance with WAC 388-96-022. In the proposed preliminary settlement report, a contractor ((~~shall~~)) must compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor ((~~shall~~)) must take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

(((~~a~~))) (4) The department will((~~:~~

(~~i~~))) review the proposed preliminary settlement report for accuracy((~~;~~)) and

(((~~ii~~))) accept or reject the ((~~proposal of the~~)) contractor's proposal. If accepted, the proposed preliminary settlement report ((~~shall~~)) must become the preliminary settlement report. If rejected, the department ((~~shall~~)) must issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(((~~b~~))) (5) When the department receives the proposed preliminary settlement report((~~:~~

(~~i~~))) by the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date((~~; or~~

(~~ii) A~~)) When the department receives the proposed preliminary settlement report after the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received.

(((~~c~~))) In its discretion, the department may designate a date later than the dates specified in this subsection (((~~(2)(b)(i) and (ii) of this section~~))) to issue preliminary settlements.

(((~~d~~))) (6) A contractor shall have twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ((~~shall~~)) must not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement ((~~shall~~)) must be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and ((~~shall~~)) must not encompass rate or audit issues.

(((~~3~~))) (7) The department ((~~shall~~)) must issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

(((~~a~~))) (8) The department ((~~shall~~)) must prepare a final settlement by component payment rate allocation and ((~~shall~~)) must fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department ((~~shall~~)) must take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department ((~~shall~~)) must compare:

(((~~i~~))) (a) The payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's;

(((~~ii~~))) (b) Audited allowable costs for the reporting period; or

(((~~iii~~))) (c) Reported costs for the nonaudited reporting period.

(((~~b~~))) (9) A contractor ((~~shall have~~)) has twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ((~~shall~~)) must not review a final settlement report. Any administrative review of a final settlement ((~~shall~~)) must be

limited to calculation of the settlement, the application of settlement principles and rules, or both, and ((~~shall~~)) must not encompass rate or audit issues.

(((~~c~~))) (10) The department ((~~shall~~)) may reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

(((~~(4)(a)~~))) (11) In computing a preliminary or final settlement, a contractor must comply with the requirements of WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

(((~~(b)~~))) (12) The nursing facility contractor ((~~shall~~)) must refund all amounts due the department within sixty days after the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department ((~~shall~~)) must deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt ((~~shall~~)) must be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance will accrue at one percent per month.

(((~~(c)~~))) (13) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

(((~~(5)~~))) (14) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care and support services component rates under authority of WAC 388-96-211, the following rules ((~~shall~~)) apply:

(a) Federal or state survey officials ((~~shall~~)) must determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status ((~~shall~~)) must be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture ((~~shall~~)) must occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture ((~~shall~~)) must occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

(15) The methodology in subsections (16) through (28) of this section is effective for services provided on or after July 1, 2016.

(16) For each component rate, the department must calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter and chapter 74.46 RCW.

(17) As part of the cost report, the proposed settlement report is due in accordance with WAC 388-96-022. In the proposed preliminary settlement report, a contractor must compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor must take into account all retained savings, and upper limits to rates on a cost center basis.

(18) The department will review the proposed preliminary settlement report for accuracy and accept or reject the contractor's proposal. If accepted, the proposed preliminary settlement report must become the preliminary settlement report. If rejected, the department must issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(19) When the department receives the proposed preliminary settlement report by the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date. When the department receives the proposed preliminary settlement report after the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received. In its discretion, the department may designate a date later than the dates specified in this subsection to issue preliminary settlements.

(20) A contractor has twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department must not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement must be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and must not encompass rate or audit issues.

(21) The department must issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

(22) The department must prepare a final settlement by component payment rate allocation and must fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department must take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department must compare:

(a) The payment rates it paid the contractor for the facility in question during the report period, weighted by the num-

ber of allowable resident days reported for the period each rate was in effect to the contractor's;

(b) Audited allowable costs for the reporting period; or

(c) Reported costs for the nonaudited reporting period.

(23) A contractor has twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department must not review a final settlement report. Any administrative review of a final settlement must be limited to calculation of the settlement, the application of settlement principles and rules, or both, and must not encompass rate or audit issues.

(24) The department may reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

(25) In computing a preliminary or final settlement, a contractor must comply with the requirements of WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

(26) The nursing facility contractor must refund all amounts due the department within sixty days after the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department must deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt must be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance will accrue at one percent per month.

(27) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

(28) In determining whether a facility has forfeited unused rate funds in its direct care component rate under authority of WAC 388-96-211, the following rules apply:

(a) Federal or state survey officials must determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status must be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture must occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture must occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-505 Offset of miscellaneous revenues. (1) The methodology in subsections (2) through (5) of this section is effective for services provided on or before June 30, 2016.

(2) The contractor ((~~shall~~)) must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits (e.g., purchase discounts, refunds of allowable costs or rebates) other than through the contractor's normal billing for care services; except, the department ((~~shall~~)) must not deduct from the allowable costs of a nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

(((~~2~~))) (3) The contractor ((~~shall~~)) must reduce allowable costs for hold-bed revenue in the support services, operations and property rate components only. In the support services rate component, the amount of reduction ((~~shall~~)) must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days. In the operations rate component, the amount of the reduction shall be determined by dividing a facility's allowable operation costs by total adjusted patient days and multiplying the result by total hold-room days. In the property rate component, the amount of reduction ((~~shall~~)) must be determined by dividing allowable property costs by the total adjusted patient days and multiplying the result by total hold-room days.

(((~~3~~))) (4) Where goods or services are sold, the amount of the reduction ((~~shall be~~)) is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it ((~~shall be~~)) is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs or rebates are received, the amount of the reduction ((~~shall be~~)) is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs and rebates, including industrial insurance rebates, ((~~shall~~)) must be offset against allowable costs in the year the contractor actually receives the benefits.

(((~~4~~))) (5) Only allowable costs ((~~shall~~)) may be recovered under this section. Costs allocable to activities or services not included in nursing facility services, e.g., costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services, are nonallowable costs.

(6) The methodology in subsections (7) through (10) of this section is effective for services provided on or after July 1, 2016.

(7) The contractor must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits (e.g., purchase discounts, refunds of allowable costs or rebates) other than through the contractor's normal billing for care services; except, the department must not deduct from the allowable costs of a

nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

(8) The contractor must reduce allowable costs for hold-bed revenue in the indirect care rate component only. The amount of reduction must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days.

(9) Where goods or services are sold, the amount of the reduction is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs or rebates are received, the amount of the reduction is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs and rebates, including industrial insurance rebates, must be offset against allowable costs in the year the contractor actually receives the benefits.

(10) Only allowable costs may be recovered under this section. Costs allocable to activities or services not included in nursing facility services, e.g., costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services, are nonallowable costs.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-525 Education and training. (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs. Cost of training for which the nursing facility is reimbursed outside the payment rate is an unallowable cost.

(2) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. Expenses of training programs for other nonemployees will not be allowable costs.

(3) Expenses for travel, lodging, and meals associated with education and training ((~~in the states of Idaho, Oregon, and Washington and the province of British Columbia~~)) are allowable if the expenses meet the requirements of this chapter.

(4) ((~~Except travel, lodging, and meal expenses, education and training expenses at sites outside of the states of Idaho, Oregon, and Washington and the province of British Columbia are allowable costs if the expenses meet the requirements of this chapter.~~

~~(5)~~)) Costs designated by this section as allowable ((~~shall be~~)) are subject to any applicable cost center limit established by this chapter.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-534 Joint cost allocation disclosure (JCAD). (1) The contractor ((~~shall~~)) must disclose to the department:

(a) The nature and purpose of all costs representing allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) The contractor ((~~shall~~)) must demonstrate in such disclosure:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) ((~~The contractor shall make such disclosure not later than September 30th for the following year; except,~~)) Upon receipt of a disclosure, the department must review the joint cost allocation disclosure (JCAD) and either approve or deny the disclosure. Once a JCAD is submitted and approvied, it is valid unil changed or amended.

(4) A new contractor ((~~shall~~)) must submit the first year's disclosure together with the submissions required by WAC 388-96-026.

(5) Within this section, the meaning of the:

(a) "Effective date" is the date the department will recognize allocation per an approved JCAD; and

(b) "Implementation date" is the date the facility will begin or began incurring joint facility costs or the allocation of joint costs has changed.

(((~~(4) The department shall approve or reject the JCAD not later than December 31 of each year for all JCADs received by September 30th. The effective date of an approved JCAD received:~~

~~(a) By September 30th is January 1st.~~

~~(b) After September 30th shall be ninety days from the date the JCAD was received by the department.~~

~~(5)~~)) (6) The contractor ((~~shall~~)) must submit to the department for approval an amendment or revision to an approved JCAD at least thirty days prior to the implementation date of the amendment or revision. For amendments or revisions received less than thirty days before the implementation date, the effective date of approval will be thirty days from the date the JCAD is received by the department.

(((~~(6)~~))) (7) When a contractor, who is not currently incurring joint facility costs, begins to incur joint facility costs during the calendar year, the contractor ((~~shall~~)) must provide the information required in subsections (1) and (2) of this section at least ninety days prior to the implementation date. If the JCAD is not received ninety days before the implementation date, the effective date of the approval will be ninety days from the date the JCAD is received by the department.

(((~~(7)~~))) (8) Joint facility costs not disclosed, allocated, and reported in conformity with this section are unallowable costs. Joint facility costs incurred before the effective dates ((~~of subsections (4), (5), and (6) of this section~~)) are unallowable. Costs disclosed, allocated, and reported in conformity with a department-approved JCAD must undergo review and be determined allowable costs for the purposes of rate setting and audit.

