

WSR 18-01-003

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed December 6, 2017, 1:22 p.m., effective December 6, 2017, 1:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-873A WAC, Hospital pharmacy associated clinics, the pharmacy quality assurance commission (commission) is establishing standards supporting the regulatory, inspection, and investigation of pharmacy services provided in individual practitioner offices and multipractitioner clinics owned and operated by a hospital based on a level of risk and the type of pharmacy services provided at a particular location. This filing replaces emergency rules filed as WSR 17-17-048 on August 10, 2017.

Citation of Rules Affected by this Order: New WAC 246-873A-010, 246-873A-020, 246-873A-030, 246-873A-040, 246-873A-050, 246-873A-060, 246-873A-070, 246-873A-080, 246-873A-090, and 246-873A-095.

Statutory Authority for Adoption: RCW 18.64.043(6).

Other Authority: RCW 18.64.043, 18.64.005.

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

Reasons for this Finding: SSB 6558 amended RCW 18.64.043 directing the commission to adopt emergency rules to implement the bill and to keep the emergency rules in effect until permanent rules are adopted. The standards in this emergency rule have not changed from the previous emergency rule. The commission has filed a preproposal statement of inquiry, WSR 16-16-025, and has initiated stakeholder work on developing proposed 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: December 6, 2017.

Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

Chapter 246-873A WAC

HOSPITAL PHARMACY ASSOCIATED CLINICS

NEW SECTION

WAC 246-873A-010 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly indicates otherwise:

(1) "Clinic" means a facility that is established primarily to furnish outpatient health care services by an individual or group of practitioners.

(2) "Commission" means the Washington state pharmacy quality assurance commission.

(3) "Compounding" means the preparation or combining of any two or more active ingredients or components into a drug product as the result of a practitioner's prescription drug order or initiative based on the practitioner, patient, and pharmacist relationship in the course of professional practice or for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns. Compounding does not include mixing, reconstituting or other such acts that are performed in accordance with the directions contained in approved labeling provided by the product's manufacturer.

(4) "Hospital pharmacy associated clinic" or "HPAC" means an individual practitioner's office or multipractitioner clinic owned, operated, or under common control of a parent hospital or health system, where the physical address of the office or clinic is identified on a hospital pharmacy license.

(5) "Parent hospital pharmacy" means a hospital pharmacy licensed under chapter 70.41 RCW, adding hospital pharmacy associated clinics to their hospital pharmacy license in accordance with chapter 18.64 RCW and this chapter.

(6) "Practice of pharmacy" shall have the same meaning as RCW 18.64.011.

(7) "Practitioner" has the same meaning as RCW 18.64-011, and those individuals authorized to possess drugs.

(8) "Prescription" has the same meaning as RCW 18.64-011.

(9) "Responsible manager" has the same meaning as WAC 246-869-070.

(10) "Transfer" means to move drugs from the parent hospital pharmacy to the hospital pharmacy associated clinic.

NEW SECTION

WAC 246-873A-020 Hospital pharmacy associated clinic—Licensing. (1) New hospital pharmacy license. A parent hospital pharmacy applying for a new hospital pharmacy license or submitting a change in hospital ownership must:

(a) Submit a full application to the department and identify any HPACs to be included under the hospital pharmacy license, along with the applicable fees established under WAC 246-907-030 and 246-907-040; and

(b) Pass an inspection by a commission pharmacist investigator in accordance with this chapter.

(2) Current hospital pharmacy license holders. The parent hospital pharmacy must notify the commission in writing of any change of HPAC ownership, location of HPACs, and addition or removal of HPACs from the parent hospital pharmacy license.

(a) Adding HPACs. A parent hospital pharmacy may add HPACs on a hospital pharmacy license at any time and must file a hospital pharmacy license addendum with the commission along with applicable fees set forth in WAC 246-907-0302. Added HPACs are subject to inspection in accordance with this chapter.

(b) Removing HPACs. A parent hospital pharmacy removing HPACs from the parent hospital pharmacy license must comply with WAC 246-873A-095.

(3) HPAC locations are identified as follows:

(a) Category 1 HPAC: Receives drugs transferred from the parent hospital pharmacy to the HPAC, and does not perform sterile or nonsterile compounding of drugs. This does not infer that pharmaceutical services are provided at this location.