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

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-542 Home office or central office. (1) ((~~When calculating the median lid on home and central office~~

~~costs and determining which home and central office costs to test against the median lid,~~)) The department will include all allowable, reported home/central office costs including all costs that are ((~~nonduplicative,~~)) documented, ordinary, reasonable, necessary, and related to the provision of medical and personal care services to authorized patients.

(2)(((~~(a)~~))) Assets used in the provision of services by or to a nursing facility, but not located on the premises of the nursing facility, ((~~shall~~)) must not be included in ((~~net invested funds or in~~)) the calculation of ((~~property payment~~)) the capital component for the nursing facility except as permissible under WAC 388-96-915.

(((~~(b)~~))) (3) The nursing facility may allocate depreciation, interest expense, and operating lease expense for the home office, central office, and other off-premises assets to the cost of the services provided to or by the nursing facility on a reasonable statistical basis approved by the department.

(((~~(c)~~))) (4) The allocated costs ((~~of (b) of this~~)) in subsection (3) of this section may be included in the cost of services in such cost centers where such services and related costs are appropriately reported.

(((~~(3)~~))) (5) Home office or central office costs must be allocated and reported in conformity with the department-approved JCAD methodology as required by WAC 388-96-534.

(((~~(4) Home office or central office costs are subject to the limitation specified in WAC 388-96-585.~~)))

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-556 Initial cost of operation. (1) The necessary ((~~and~~)), ordinary, and reasonable one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility ((~~shall be~~)) are allowable costs. These expenses ((~~shall be~~)) are limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs ((~~shall~~)) include, but ((~~not be~~)) are not limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training((~~; except, that they shall exclude~~)). Start-up costs do not include expenditures for capital assets. ((~~These~~)) Start-up costs ((~~will be~~)) are allowable in the ((~~operations~~)) indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the ((~~operations~~)) indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(((~~(4) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care and shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.~~)))

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-560 Land, improvements((~~—Depreciation.~~ ~~Land is not depreciable. The cost of~~)) Land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading ((~~of a nondepreciable nature~~)), and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-580 Operating leases of office equipment. (1) Rental costs of office equipment under arm's-length operating leases ((~~shall be~~)) are allowable to the extent such costs are necessary, ordinary, and related to patient care.

(2) The department ((~~shall~~)) must pay office equipment rental costs in the ((~~operations~~)) indirect component rate allocation. Office equipment may include items typically used in administrative or clerical functions such as telephones, copy machines, desks and chairs, calculators and adding machines, file cabinets, typewriters, and computers.

(((~~(3) The department shall not pay for depreciation of leased office equipment.~~)))

AMENDATORY SECTION (Amending WSR 15-09-025, filed 4/7/15, effective 5/8/15)

WAC 388-96-585 Unallowable costs. (1) Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) Unallowable costs include but are not limited to the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW;

(c) Costs associated with a capital expenditure ((~~subject to section 1122 approval (part 100, Title 42 C.F.R.)~~)) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable only when:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts ((~~shall~~)) consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of non-Title XIX recipients;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future((~~.~~));

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions((~~, excluding dues,~~)) to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations. This does not include membership dues;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) ((~~Televisions acquired prior to July 1, 2001;~~

~~(v)~~)) Federal, state, and other income taxes;

(((~~w~~))) (v) Costs of special care services except where authorized by the department;

(((~~x~~))) (w) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

(((~~y~~))) (x) Expenses of profit-sharing plans;

(((~~z~~))) (y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(((~~aa~~))) (z) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners;

(((~~bb~~))) (aa) All expenses of maintaining professional licenses or membership in professional organizations;

(((~~cc~~))) (bb) Costs related to agreements not to compete;

(((~~dd~~))) (cc) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

(((~~ee~~))) (dd) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(((~~ff~~))) (ee) Legal and consultant fees in connection with a fair hearing against the department when the department's Board of Appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees will be unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the Board of Appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred;

(((~~gg~~))) (ff) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department;

(((~~hh~~))) (gg) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

(((~~ii~~))) (hh) All rental or lease costs other than those provided for in WAC 388-96-580;

(((~~jj~~))) (ii) Postsurvey charges incurred by the facility ((~~as a result of subsequent inspections~~)) under ((~~RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year~~)) RCW 18.51.060;

(((~~kk~~))) (jj) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(((~~ll~~))) (kk) For all partial or whole rate periods after July 17, 1984, costs of ((~~land and~~)) depreciable assets that cannot

be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(((~~(mm)~~))) (ll) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(((~~(nn)~~))) (mm) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(((~~(oo)~~))) (nn) Travel expenses that are not necessary, ordinary, and related to resident care;

(((~~(pp)~~))) (oo) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(((~~(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;~~

~~(rr)~~))) (pp) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(((~~(ss)~~))) (qq) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(((~~(tt)~~))) (rr) Costs and fees associated with filing a petition for bankruptcy;

(((~~(uu)~~))) (ss) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(((~~(vv)~~))) (tt) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(((~~(ww) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;~~

~~(xx)~~))) (uu) Tax expenses that a nursing facility has never incurred;

(((~~(yy)~~))) (vv) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;

(((~~(zz)~~))) (ww) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department ((~~shall be~~)) are unallowable; and

(((~~(aaa)~~))) (xx) Increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment)((~~.~~));

(yy) Costs related to a nursing assistant certified training program;

(zz) Effective July 1, 2012, payments made relating to the safety net assessment; and

(aaa) Building renovations, building improvements, or leasehold improvements that require preapproval from the department of health and were not preapproved.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds ((~~by means other than "banking" pursuant to chapter 70.38 RCW~~)). (1) For the purpose of minimum occupancy capital calculation banked beds are included in the number of licensed beds. The department will recalculate a contractor's prospective medicaid payment rate when the contractor permanently reduces the number of its licensed beds and:

(a) Provides a copy of the new bed license, if issued, documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any, and the letter from the department of health (DOH) confirming the number of beds relinquished and the date they were relinquished; and

(b) Requests a rate revision.

(2) The department will revise medicaid rates in accordance with this chapter and chapter 74.46 RCW using the facility's decreased licensed bed capacity to calculate minimum occupancy for rate setting.

(3)(((~~(a)~~))) When the new license is effective the first day of the month or when the DOH letter confirms the beds were relinquished the first day of the month, the revised prospective payment rate will be effective the first day of the month((~~; or~~)).

(((~~(b)~~))) (4) When the new license is effective after the first day of the month or when the DOH letter confirms the beds were relinquished after the first day of the month, the revised prospective payment rate will be effective the first day of the month following the month the new license was effective or the DOH letter confirmed beds were relinquished after the first day of the month.

(((~~(4)(a)~~))) (5) The department will recalculate a nursing facility's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the new number of licensed beds including banked bed times the appropriate minimum occupancy pursuant to this chapter and chapter 74.46 RCW times the number of calendar days in the cost report period on which the rate being recalculated is based.

(((~~(b) For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:~~

~~(i) Essential community providers - Eighty-five percent.~~

~~(ii) Small nonessential community providers - Ninety percent.~~

~~(iii) Large nonessential community providers - Ninety-two percent.~~

~~(c) For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty-five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.~~

~~(5)~~)) (6) The revised prospective medicaid payment rate will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums, unless otherwise specified in this section.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-710 Prospective payment rate for new contractors. (1) The department will establish an initial prospective medicaid payment rate for a new contractor as defined under WAC 388-96-026 within sixty days following the new contractor's application and approval for a license to operate the facility under chapter 18.51 RCW. The rate will take effect as of the effective date of the contract, except as provided in this section, and will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth.

(2) ((~~Except for quarterly updates per RCW 74.46.501 (7)(c), the rate established for a new contractor as defined in WAC 388-96-026 (1)(a) or (b) will remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate thereafter will be cost rebased only as provided in this chapter and chapter 74.46 RCW.~~

~~(3)~~)) To set the initial prospective medicaid payment rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department will:

(a) Determine ((~~whether the new contractor nursing facility belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency~~)) the direct care rate by multiplying the industry median by the appropriate county wage index by the facility's medicaid average case mix index (MACMI) and if the facility does not have a MACMI, the department will use the facility industry MACMI;

(b) ((~~Select all nursing facilities from the department's records of all the current medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained~~)) Assign the new provider the indirect price based rate;

(c) ((~~Based on the information for the nursing facilities selected under subsection (3)(b) of this section and available to the department on the day the new contractor began participating in the medicaid payment rate system at the facility, rank from the highest to the lowest the component rate allocation in direct care, therapy care, support services, and operations cost centers and based on this ranking:~~

~~(i) Determine the middle of the ranking and then identify the rate immediately above the median for each cost center identified in subsection (3)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center;~~

~~(ii) Set the new contractor's nursing facility component rate allocation for therapy care, support services, and operations at the "selected rate";~~

~~(iii) Set the direct care rate using data from the direct care "selected" rate facility identified in (c) of this subsection as follows:~~

~~(A) The cost per case mix unit will be the rate base allowable case mixed direct care cost per patient day for the direct care "selected" rate facility, whether or not that facility is held harmless under WAC 388-96-728 and 388-96-729, divided by the facility average case mix index per WAC 388-96-741;~~

~~(B) The cost per case mix unit determined under (c)(iii)(A) of this subsection will be multiplied by the medicaid average case mix index per WAC 388-96-740. The product will be the new contractors direct care rate under case mix; and~~

~~(C) The department will not apply RCW 74.46.506 (5)(k) to any direct care rate established under subsection (5)(c) or (f) of this section. When the department establishes a new contractor's direct care rate under subsection (5)(c) or (f) of this section, the new contractor is not eligible to be paid by a "hold harmless" rate as determined under RCW 74.46.506 (5)(k);~~

~~(iv) Set the property rate in accordance with the provisions of this chapter and chapter 74.46 RCW; and~~

~~(v) Set the financing allowance and variable return component rate allocations in accordance with the provisions of this chapter and chapter 74.46 RCW. In computing the variable return component rate allocation, the department will use for direct care, therapy care, support services and operations rate allocations those set pursuant to subsection (3)(c)(i), (ii) and (iii) of this section.~~

~~(d) Any subsequent revisions to the rate component allocations of the sample members will not impact a "selected rate" component allocation of the initial prospective rate established for the new contractor under this subsection.~~

~~(4) For the WAC 388-96-026 (1)(a) or (b) new contractor, the department will establish rate component allocations for:~~

~~(a) Direct care, therapy care, support services and operations based on the "selected rates" as determined under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program;~~

~~(b) Property in accordance with the provisions of this chapter and chapter 74.46 RCW using for the new contractor as defined under:~~

~~(i) WAC 388-96-026 (1)(a), information from the certificate of need; or~~

~~(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received;~~

~~(c) Variable return in accordance with the provisions of this chapter and chapter 74.46 RCW using the "selected~~

~~rates" established under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program; and~~

~~(d) Financing allowance using for the new contractor as defined under:~~

~~(i) WAC 388-96-026 (1)(a), information from the certificate of need; or~~

~~(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component allocation will remain zero until the information is received.~~

~~(5) The initial prospective payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) will be established under subsections (3) and (4) of this section. If the WAC 388-96-026 (1)(a) or (b) contractor's initial rate is set:~~

~~(a) Between July 1, 2000 and June 30, 2001, the department will set the new contractor's rates for:~~

~~(i) July 1, 2001 using the July 1, 2001 rates for direct care, therapy care, support services, and operations of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.~~

~~(A) Property and financing allowance component rates will remain the same as set for the initial rate.~~

~~(B) Variable return component rate using the rates determined under subsection (5)(a)(i) of this section;~~

~~(ii) July 1, 2002 rate using 2001 cost report data; and~~

~~(iii) All July 1 rates following July 1, 2002 in accordance with this chapter and chapter 74.46 RCW;~~

~~(b) Between July 1, 2001, and June 30, 2002, the department will set the new contractor's rates for:~~

~~(i) July 1, 2002 using July 1, 2002 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.~~

~~(A) Property and financing allowance component rates will remain the same as set for the initial rate.~~

~~(B) Variable return component rate using the rates determined under subsection (5)(b)(i) of this section;~~

~~(ii) July 1, 2003 rate by rebasing using 2002 cost report data in accordance with this chapter and chapter 74.46 RCW; and~~

~~(iii) All July 1 rates following July 1, 2003 in accordance with this chapter and chapter 74.46 RCW; or~~

~~(c) Between July 1, 2002, and June 30, 2003, the department will set the contractor's rates for:~~

~~(i) July 1, 2003 using July 1, 2003 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsection (3) and (4) of this section.~~

~~(A) Property and financing allowance component rates will remain the same as set for the initial rate.~~

~~(B) Variable return component rate using the rates determined under subsection (5)(c)(i) of this section;~~

~~(ii) July 1, 2004 by rebasing using 2003 cost report data; and~~

~~(iii) All July 1 rates following July 1, 2004 in accordance with this chapter and chapter 74.46 RCW.~~

~~(6) For the WAC 388-96-026 (1)(c) new contractor, the initial prospective payment rate will be the last prospective payment rate the department paid to the medicaid contractor operating the nursing facility immediately prior to the effective date of the new medicaid contract or assignment. If the WAC 388-96-026 (1)(c) contractor's initial rate is set:~~

~~(a) Between October 1, 1998 and June 30, 1999, the department will not rebase the contractor's rate for:~~

~~(i) July 1, 1999; and~~

~~(ii) July 1, 2000;~~

~~(b) Between July 1, 1999 and June 30, 2000, the department will for:~~

~~(i) July 1, 2000 not rebase the new contractor's rate;~~

~~(ii) July 1, 2001 rebase the new contractor's rate using twelve months of cost report data derived from the old contractor's and the new contractor's 1999 cost reports; and~~

~~(iii) July 1, 2002 not rebase the new contractor's rate; and~~

~~(iv) July 1, 2003 not rebase the new contractor's rate;~~

~~(c) Between July 1, 2000 and June 30, 2001, the department will for:~~

~~(i) July 1, 2001 rebase the new contractor's rate using the old contractor's 1999 twelve month cost report;~~

~~(ii) July 1, 2002 not rebase the new contractor's rate;~~

~~(iii) July 1, 2003 not rebase the new contractor's rate; or~~

~~(d) Between July 1, 2001 and June 30, 2002, the department will for:~~

~~(i) July 1, 2002 not rebase the new contractor's rate;~~

~~(ii) July 1, 2003 not rebase the new contractor's rate; and~~

~~(iii) July 1, 2004 rebase the new contractor's rate using the new contractor's 2002 cost report containing at least six month's data.~~

~~(7)~~)) Determine a capital rate once the facility has submitted square footage and age information and the department accepts it; and

(d) Use the facility's available centers for medicare and medicaid date for the three quarter period currently being measured by the department to determine a quality enhancement rate and if no data is available, the department will not pay a quality enhancement.

(3) A prospective payment rate set for all new contractors will be subject to adjustments for economic trends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW.

(((~~(8) For a WAC 388-96-026 (1)(a), (b) or (c) new contractor, the medicaid case mix index and facility average case mix index will be determined in accordance with this chapter and chapter 74.46 RCW.~~)))

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-713 Rate determination. (1) Each nursing facility's medicaid payment rate for services provided to medical care recipients will be determined, adjusted and updated prospectively as provided in this chapter and in chapter 74.46 RCW. The department will calculate any limit, ((~~lid,~~)) and/or median only when it rebases each nursing facil-

ity's July 1st medicaid payment rate in accordance with chapter 74.46 RCW and this chapter.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Contractors submitting correct and complete cost reports by March 31st, ((~~shall~~)) must be notified of their rates by July 1st, unless circumstances beyond the control of the department interfere.

(4) In setting rates, the department will use the greater of actual days from the cost report period on which the rate is based or days calculated at minimum occupancy pursuant to chapter 74.46 RCW.

(((~~(5) Adjusted cost report data from 1999 shall be used for July 1, 2001 through June 30, 2005 direct care, therapy care, support services, and operations component rate allocations.~~)))

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-758 Add-on for low-wage workers. (1) The department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on pursuant to subsection (7) of this section. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year 2008, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

(i) Activities directors and assistants;

(ii) Patient choices coordinators;

(iii) Central supply/ward clerks;

(iv) Expanded community service workers; and

(v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that receives a low-wage add-on ((~~shall~~)) must report to the department its expenditure of that add-on by:

(a) Completing Cost Report Schedule L 1; and

(b) Returning it to the department by January 31st.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) Each May of the calendar year, the department will ask nursing home contractors whether they will want to continue to receive the add-on or begin to receive the add-on. For nursing home contractors responding by May 31st indicating a desire to receive the low wage worker add-on, the department will pay them the low wage add-on effective July 1st. For nursing home contractors that do not respond by May 31st indicating a desire to receive the low wage worker add-on, the department will cease or not begin paying them the low wage add-on effective July 1st.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-781 Exceptional care rate add-on—Covered medicaid residents. A nursing facility (NF) may receive an increase in its direct care ((~~and/or therapy component~~)) rate allocations for providing exceptional care to a medicaid resident who:

(1) Receives specialized services to meet chronic complex medical conditions and neurodevelopment needs of medically fragile children and resides in a NF where all residents are under age twenty-one with at least fifty percent of the residents entering the facility before the age of fourteen;

(2) Receives expanded community services (ECS);

(3) Is admitted to the NF as an extraordinary medical placement (EMP) and the department of corrections (DOC) has approved the exceptional direct care and/or therapy payment;

(4) Is ventilator or tracheotomy (VT) dependent and resides in a NF that the department has designated as active ventilator-weaning center;

(5) Has a traumatic brain injury (TBI) established by a comprehensive assessment reporting evaluation (CARE) assessment administered by department staff and resides in a NF that the department has designated as capable for TBI patients;

(6) Has a TBI and currently resides in nursing facility specializing in the care of TBI residents where more than fifty percent of residents are classified with TBIs based on the federal minimum data set assessment (MDS ((~~2~~)) 3.0 or its successor); or

(7) Is admitted to a NF from a hospital with an exceptional care need and medicaid purchasing administration (MPA) or a successor administration has approved the exceptional direct care ((~~and/or therapy~~)) payment.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-782 Exceptional ((~~therapy care and exceptional~~)) direct care—Payment. (1) For WAC 388-96-781(1) residents, the department will pay the Oregon medicaid rate.

(2) For WAC 388-96-781 (4), (5) ((~~and~~)), (6), and residents, the department may establish a rate add-on that when added to the nursing facility's per diem medicaid rate does not exceed the cost of caring for the client in a hospital.

(((~~(3)(a) Costs related to payments resulting from increases in direct care component rates under subsection (2) of this section shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care shall be for rate setting, settlement, and other purposes deemed appropriate by the department; or~~

~~(b) Costs related to payments resulting from increases in therapy care component rates under subsection (2) of this section shall not be offset against the facility's examined, allowable therapy care costs, for each report year or partial period such increases are paid.~~))

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-901 Disputes. (1) When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor ((~~shall~~)) must pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

(i) Determining a nursing facility payment rate;

(ii) Calculating a nursing facility settlement;

(iii) Imposing a civil fine on the nursing facility;

(iv) Suspending payment to a nursing facility; or

(v) Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

(i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;

(ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments, which ((~~shall~~)) must be limited to separate administrative review under the provisions of WAC 388-96-905;

(iii) ((~~Quarterly and~~)) Semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;

(iv) Actions taken under exceptional direct ((~~and therapy~~)) care program codified at WAC 388-96-781 and 388-96-782;

(v) Actions taken under WAC 388-96-218 (2)(c)((~~; and~~

~~(vi) Actions taken under WAC 388-96-786~~)).