(b) Category 2 HPAC: Receives drugs transferred from the parent hospital pharmacy to the HPAC, and performs sterile or nonsterile compounding of drugs.

(4) A HPAC licensed under the parent hospital pharmacy license must obtain a Drug Enforcement Administration (DEA) registration for purposes of possessing controlled substances.

NEW SECTION

WAC 246-873A-030 Responsible manager. The responsible manager shall comply with the requirements of WAC 246-873-080 (3), (4), (7) and (8).

NEW SECTION

WAC 246-873A-040 Physical requirements of a HPAC. Physical requirements must be consistent with the applicable subsections of WAC 246-873-070 according to the HPAC category type.

NEW SECTION

WAC 246-873A-050 HPAC drug transfer and control. The following apply to both Category 1 and Category 2 HPACs:

(1) General drug transfer. A licensed hospital pharmacy is permitted without a wholesaler license to engage in intra-company sales, being defined as any transaction or transfer between any division, subsidiary, parent company, affiliated company, or related company under common ownership and control of the corporate entity;

(2) Patient specific drugs. A licensed hospital pharmacy dispensing appropriately labeled, patient specific drugs to a HPAC licensed under the parent hospital pharmacy may do so only pursuant to a valid patient order or prescription and the order or prescription information is authenticated in the medical record of the patient to whom the legend drug or controlled substance will be provided according to the policy and procedures of the parent hospital pharmacy.

(3) Storage. The parent hospital pharmacy's policy and procedures must specify HPAC drug storage parameters consistent with WAC 246-869-150.

(4) Drug samples. Nothing in this chapter prohibits a practitioner from dispensing drug samples in accordance with state and federal laws and regulations.

(5) Controlled substance accountability. The responsible manager of the parent hospital pharmacy must include accountability standards of controlled substances consistent with WAC 246-873-080(7) in the HPAC policies and procedures.

(6) Drug recall. A recall procedure must be in place to assure that potential harm to patients within a HPAC is prevented and that all drugs included on the recall are returned to the parent hospital pharmacy for proper disposition.

NEW SECTION

WAC 246-873A-060 Labeling. (1) Labels on medications dispensed to HPAC patients, including drug samples, must meet the requirements of RCW 69.41.050. This does not apply to HPAC administered medications.

(2) Parenteral and irrigation solutions in Category 2 HPACs. When drugs are added to intravenous solutions, a suitable label shall be affixed to the container and at a minimum should include the following:

(a) The name of the patient;

(b) Name and amount of drug(s) added;

(c) Beyond use date; and

(d) Initials of the personnel who prepared and checked the solution.

NEW SECTION

WAC 246-873A-070 Records. All transaction and inventory records must be maintained in compliance with applicable sections in chapter 246-875 WAC according to the HPAC category type.

NEW SECTION

WAC 246-873A-080 Administration of drugs. (1) Drugs administered in a HPAC shall only be administered by Washington state credentialed personnel, acting within their scope of practice, in accordance with state and federal laws and regulations governing such acts.

(2) Drugs must be administered only upon the valid order of a practitioner, as defined in RCW 69.50.101, who is licensed to prescribe legend drugs or controlled substances and who has been granted clinical privileges to write such orders.

(3) All medications administered to HPAC patients must be recorded in the patient's medical record.

NEW SECTION

WAC 246-873A-090 Inspections of HPAC. The commission shall conduct inspections of HPACs in conjunction with associated hospital pharmacy inspections under WAC 246-869-190 and consistent with WAC 246-869-110. All

deficiencies shall be noted on the hospital pharmacy inspection form.

(1) A representative sample of Category 1 HPACs not performing compounding are subject to inspection as determined by the commission investigator. Category 1 HPACs will be inspected to the standards established in this chapter.

(2) All Category 2 HPACs performing on-site sterile or nonsterile compounding will be inspected. Category 2 HPACs will be inspected to standards established in this chapter, RCW 18.64.270, and chapter 246-878 WAC.

NEW SECTION

WAC 246-873A-095 Removal of HPAC from a hospital pharmacy license. (1) The parent hospital pharmacy shall notify the commission of the removal of a HPAC from the hospital pharmacy license no later than fifteen days prior to the anticipated date of removal or closing of the HPAC. This notice must be submitted in writing and shall contain all of the following information:

(a) The date the HPAC will no longer be listed under the parent hospital pharmacy;

(b) The names and addresses of the person(s) who will have custody of the prescription files, the repackaging records, and the controlled substances inventory records of the HPAC being removed from the parent hospital pharmacy license or closed; and

(c) The names and addresses of any persons who will acquire any of the legend drugs, including controlled substances, from the HPAC.

(2) A written statement containing the following information must be filed with the commission no later than fifteen days after the planned removal of the HPAC:

(a) Confirmation that all legend drugs have been transferred to an authorized person(s) or destroyed. If the legend drugs were transferred, the names and addresses of the person(s), or alternate HPAC location(s) to whom they were transferred;

(b) If controlled substances were transferred, a list of the name(s) and address (or addresses) of the DEA registrant(s) to whom the substances were transferred, the substances transferred, the amount of each substance transferred, and the date on which the transfer took place;

(c) Confirmation that the DEA registration and all unused DEA 222 forms (order forms) were returned to the DEA;

(d) Confirmation that all labels and blank prescriptions in the possession of the HPAC were destroyed or otherwise accounted for; and

(e) Confirmation that all signs and symbols indicating the ownership or affiliation to the parent hospital pharmacy have been removed.

Purpose: Compliance with HB [EHB] 1595 requiring each state agency to declare by rules or regulations the reasons it is not calculating the actual costs it charges for providing public records, if doing so would be unduly burdensome - adoption of the statutory fee schedule.

Citation of Rules Affected by this Order: Amending WAC 137-08-110.

Statutory Authority for Adoption: RCW 42.56.120.

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

Reasons for this Finding: Under the Public Records Act (PRA), agencies have the ability to charge a requestor for certain costs associated with providing copies of records in response to the requestor's public records request. In the 2017 legislative session, the legislature amended the provision of the PRA that governs public records charges. Under the law prior to the 2017 amendments, agencies could only charge for photocopies, not scanned records and other electronic records. The 2017 amendments allow agencies to charge requestors for things like scanning records, providing records via email or other means of electronic delivery.

HB [EHB] 1595, passed in the 2017 legislative session, amending RCW 42.56.120, the provision of the PRA that governs agency charges to requestors for providing copies of public records. These amendments in HB [EHB] 1595 were designed to modernize this provision to reflect changes in the way agencies provide copies of records to requestors.

HB [EHB] 1595 becomes law on July 23, 2017, and a rule must be in place that establishes the actual costs of producing records, or a rule must be in place that declares the calculation of actual costs would be "unduly burdensome." Otherwise an agency would not be able to impose any fee on PRA requestors. The department of corrections (DOC) is taking the latter approach and will declare that it will be "unduly burdensome" to calculate actual costs and will file an emergency rule. This declaration will allow DOC to utilize the statutory default fee schedule created by the legislature in the 2017 amendments beginning July 23, 2017, the date the legislation goes into effect, and to be in full compliance with the PRA, as amended. The agency will be filing a preproposal statement of inquiry to begin the permanent rule-making process.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

WSR 18-01-009

EMERGENCY RULES

DEPARTMENT OF CORRECTIONS

[Filed December 7, 2017, 8:41 a.m., effective December 7, 2017, 8:41 a.m.]

Effective Date of Rule: Immediately upon filing.

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 16, 2017.

Stephen Sinclair
Secretary

AMENDATORY SECTION (Amending WSR 85-13-020, filed 6/10/85)

WAC 137-08-110 Fees—Inspection and copying. (1)

No fee shall be charged for the inspection of public records.

(2) The department shall collect a fee of (~~twenty~~) fifteen cents per page plus postage to reimburse itself for the cost of providing copies of public records.

(3) Nothing contained in this section shall preclude the department from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies, whenever doing so is in the best interest of the department.

(4) The secretary of the department or his designee is authorized to waive any of the foregoing copying costs.

WSR 18-01-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-338—Filed December 7, 2017, 4:12 p.m., effective December 11, 2017]

Effective Date of Rule: December 11, 2017.