(2) The administrative review process prescribed in WAC 388-96-904 ((~~shall~~)) must not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits of a claim or to make a record for subsequent judicial review or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer ((~~shall~~)) must dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by Title 42 U.S.C. Sec. 1396a((-))(a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and ((~~disability services~~)) long-term support administration((~~, for example, entitlement to or payment for durable medical equipment or other services~~)).

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the nursing facility medicaid payment system or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor ((~~may~~)) must not use this section or WAC 388-96-904 for such purposes. This prohibition ((~~shall apply~~)) applies irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

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

NEW SECTION

WAC 388-96-915 Capital component—Square footage. (1) Allowable nursing home square footage is the external dimensions of the space building utilized and licensed as a nursing home less all unallowable square footage as outlined in subsection (2) of this section. Allowable nursing home square footage includes the following:

(a) All necessary, ordinary, and reasonable space on the campus or adjacent to the campus utilized by the residents and staff of the nursing home including in administrative and support capacities; and

(b) Basements to the extent they are utilized for administrative or support functions including the storage of equipment and records.

(2) Unallowable nursing home square footage includes, but is not limited to:

(a) Courtyards or other areas not surrounded by four walls and a contiguous roof;

(b) Patios and decks; and

(c) Off-site storage space.

(3) Off-site administrative square footage is allowable to the extent it is:

(a) Allocated in accordance with an approved joint cost allocation disclosure as outlined in WAC 388-96-534;

(b) Not otherwise unallowable under subsection (2) of this section; and

(c) Used for administrative purposes.

(4) Off-site administrative square footage is allowable up to ten percent of the combined total allowable square footage. Any square footage over ten percent of the combined total allowable square footage in unallowable.

(5) In order to be allowable, all space must be identified on a site plan, blueprint, or county assessment identifying the gross external square footage.

NEW SECTION

WAC 388-96-916 Capital component—Facility age. (1) Facility age is based on the completion date of the original structure as adjusted for renovations as defined in WAC 388-96-020.

(2) For the cost report period ending December 31, 2014, facility age will be calculated by identifying the square footage and date placed into service for the original structure and renovations.

(3) Beginning with rates paid on July 1, 2016, the average age of a facility is the age as calculated on the calendar year 2014 cost report adjusted by renovations reported in 2015.

(4) Beginning with rates paid on July 1, 2017, the average age of a facility will be adjusted on July 1st of each year based on renovations from the prior calendar year cost reporting period.

(5) Average age is calculated in accordance with RCW 74.46.561 (5)(e).

NEW SECTION

WAC 388-96-917 Direct care—County wage information. (1) The department must calculate a county wide wage index each rebase year by utilizing the most recent average wage data available from the federal bureau of labor statistics for registered nurses, licensed practical nurses, and certified nursing assistants.

(2) For each county, the department must calculate an average combined wage for all three disciplines based on the percentage of total wages by discipline from the prior year cost report. Each wage must be multiplied by the relative utilization percentage for that discipline. The total of all three disciplines is the average wage in that county.

(3) The department must calculate the statewide average combined wage for all three disciplines based on the average percentage of total wages by discipline from the prior year cost report.

(4) The county index is determined by dividing the county average wage in a given county by the statewide average wage.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-96-540	Will the department allow the cost of an administrator-in-training?
WAC 388-96-552	Depreciable assets.
WAC 388-96-553	Capitalization.
WAC 388-96-554	Expensing.
WAC 388-96-558	Depreciation expense.
WAC 388-96-559	Cost basis of land and depreciation base.
WAC 388-96-561	Cost basis of land and depreciation base—Donated or inherited assets.
WAC 388-96-562	Depreciable assets—Disposed—Retired.
WAC 388-96-564	Methods of depreciation.
WAC 388-96-565	Lives.
WAC 388-96-572	Handling of gains and losses upon retirement of depreciable assets—Other periods.
WAC 388-96-574	New or replacement construction—Property tax increases.
WAC 388-96-708	Beds removed from service under chapter 70.38 RCW, new beds approved under chapter 70.38 RCW, and beds permanently relinquished—Effect on prospective payment rate.
WAC 388-96-744	How will the department set the therapy care rate and determine the median cost limit per unit of therapy?
WAC 388-96-746	How much therapy consultant expense for each therapy type will the department allow to be added to the total allowable one-on-one therapy expense?
WAC 388-96-747	Constructed, remodeled or expanded facilities.
WAC 388-96-748	Financing allowance component rate allocation.
WAC 388-96-759	Standards for low-wage workers add-on.
WAC 388-96-762	Allowable land.
WAC 388-96-767	Appraisal values.
WAC 388-96-776	Add-ons to the property and financing allowance payment rate—Capital improvements.

WAC 388-96-783	Certificate of capital authorization (CCA).
WAC 388-96-784	Expense for construction interest.
WAC 388-96-786	Pay for performance add-on.

WSR 16-24-001
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-316—Filed November 23, 2016, 12:56 p.m., effective November 28, 2016]

Effective Date of Rule: November 28, 2016.

Purpose: Amend commercial fishing rules for sea urchins.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300Y; and amending WAC 220-52-073.

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 raise the trip limit for red sea urchins to three thousand pounds because harvestable surpluses of sea urchins exist to allow for commercial harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 23, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07300Z Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective November 28, 2016, until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, and District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landing of sea urchins for each weekly fishery opening period is 3,000 pounds of each species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 28, 2016:

WAC 220-52-07300Y Sea urchins. (16-289)

WSR 16-24-004
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed November 28, 2016, 8:56 a.m., effective November 28, 2016, 8:56 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add prior authorization requirements for providers prescribing thickeners to clients younger than one year of age.

Citation of Existing Rules Affected by this Order: Amending WAC 182-554-500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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 Food and Drug Administration (FDA) has issued a warning not to give infants thickeners, particularly those born prematurely, because there is substantive evidence it puts them at risk of necrotizing enterocolitis. The recommendation is supported by American Academy of Pediatrics. This rule change is intended to follow the FDA's warning. The agency held a public hearing for this rule on January 5, 2016. As a result of comments received at the public hearing, the agency rewrote the rule. The agency has completed the initial workgroup stage, internal, and external review, and has filed a second CR-102 to hold another public hearing. The CR-102 is filed under WSR 16-23-083.

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 1, Repealed 0.

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

Date Adopted: November 28, 2016.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-500 Covered enteral nutrition products, equipment and related supplies—Orally administered—Clients twenty years of age and younger only. (1) The department covers orally administered enteral nutrition products for clients twenty years of age and younger only, as follows:

(a) The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;

(b) The client is able to manage their feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(c) The client meets one of the following clinical criteria:

(i) Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:

(A) Be in a wasting state;

(B) Have a weight-for-length less than or equal to the fifth percentile if the client is three years of age or younger; or

(C) Have a body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or

(II) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or

(D) Have a BMI of:

(I) Less than or equal to twenty-five; and

(II) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(ii) Amino acid, fatty acid, and carbohydrate metabolic disorders.

(A) The client must require a specialized nutrition product; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(iii) Cancer(s).

(A) The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;

(B) The department pays for orally administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and

(C) Providers must follow the department's expedited prior authorization process to receive payment.

(iv) Chronic renal failure.

(A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(v) Decubitus pressure ulcers.

(A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and

(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.

(vi) Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.

(A) The provider must obtain prior authorization to receive payment; and

(B) The client must have:

(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and

(II) A weight-for-length less than or equal to the fifth percentile if the client is two years of age or younger; or

(III) A BMI of:

(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or

(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or

(IV) Have a BMI of:

(aa) Less than or equal to twenty-five; and

(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(vii) Medical conditions (e.g., dysphagia) requiring a thickener.

(A) The client must be older than one year of age and:

(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(B) Providers must follow the ((~~department's~~)) agency's expedited prior authorization process to receive payment.

(C) If prescribing for a child younger than one year of age, providers must request prior authorization and:

(I) Include clinical documentation that supports the medical necessity of the request; and

(II) Include the report recommending a thickener from a speech therapist or occupational therapist who specializes in dysphagia.

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(I) Client is not eligible for the women, infants, and children (WIC) program; or

(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or

(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: http://www1.dshs.wa.gov/msa/forms/eforms.html. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.

WSR 16-24-022
EMERGENCY RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 29, 2016, 1:08 p.m., effective November 29, 2016, 1:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 392-700 WAC requires updating to clarify student eligibility, program requirements, and report-

ing processes for dropout reengagement programs. Specific changes are the removal of language that prohibits a student who has been expelled or long-term suspended from being counted for state funding and providing an additional month of state funding for programs operating during the fall quarter. Additional housekeeping changes were made.

Citation of Existing Rules Affected by this Order: Amending chapter 392-700 WAC.

Statutory Authority for Adoption: RCW 28A.175.100 and 28A.175.010.

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

Reasons for this Finding: This emergency rule is required to ensure that changes to the statewide dropout reengagement system necessitated by the enactment of 4SHB 1541 (2016) continue to be in effect for the 2016-17 school year. The office of superintendent of public instruction is engaging in the rule-making process to make these rules permanent and anticipates filing a permanent rule-making order shortly.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 12, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: November 29, 2016.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) **"College level class"** is a class provided by a college that is one hundred level or above.

(7) **"Consortium"** means a regional group of organizations that ((~~will~~)) consist of districts, tribal compact schools, charter schools and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts, tribal compact schools, and charter schools and reduce the administrative burden ((~~on districts~~)).

(8) **"Consortium agreement"** means the agreement that is signed by the authorized consortium lead and all district, tribal compact school, and charter school superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts, tribal compact schools, and charter schools.

(9) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(10) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

(11) **"Credential"** is identified as one of the following:

(a) ((~~High school equivalency certificate;~~

~~(b)~~)) High school diploma; (((~~(c) College certificate received after completion of a college program requiring at least forty hours of instruction;~~

~~(d) College degree; or~~

~~(e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.~~)) or

(b) Associate degree.

(12) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding. An enrolled student can be further defined as one of the following:

(a) **New student** is an enrolled student who is being claimed for state funding for the first time by the program.

(b) **Continuing student** is an enrolled student who has continuously been enrolled in the program and claimed for state funding on at least one count day.

(c) **Returning student** is an enrolled student who has returned to the program after not receiving program services for a period of at least one count day and not more than ten count days.

(d) **Reenrolling student** is an enrolled student who has reenrolled in the program after not receiving program services for a period of eleven count days or more.

(13) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(14) **"Full-time equivalent (FTE)"** is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(15) **"Indicator of academic progress"** means a standard academic benchmark that demonstrates academic performance which is attained by a reengagement student. These indicators will be tracked and reported by the program and district, tribal compact school, or charter school for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

(a) Earns at minimum a 0.25 high school ((~~or~~)) credit;

(b) Earns at minimum a whole college credit;

(c) Receives a college certificate after completion of a college program requiring at least forty hours of instruction;

(d) Receives an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction;

(e) Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;

(((~~e~~))) (f) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;

(((~~d~~))) (g) Makes a significant gain in a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);

(((~~e~~))) (h) Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;

(((~~f~~))) (i) Successfully completes ((~~approved~~)) college readiness course work with documentation of competency attainment;

(((~~g~~))) (j) Successfully completes job search and job retention course work with documentation of competency attainment;

(((~~h~~))) (k) Successfully completes a paid or unpaid cooperative work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);

(((~~i~~))) (l) Enrolls in a college level class for the first time (limited to be claimed once per enrolled student);

(((~~j~~))) (m) Successfully completes an English as a second language (ESL) class;

(((~~k~~))) (n) Successfully completes an adult basic education (ABE) class; or

(((~~l~~))) (o) Successfully completes a series of short-term industry recognized certificates equaling at least forty hours.

(16) **"Instructional staff"** means the following:

(a) For programs operated by a district, tribal compact school, charter school, or agency, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205; and

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college.

(17) **"Letter of intent"** means the document signed by the district, tribal compact school, charter school, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, tribal compact school, charter school, college, or agency agree to implement.

(18) **"Noninstructional staff"** is any person employed in a position that is not an instructional staff as defined under subsection ((~~(13)~~)) (16) of this section.

(19) **"OSPI"** means the office of superintendent of public instruction.

(20) **"Program"** means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

(21) **"School year"** is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

(22) **"Scope of work"** means the document signed by district, tribal compact school, or charter school superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district, tribal compact school, or charter school, and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district, tribal compact school, or charter school agree to implement.

(23) **"Resident district"** means the district where the student resides or a district that has accepted full responsibility for a student who lives outside of the district through the choice transfer process pursuant to RCW 28A.225.200 through 28A.225.240. For students enrolled in a tribal compact school or charter school, the tribal compact school or charter school is the student's resident district.

(24) **"Weekly status check"** means individual communication from a designated program staff to a student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once every week that has at least three days of instruction.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-035 Student eligibility. (1) A student is eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age((~~, but at least sixteen years of age, as of~~)) at the beginning of the school year but whose sixteenth birthday occurs on or before September 1st ;

(b) Has not yet met the high school graduation requirements of either the district, tribal compact school, charter school, or the college under RCW 28B.50.535; and

(c) At the time the student enrolls, is significantly behind in credits based on the student's cohort graduation date. The cohort graduation date is established as the end of the fourth school year after a student first enrolls in the ninth grade.

(i) A student who is more than twenty-four months from their cohort graduation date and has earned less than sixty-five percent of the high school credits expected to be earned by their cohort. A cohort is the group of ((~~district~~)) students that enter the ninth grade in the same school year;

(ii) A student who is between twelve and twenty-four months from their cohort graduation date and has earned less than seventy percent of the high school credits expected to be earned by their cohort;

(iii) A student who is less than twelve months from their cohort graduation date or who has passed their cohort graduation date by less than twelve months and has earned less than seventy-five percent of the high school credits expected to be earned by their cohort;

(iv) A student who is passed their cohort graduation date by twelve months or more and has not met their district, tribal compact school, or charter school graduation requirements; or

(v) A student who has never attended the ninth grade and has earned zero high school credits.

(d) If determined not to be credit deficient as outlined in subsection (1)(c) of this section, has been recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, a district, tribal compact school, or charter school designated school personnel, or staff from community agencies which provide educational advocacy services;

(e) Are not currently enrolled in any high school ((~~or other educational program~~)) classes that receive state basic education funding, excluding an approved skill center program, a Jobs for Washington's Graduates program, or running start program((~~, receiving state basic education funding~~)); ((~~and~~))

(f) ((~~Released from their district of residence and accepted by the serving district, if the program is operated by a different district.~~)) Students who are claimed for state funding by a district, tribal compact school, or charter school outside the district they live in, must be released by either a choice transfer or interdistrict agreement. When a choice transfer is in place, the student's resident district as defined in WAC 392-700-015(23) becomes the district operating the program.

(2) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree; or

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(3) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-042 Program operating agreements and OSPI approval. (1) Districts, tribal compact schools, charter schools, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve students. Many models of operation are authorized as part of the statewide dropout reengagement system.

(((~~(a) In each of these models, the necessary agreement(s) will address whether the program will only serve students who are residents of the district or whether the program will also serve students who are not residents of the district but who petition for release from the resident district, pursuant to RCW 28A.225.220 through 28A.225.230, in order to attend the program. If the resident district does not participate in an OSPI approved program, another district, agency, or college may petition a district other than the resident district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 with the petitioning entity to provide a program for the eligible students.~~

~~(b)~~)) Regardless of the model of operation, the state funding is allocated to the district, tribal compact school, charter school, or direct funded technical college that is reporting the student's enrollment for the program.

(2) A district, tribal compact school, or charter school may enter into one of the following models of operations through the OSPI approval process:

(a) Directly operate a program where the services are provided by the district, tribal compact school, or charter school resources; ((~~or~~))

(b) Enter into a partnership with an agency or college that will provide the services through a defined scope of work or contracted services agreement; or

(c) Become part of a consortium with other districts, tribal compact schools, charter schools, colleges, and/or agencies by executing a consortium agreement that is signed by all members ((~~districts~~)).

(3) The purpose of the consortium will be to create and operate a program that will serve students enrolled in multiple districts including tribal compact schools and charter schools, and reduce the administrative burden ((~~on districts~~)). If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

(a) Take the lead in organizing and managing the regional consortium;

(b) Provide information and technical assistance to districts, tribal compact schools, and charter schools interested in participating in the consortium and providing the opportunity for their students ((~~from their district~~)) to enroll;

(c) ((~~Advance~~)) Develop scopes of work with agencies and colleges to operate the programs;

(d) Provide oversight and technical assistance to the program to align with all requirements of this chapter and the delivery of quality programming;

(e) Assist the program with the preparation of required reports, enrollment data, and course records needed ((~~by each district~~)) to enroll students, award credit, and report FTE and performance to OSPI;

(f) Facilitate data entry of required student data into each ((~~district's~~)) district, tribal compact school, or charter school's statewide student information system related to enrollment; and

(g) Work with the districts, tribal compact schools, and charter schools to facilitate the provision of special education ((~~and~~)), accommodations under Section 504 of the Rehabilitation Act of 1973, and transitional bilingual instruction pursuant to WAC 392-700-147.

(4) A technical college receiving direct funding and authorized to enroll students under WAC 392-121-187 may directly operate a program and serve students referred from multiple districts. The technical college will assume the responsibilities of operating the program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

(5) All programs must be approved by OSPI as follows:

(a) If the program is run by a district, tribal compact school, charter school, agency or college, the program must be approved.

(b) If the program is run by a consortium, both the program and participating districts, tribal compact school, or charter school must be approved.

(c) Any program which meets the definition of an online school program in RCW 28A.250.010 must be approved as an online provider, pursuant to RCW 28A.250.060(2).

(6) Dependent on the model of operations, OSPI will specify the necessary documentation required for approval.

(7) OSPI will provide model documents that can be modified to include ((~~district/college/agency~~)) district, tribal compact school, charter school, college, or agency specific language and will indicate which elements of these standard documents must be submitted to OSPI for review and approval.

(8) Upon initial approval, OSPI will specify the duration of the approval and indicate the necessary criteria to obtain reapproval.

(9) After receiving a notice of approval, OSPI will assign a code to be used when reporting students enrolled in the program.

(10) This chapter does not affect the authority of districts, tribal compact schools, and charter schools under RCW 28A.150.305 and 28A.320.035, to contract for educational services other than reengagement programs as defined by WAC 392-700-015(20).

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-065 Instruction. (1) All program instruction will meet the following criteria:

(a) Instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work.

(b) Instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:

(i) Instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and

(ii) Instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of calculating FTE and will be designed to prepare students for course work that is at the ninth grade level or higher.

(c) Instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.

(d) The program will administer to new students as defined in WAC 392-700-015 (12)(a) and reenrolling student as defined in WAC 392-700-015 (12)(d) standardized tests within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.

(e) The program will provide all instruction, tuition, and required academic skills assessments at no cost to the students, but may collect mandatory fees as established by each program.

(i) Consumable supplies, textbooks, and other materials that are retained by the student do not constitute tuition or a fee.

(ii) Programs are encouraged to offer a waiver or scholarship process.

(2) Instruction for students enrolled in programs operated by a district, tribal compact school, charter school, or agency will meet the following criteria:

(a) Instruction must include:

(i) Academic skills instruction and high school equivalency certificate preparation course work with curriculum and instruction appropriate to each student's skills levels and academic goals; and

(ii) College readiness and work readiness preparation course work.

(b) Instruction may include:

(i) Competency based vocational training;

(ii) College preparation math or writing instruction;

(iii) Subject specific high school credit recovery instruction;

(iv) English as a second language instruction (ESL); and

(v) Other course work approved by the district, tribal compact school, or charter school including cooperative work experience.

(c) Instruction will be scheduled so that enrolled students have the opportunity to attend and work with instructional staff during the hours of the program's standard instructional day.

(d) The program will maintain an instructor to student ratio as follows:

(i) The scheduled teaching hours of an instructional staff will equal or exceed the hours of the program's standard instructional day plus one additional hour per every five teaching hours for planning, curriculum development,

recordkeeping, and required coordination of services with case management staff.

(ii) For any one instructional session, the program will assign instructional staff as needed to maintain an instructional staff to student ratio that does not exceed 1:25.

(iii) For programs that use noninstructional staff as part of the calculated instructional staff to student ratio, the following conditions must be met:

(A) Noninstructional staff may not be a replacement for the instructional staff and must work under the guidance and direct supervision of the instructional staff; and

(B) The ratio of total instructional and noninstructional staff to students may not exceed 2:50.

(3) Instruction for students enrolled in programs operated by a college will meet the following criteria:

(a) Instruction will be provided through courses approved by the college, identifiable by course title, course number, quarter, number of credits, and, for vocational course, the classification of instructional program (CIP) code number assigned by OSPI to the approved career and technical education (CTE) course.

(b) The following instruction will be offered to all students, as appropriate for their goals, skills levels, and completion of prerequisites:

(i) Basic skills remediation courses and high school equivalency certificate preparation courses;

(ii) Courses that will lead to a postsecondary degree or certificate;

(iii) Course work that will lead to a high school diploma; and

(iv) College and work readiness preparation course work.

(c) The program will maintain an instructor to student ratio as follows:

(i) Instructor to student ratio for any course open to both program students and nonprogram students will be determined by the college; and

(ii) Instructor to student ratio for classes designed exclusively for program students will not exceed 1:35.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-137 Award of credit. (1) For programs operated by districts, tribal compact schools, charter schools, and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through November;

(ii) December through February;

(iii) March through May; and

(iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized high school equivalency certificate pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit ((~~ranging from at least 0.1 credits to no more than~~)) for a minimum of 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. ((~~The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained.~~))

(iv) For students taking part in district, tribal compact school, or charter school approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district, tribal compact school, or charter school.

(v) The district, tribal compact school, or charter school must award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district, tribal compact school, or charter school review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district, tribal compact school, or charter school, and the college will determine whether the high school diploma will be awarded by the district, tribal compact school, or charter school or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college ((~~but has been determined by the college to be at the ninth grade level or higher~~)). The college will determine the type of credit((~~. College based high school equivalency certificate and adult~~

~~basic education (ABE) classes will not be included in this category~~)); and

(iii) 0.5 ((~~elective~~)) subject specific credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work((~~; and~~

~~(iv) ABE courses or other college courses that have been determined to be below the ninth grade level that does not generate high school credit will be counted as part of the program's instructional programming for the purposes of calculating FTE~~)) which is aligned to the common core standards.

(c) If the district, tribal compact school, or charter school is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The district, tribal compact school, or charter school will determine the type of credit based on the articulation agreement between the college and district, tribal compact school, or charter school;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college ((~~but has been determined by the district to be at the ninth grade level or higher~~)). The district, tribal compact school, or charter school will determine the type and amount of credit for each class((~~. College based high school equivalency certificate and ABE classes will not be included in this category;~~)) based on the articulation agreement between the college and district, tribal compact school, or charter school; and

(iii) 0.5 ((~~elective~~)) subject specific credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work((~~; and~~

~~(iv) ABE courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE~~)).

(3) The district, tribal compact school, or charter school is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district, tribal compact school, or charter school will be provided by the college or agency as needed to facilitate this process.

(4) The district, tribal compact school, or charter school will ensure that the process for awarding high school credits under this scope of work is implemented as part of ((~~the district's~~)) their policy regarding award of credits per WAC 180-51-050 (5) and (6).

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-147 Provision of special education ((~~and~~)), Section 504 of the Rehabilitation Act of 1973 accommodations, and transitional bilingual instructional program. (1) The resident district as defined in WAC 392-700-015(23) is responsible for the provision of special education services ((~~to any enrolled reengagement students who qualify for special education in accordance with all~~)) in a properly formulated individualized education program (IEP) for students aged sixteen and older who have been determined eligible for special educational services, and are otherwise qualified for participation in the program. The provision of special education services by the resident district must be consistent with state and federal law ((~~and~~)) pursuant to WAC 392-172A-01190, and includes the identification, evaluation, education, and placement of eligible students consistent with chapter 392-172A WAC.

(2) The resident district as defined in WAC 392-700-015(23) is responsible for the provision of accommodations in a properly formulated 504 plan for students who have been determined eligible for services related to Section 504 of the Rehabilitation Act of 1973 ((~~accommodations will be provided to all eligible students served by the agency or college in accordance with all applicable state and federal law~~)), and are otherwise qualified for participation in the program.

(3) The resident district as defined in WAC 392-700-015(23) is responsible for the provision of services to students who are eligible for transitional bilingual services, and are otherwise qualified for participation in the program.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-152 Statewide student assessment. (1) All reengagement programs will ensure that students participate in the statewide assessment of student learning to fulfill the minimum requirements for high school graduation and comply with state and federal school ((~~and district~~)) accountability requirements.

(2) A district, tribal compact school, charter school, direct funded technical college, or educational service district that has been assigned a school code is required to administer the required statewide assessments for each enrolled student and cohort as defined by WAC 392-700-035 (1)(c).

(3) The program staff is not required to be direct test administrators (((~~students can access the tests through the reporting district~~))) but may act in this capacity with the approval of the ((~~reporting~~)) district, tribal compact school, charter school, direct funded technical college, or educational service district that has been assigned a school code which will be responsible for the appropriate training of agency or college staff((~~. The reporting district will submit the proposed test site information to OSPI if a program is operating in adult jail, adult institution, hospital care, home care, library, group home, or church~~)).

(((~~(3)~~))) (4) Program students will be included when calculating school and state statistics in relation to the statewide assessments.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-155 Annual reporting calendar. (1) For programs operated by ((~~district and~~)) districts, tribal compact schools, charter schools or agencies and for below one hundred level classes offered in a college operated program, the following requirements will be met in relation to the school calendar:

(a) A school year begins September 1st and ends August 31st.

(b) The program will provide the reporting district, tribal compact school, or charter school a calendar of the school year prior to the beginning of the program's start date for that school year.

(c) The school year calendar must meet the following criteria:

(i) The specific planned days of instruction will be identified; and

(ii) There must be a minimum of ten instructional months.

(d) The number of hours of instruction as defined in WAC 392-700-065 must meet the following criteria:

(i) The calculation for standard instructional day may not exceed six hours per day even when instruction is provided for more than six hours per day; and

(ii) The standard instructional day may not be less than two hours per day.

(e) The total planned hours of instruction for the school year:

(i) Is the sum of the instructional hours for all instructional months of the school year; and

(ii) Must have at a minimum of nine hundred planned hours of instruction for the school year.

(2) For programs operated by colleges and for college level classes, the school year calendar shall meet the following criteria:

(a) The specific planned days of instruction will be identified; and

(b) There must be a minimum of ten instructional months.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-160 Reporting of student enrollment. (1) For all programs, the following will apply when reporting student enrollment for each monthly count day:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district, tribal compact school, charter school, or the direct funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) For continuing students as defined by WAC 392-700-015 (12)(b), met the attendance period requirement pursuant to WAC 392-700-015(3);

(e) For continuing students as defined by WAC 392-700-015 (12)(b), met the weekly status check requirement pursuant to WAC 392-700-015((~~(23)~~)) (24);

(f) Has not withdrawn or been dropped ((~~prior to~~)) on or before the monthly count day;

(g) Is not enrolled in course work that has been reported by a college for postsecondary funding;

(h) Is not eligible to be claimed by a state institution pursuant to WAC 392-122-221;

(i) Is not enrolled in a high school ((~~program~~)) class, including alternative learning experience, college in the high school, or another reengagement program, excluding Jobs for Washington's Graduates, special education and/or transitional bilingual instructional program;

(j) If concurrently enrolled in a special education, transitional bilingual instruction, skills center ((~~program~~)), or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136; and

(k) ((~~Is not suspended pursuant to WAC 392-400-260 or expelled pursuant to WAC 392-400-275 or 392-400-295 by the program; and~~

~~(l)~~)) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in Jobs for Washington's Graduates, special education and/or transitional bilingual instructional programs, the combined FTE does not exceed 1.0 FTE in any month.

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in Jobs for Washington's Graduates, special education and/or transitional bilingual instructional programs, the combined AAFTE does not exceed 1.0 AAFTE for the school year.

(2) For all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress.

(a) Satisfactory progress is defined as the documented attainment ((~~of at least one credential identified in WAC 392-700-015(11) and/or~~)) of at least one indicator of academic progress identified in WAC 392-700-015(15).

(b) A ((~~student who after three months of being claimed for state funding has not attained a credential or~~)) continuing student as defined by WAC 392-700-015 (12)(b) and for returning student as defined by WAC 392-700-015 (12)(c) who after being claimed for state funding for three count days excluding the September count day has not earned an indicator of academic progress cannot be claimed for state funding until ((~~a credential or~~)) an indicator of academic progress is earned.

(i) During this reporting funding exclusion period, the program may permit the student to continue to attend;

(ii) When the student achieves ((~~a credential or~~)) an indicator of academic progress, the student may be claimed for state funding ((~~for~~)) on the following ((~~month~~)) count day; and

(iii) Rules governing the calculation of the three ((~~months~~)) count day period are:

(A) The September count day is excluded from the three count day period for the indicator of academic attainment. Students whose enrollment spans over the September count day have an additional month to earn an indicator of academic progress.

(B) The three ((~~months~~)) count days may occur in two different school years, if the student is enrolled in consecutive school years; and

(((~~B~~))) (C) The three ((~~months~~)) count days are not limited to consecutive months, if there is a break in the student being claimed for state funding.

(3) For below one hundred level classes, student enrollment will be reported as ((~~follows:~~

~~(a) When the program's total planned hours of instruction pursuant to WAC 392-700-155 for the school year equals or exceeds nine hundred hours:~~

~~(i) The program is considered a full-time program; and~~

~~(ii) An enrolled student is a full-time student and is reported as~~)) 1.0 FTE on each monthly count day.

(((~~(b)~~))) Enrollment in below one hundred level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For college level classes, student enrollment will be reported as follows:

(a) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-165 Funding and reimbursement. (1) OSPI shall apportion funding for an approved program to districts, tribal compact schools, charter schools, or direct funded technical colleges based upon the reported nonvocational and vocational FTE enrollment and the standard reimbursement rates. The standard reimbursement rates are the statewide average annual nonvocational and vocational rates as determined by OSPI pursuant to WAC 392-169-095.

(a) The basic education allocation funded to districts, tribal compact schools, and charter schools will be as follows:

(i) Monthly payments for the months September through December are based on estimated student enrollment projected by the district, tribal compact school, or charter schools.

(ii) Beginning in January, monthly payments shall be adjusted to reflect actual student enrollment.

(b) Direct funded technical colleges will be paid quarterly pursuant to WAC 392-121-187 (7)(c).

(2) Distribution of state funding for programs is as follows:

(a) For programs directly operated by a district, tribal compact school, or charter school, the district, tribal compact school, or charter school will retain one hundred percent of the basic education allocation.

(b) For programs directly operated by a direct funded technical college pursuant to WAC 392-121-187, the technical college will retain one hundred percent of the basic education allocation.

(c) For programs operated by a college or agency under a scope of work or contracted services agreement with a district, tribal compact school, or charter school:

(i) The district, tribal compact school, or charter school may retain up to seven percent of the basic education allocation; and

(ii) The agency or college will receive the remaining basic education allocation.

(d) For programs operated as part of a consortium with a consortium lead agency:

(i) The district, tribal compact school, or charter school may retain up to five percent of the basic education allocation;

(ii) The consortium lead may retain up to seven percent of the basic education allocation; and

(iii) The operating agency or college will receive the remaining basic education allocation.

(3) Programs and districts, tribal compact school, or charter school may provide transportation for students but additional funds are not generated or provided.

(4) ((~~Reengagement~~)) Students ((~~enrolled in a state-approved K-12 transitional bilingual instructional program pursuant to chapter 392-160 WAC~~)) identified as eligible for K-12 transitional bilingual instruction, enrolled in a state-approved K-12 transitional bilingual instructional program pursuant to chapter 392-160 WAC, and receiving transitional bilingual instruction services on or before the monthly count day but within the last month they were claimed for transitional bilingual instruction program enhanced funding, can be claimed by the district ((~~for bilingual~~)), tribal compact school, or charter school for transitional bilingual instruction program enhanced funding for the months of September through June.

(5) Students identified as eligible for special education services and receiving special education services on or before the monthly count day but within the last month they were claimed for special education funding, can be claimed by the district, tribal compact school, or charter school for special education funding for the months of September through June.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-175 Required documentation and reporting. (1) Student documentation:

(a) The program shall submit to the reporting district, tribal compact school, charter school, or direct funded technical college monthly the program's enrollment and maintain and make available upon request the following documentation to support the monthly enrollment claimed:

(i) Each student's eligibility pursuant to WAC 392-700-035;

(ii) Evidence of each student's enrollment requirements under WAC 392-700-160 to include:

(A) Enrollment in district, tribal compact school, charter school, or direct funded technical college;

(B) Evidence of minimum attendance period; and

(C) Earned ((~~credentials or attained an~~)) indicators of academic progress.

(D) Evidence of weekly status check.

(iii) Case management support pursuant to WAC 392-700-085.

(b) The district, tribal compact school, charter school, agency, or college operating the program shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(c) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

(2) ((~~Monthly~~)) CEDARS student reporting. Approved programs are responsible for submitting all required student information to OSPI in accordance with the CEDARS reporting guidance and reengagement operational instructions. ((~~If the program's model of operation is a partnership or consortium, the agreement must identify who is responsible for providing the information.~~))

(3) Annual reporting.

(a) The program will prepare and submit an annual performance report to the district, tribal compact school, charter school, agency, or college under which the program is operating no later than October 1st.

(b) The district, agency, or college will review and submit the program's annual performance report to OSPI no later than November 1st. The annual performance must be completed using the designated OSPI reporting tool.

(c) The annual report will ((~~include the following~~)) provide the previous school year's student level data:

(i) A list of the program's ((~~total number of~~)) enrolled students by:

(A) Gender, age, race/ethnicity((~~, and credential type who earned a~~));

(B) Earned credentials as defined in WAC 392-700-015(11)((~~.~~

~~(ii) Program's total number of students by gender, age, race/ethnicity, and indicator of academic progress types who~~));

(C) Attained ((~~an~~)) indicators of academic progress as defined in WAC 392-700-015(15). For high school and college credit, detail the subject area;

(D) The number of months each enrolled student was claimed for state funding;

(E) The number of months each enrolled student was served;

(F) The status of each enrolled student at the end of the school year (graduated, continuing, exited by student choice, exited by program choice, or turned twenty-one during the school year).

(((~~iii~~))) (ii) Total number of instructional staff.

(A) For programs operated by a district, tribal compact school, charter school, or agency, report total number of instructional staff assigned to the program.

(B) For programs operated by a college, report the number of instructional staff teaching students for the program.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

WAC 392-700-195 Longitudinal performance goals. (1) Longitudinal performance data for the program and the statewide reengagement system as a whole will be reported through the Washington's P-20 (preschool to postsecondary and workforce) longitudinal data system maintained by the ERDC.

(2) The district, tribal compact school, or charter school will work with the agency or college to collect and report student data requested by the ERDC in order to accomplish the longitudinal follow-up of reengagement students.

(3) At the end of each school year, the ERDC will identify the cohort of students for each program for whom longitudinal tracking will be done. Standard criteria to determine when students will be included in a longitudinal study cohort will be developed by the ERDC, with input from OSPI, the district, tribal compact school, charter school, and program representatives and will apply to all programs.

(4) The ERDC will collect longitudinal data for each specific program cohort on an annual basis for five years. The ERDC will work with the OSPI administrator responsible for programs to prepare annual program specific reports for each cohort and an annual system-wide report for the entire reengagement system including data for the cohorts of all programs.

(5) The ERDC and OSPI will work with the district, tribal compact school, and charter school so that the district, tribal compact school, and charter school, and the agency or college will have the opportunity to review data about the program prior to the release of the annual reports in December of each year. The ERDC and OSPI will develop procedures by which the district, tribal compact school, charter school, or agency can provide supplemental information and backup documentation for review and inclusion as it relates to postsecondary or workforce engagement of specific students in the cohort.

WSR 16-24-036
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-317—Filed November 30, 2016, 3:29 p.m., effective December 1, 2016]

Effective Date of Rule: December 1, 2016.

Purpose: Amend recreational fishing rules for hardshell clams and oysters.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

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

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

Reasons for this Finding: The department of health has changed the water quality status of eight hundred ten acres at Drayton West from conditionally approved to approved, eliminating the need for seasonal closures. Oyster seasons should coincide with the clam seasons on this beach. There is insufficient time to promulgate 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: November 30, 3016 [2016].

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-35000H Clams other than razor clams, mussels—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

Drayton West: All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as approved by the department of health and defined by boundary markers and signs posted on the beach are open December 1, 2016, until further notice.

NEW SECTION

WAC 220-56-38000M Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands except during the open periods specified herein:

Drayton West: All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as approved by the department of health and defined by boundary markers and signs posted on the beach are open December 1, 2016, until further notice.

WSR 16-24-038
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-318—Filed November 30, 2016, 3:57 p.m., effective December 1, 2016]

Effective Date of Rule: December 1, 2016.

Purpose: Amend recreational fishing rules for Sol Duc River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000D; and amending WAC 220-310-180.

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: Coho broodstock needs at the Sol Duc Hatchery have been met, and there are surplus hatchery (adipose fin clipped) coho in the Sol Duc River below the hatchery. The Sol Duc is open for trout and steelhead fishing, and this action allows anglers to retain hatchery coho along with trout and hatchery steelhead providing 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 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: November 30, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000D Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective December 1 through December 15, 2016, it is permissible to fish in the waters of the Sol Duc River downstream of the hatchery.

Salmon: Daily limit 2 fish, minimum size 14 inches; release all wild steelhead, wild coho, and chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 16, 2016:

WAC 220-310-18000D Freshwater exceptions to statewide rules—Coastal.

WSR 16-24-039
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-313—Filed November 30, 2016, 4:00 p.m., effective December 1, 2016]

Effective Date of Rule: December 1, 2016.

Purpose: Amend Puget Sound saltwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: 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: Providing maximum season length is a priority for the recreational community and warrants a reduced daily limit based upon prior fishery performance and preliminary estimates. This emergency rule modifies Area 7 fisheries to ensure compliance with conservation objectives and agreed-to management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 30, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100P Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective December 1, 2016, until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

Catch Record Card Area 7: Daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

WSR 16-24-040
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-314—Filed November 30, 2016, 4:06 p.m., effective December 1, 2016]

Effective Date of Rule: December 1, 2016.

Purpose: Amend Puget Sound saltwater recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100I; 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: Washington department of fish and wildlife and tribal comanagers agreed to a limited number of Chinook encounters retaining or releasing fish that anglers are allowed in Marine Areas 8-1, 8-2, and 10. This emergency rule is needed to modify these fisheries to stay within the agreed-to number of encounters and increasing the possibility of providing season long fisheries which will provide 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 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: November 30, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100Q Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) **Marine Areas 8-1 and 8-2:** Effective immediately until further notice:

(a) Daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

(2) **Marine Area 10:** Effective immediately through February 28, 2017:

(a) Daily limit of 2 salmon, no more than 1 Chinook. Release coho and wild Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62100I Puget Sound salmon—Saltwater seasons and daily limits. (16-213)

WSR 16-24-044
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-319—Filed December 1, 2016, 2:15 p.m., effective December 1, 2016, 2:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for sea urchins.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300Z; and amending WAC 220-52-073.

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 close the commercial harvest of red sea urchins in District 3 because the quota limit has been reached. Harvestable surpluses of sea urchins exist in Districts 1, 2 and 4 to remain open for harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 1, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07300A Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landing of sea urchins for each weekly fishery opening period is 3,000 pounds of each species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300Z Sea urchins. (16-316)

WSR 16-24-053
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-310—Filed December 2, 2016, 9:10 a.m., effective December 5, 2016]

Effective Date of Rule: December 5, 2016.

Purpose: Amend freshwater recreational fishing rules.

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

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

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

Reasons for this Finding: This emergency rule is needed to close these waters because the Tokul Creek and Whitehorse hatcheries are expecting a very low return of hatchery early winter steelhead this year as there were no smolt releases in 2014 or 2015. All returning hatchery fish will be needed for broodstock to ensure egg take goals are met. 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: December 2, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000B Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190:

(1) Effective December 5, 2016 through February 15, 2017, the following waters are closed to fishing:

(a) Stillaguamish River; Closed from Marine Drive (South of Stanwood) upstream to the forks.

(b) North Fork Stillaguamish River; Closed from the mouth upstream to the mouth of French Creek.

(c) South Fork Stillaguamish River; Closed from the mouth upstream to the Granite Falls Fishway.

(d) Canyon Creek; Closed from mouth to forks.

(e) Pilchuck Creek; Closed from mouth to the Highway 9 Bridge.

(2) Effective December 16, 2016 through February 15, 2017, the following waters are closed fishing:

(a) Tokul Creek; from the mouth upstream to the hatchery intake.

(b) Tolt River; from the mouth to the confluence with the North and South Forks.

(c) Raging River; from the mouth to the Highway 18 Bridge (upstream of Preston).

(d) Snoqualmie River; from the mouth upstream to Snoqualmie Falls.

(3) Effective Feb. 1 through February 15, 2017, the following waters are closed to fishing:

(a) North Fork Stillaguamish River; Closed from the mouth of French Creek upstream to Swede Heaven Bridge.

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 effective February 16, 2017:

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

WSR 16-24-078
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 16-320—Filed December 6, 2016, 3:17 p.m., effective December 6, 2016, 3:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational harvest rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000V; and amending WAC 220-56-360.

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 6, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000V Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, t is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. December 10, 2016 through 11:59 p.m. December 11, 2016, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. December 10, 2016 through 11:59 p.m. December 11, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) It is unlawful to dig for razor clams at any time in the Twin Harbors Clam sanctuaries defined in WAC 220-56-372.

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 effective 12:01 a.m. December 12, 2016:

WAC 220-56-36000V Razor clams—Areas and seasons.

WSR 16-24-093
EMERGENCY RULES
LIQUOR AND CANNABIS BOARD

[Filed December 7, 2016, 10:50 a.m., effective December 7, 2016, 10:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: New rules are needed to protect consumer safety through ensuring laboratories employ appropriate testing methodologies and achieve accurate testing results for marijuana. The Washington state liquor and cannabis board (WSLCB) also needs rules to suspend or revoke the certification of a laboratory that does not follow rule requirements for testing or for those laboratories that do not consistently achieve accurate testing results. This is a refiling of these emergency rules to maintain requirements until permanent rules take effect.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

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: Marijuana and marijuana products sold in WSLCB licensed retail stores are a consumable product and it is important that they are safe for human consumption. These emergency rules relating to accurate testing procedures and results and laboratory accountability are needed to ensure the public health and safety of the citizens of Washington. Permanent rule making is currently underway for these 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: December 7, 2016.

Jane Rushford
Chair

NEW SECTION

WAC 314-55-1025 Proficiency testing. (1) For the purposes of this section, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the composition of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the WSLCB to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) The WSLCB or its vendor determines the sufficiency of PTs and maintains a list of approved PT programs. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT pro-

gram from WSLCB or WSLCB's vendor prior to conducting PT. The WSLCB may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in PT and achieve a passing score for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing the lab seeks to be certified for and provide proof of the successful PT results prior to initial certification.

(5)(a) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(b) To maintain certification, the laboratory must achieve a passing score, on an ongoing basis, in a minimum of two out of three successive rounds of PT. At least one of the scores must be from a round of PT that occurs within six months prior to the laboratory's certification renewal date.

(6) If the laboratory fails to achieve a passing score on at least eighty percent of the analytes in any proficiency test, the test is considered a failure. If the PT provider provides a pass/fail on a per analyte basis but not on the overall round of PT the lab participates in, the pass/fail evaluation for each analyte will be used to evaluate whether the lab passed eighty percent of the analytes. If the PT provider does not provide individual acceptance criteria for each analyte, the following criteria will be applied to determine whether the lab achieves a passing score for the round of PT:

(a) +/- 30% recovery from the reference value for residual solvent testing; or

(b) +/- 3 z or 3 standard deviations from the reference value for all other fields of testing.

(7) If a laboratory fails a round of PT or reports a false negative on a micro PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three years, available for review during an on-site assessment or inspection, and provided to the WSLCB or WSLCB's vendor upon request.

(8) Laboratories are responsible for obtaining PT samples from vendors approved by WSLCB or WSLCB's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(9) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to, adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(10) The laboratory must authorize the PT provider to release all results used for certification and/or remediation of failed studies to WSLCB or WSLCB's vendor.

(11) The WSLCB may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three years.

(12) The WSLCB may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by WSLCB.

(13)(a) The WSLCB will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an ongoing basis in two out of three successive PT studies. The WSLCB may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider, so long as the supplemental PT studies are performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The WSLCB will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. WSLCB may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the WSLCB a deficiency report identifying the root cause of the failed PT, and successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider. The supplemental PT studies must be performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(14) If a laboratory fails to remediate and have its certification reinstated under subsection (13)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(15) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.

NEW SECTION

WAC 314-55-1035 Laboratory certification—Suspension and revocation. (1) The board may summarily suspend or revoke the certification of any lab certified under WAC 314-55-0995 for any of the following reasons:

(a) The laboratory owner or science director violates any of the requirements of chapter 314-55 WAC relating to the operations of the laboratory.

(b) The laboratory owner or science director aids, abets, or permits the violation of any provision of chapters 314-55 WAC, 69.50 RCW, 69.51A RCW, or Title 9 or 9A RCW related to the operations of the laboratory, or the laboratory owner or science director permits laboratory staff to do so.

(c) Evidence the certificate holder or owner made false statements in any material regard:

(i) On the application for certification;

(ii) In submissions to the board relating to receiving or maintaining certification; or

(iii) Regarding any testing performed or results provided to WSLCB or the marijuana licensee by the certificate holder or owner pursuant to WAC 314-55-102.

(d) The laboratory owner or science director is convicted of any crime substantially related to the qualifications or duties of that owner and related to the functions of the laboratory, including a conviction for falsifying any report of or that relates to a laboratory analysis. For purposes of this subsection, a "conviction" means a plea or finding of guilt

regardless of whether the imposition of sentence is deferred or the penalty is suspended.

(e) The laboratory submits proficiency test sample results generated by another laboratory as its own.

(f) The laboratory staff denies entry to any employee of the WSLCB or WSLCB's vendor during normal business hours for an on-site assessment or inspection, as required by WAC 314-55-0995, 314-55-102, 314-55-1025, or 314-55-103.

(2)(a) The following violations are subject to the penalties as provided in (b) of this subsection:

(i) The laboratory fails to submit an acceptable corrective action report in response to a deficiency report, and failure to implement corrective action related to any deficiencies found during a laboratory assessment.

(ii) The laboratory fails to report proficiency testing results pursuant to WAC 314-55-1025.

(iii) The laboratory fails to remit certification fees within the time limit established by a certifying authority.

(iv) The laboratory fails to meet recordkeeping requirements as required by chapter 314-55 WAC unless the failure to maintain records is substantial enough to warrant a suspension or revocation under subsection (1) of this section.

(b) The penalties for the violations in (a) of this subsection are as follows:

(i) First violation: Ten-day suspension of the lab's certification or until the lab corrects the violation leading to the suspension, whichever is longer.

(ii) Second violation within a three-year period: Thirty-day suspension of laboratory certification or until the laboratory corrects the violation leading to the suspension, whichever is longer.

(iii) Third violation within a three-year period: Revocation of the lab's certification.

(3) A certified lab may also be subject to a suspension of certification related to proficiency testing requirements under WAC 314-55-1025.

(4) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension or revocation as provided in chapter 34.05 RCW.