Purpose: Amends commercial green sea urchin rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000D; and amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule is needed to close commercial sea urchin harvest in District 1 and part of District 2 to prevent overharvest. Harvestable surpluses of sea urchin exist in Districts 3 and 4, and in the southern portion of District 2, to remain open for red sea urchin 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 the Request of a Non-governmental 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 7, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-75000E Commercial sea urchin fisheries Notwithstanding the provisions of WAC 220-340-750, 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: marine fish/shellfish catch areas 23A, 23B, 25A, and 25B in Sea Urchin District 2, Sea Urchin District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and Sea Urchin 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: marine fish/shellfish catch areas 23A in Sea Urchin District 2, Sea Urchin District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, Sea Urchin District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, Sea Urchin District 6, and Sea Urchin 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 landings for red and green sea urchins for each weekly fishery opening period is 1,500 pounds per 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 December 11, 2017:

WAC 220-340-75000D Commercial sea urchin fisheries.
(17-324)

WSR 18-01-021**EMERGENCY RULES****SKAGIT VALLEY COLLEGE**

[Filed December 8, 2017, 2:09 p.m., effective December 8, 2017, 2:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose for repealing WAC 132D-305-005 Sexual harassment policy, is to allow the college to implement its current policy/procedure for prevention of sexual harassment and discrimination. Repeal of WAC 132D-305-005 is necessary to comply with the latest Title IX, Violence Against Women Act (VAWA), and Campus SaVE requirements.

Citation of Rules Affected by this Order: Repealing WAC 132D-305-005.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Reasons for this Finding: Skagit Valley College finds good cause to repeal WAC 132D-305-005 for the following reasons. The college updated its policy/procedure for prevention of sexual harassment and discrimination to implement changes in line with the most recent guidance from the United States Department of Education, Title IX, VAWA, and Campus SaVE. The college finds that it is in the general welfare and the public interest to repeal this rule on an emergency basis; therefore, emergency rule making is necessary. The college intends to proceed with permanent rule making on this subject in the near future.

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 12 [1]; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 12 [1].

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 12 [1].

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 12 [1]; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 8, 2017.

Lisa Radeleff
Executive Assistant
Rules Coordinator

WSR 18-01-023**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 17-337—Filed December 8, 2017, 3:38 p.m., effective December 11, 2017, 6:00 a.m.]

Effective Date of Rule: December 11, 2017, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000K; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This order allows for harvest and sale of the eighty-three white sturgeon remaining from the 2017 harvest guidelines for the John Day Pool. The expectation for treaty fisheries to be within the pre-season Endangered Species Act (ESA) guidelines continues to be unchanged. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish when open under tribal regulations. The forecast for upriver fall Chinook is four hundred eighty-four thousand one hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. This rule is consistent with actions of the Columbia River Compact on December 7, 2017. This action conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations. The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May

5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental 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 8, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-359-02000L Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030 and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

(1) Open Area: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: Immediately until 6:00 PM Sunday December 31

(b) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John

Day pools may be retained for subsistence purposes. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect.

(2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: 6:00 AM Monday, December 11 to 6:00 PM Saturday December 30

(b) Gear: Hoop nets, bag nets, dip nets, rod and reel with hook and line and setline. It is unlawful to use setline gear with more than 100 hooks per set line, with hooks less than the minimum size of 9/0, with treble hooks, without visible buoys attached, and with buoys that do not specify operator and tribal identification.

(c) Allowable sale: Sturgeon between 43-54 inches in fork length in The John Day pool may be sold. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Drano Lake, and Klickitat River.

(c) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line. Gill nets may only be used in Drano Lake.

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) 24-hour quick reporting is required as provided in WAC 220-352-180, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

(5) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

REPEALER

The following section of the Washington Administrative Code is repealed 6:00 a.m. December 11, 2017:

WAC 220-359-02000K Columbia River salmon seasons above Bonneville Dam. (17-297)

WSR 18-01-027

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed December 11, 2017, 11:53 a.m., effective December 11, 2017, 11:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is revising the requirements a hospital must meet to perform and be paid for bariatric surgery provided to eligible apple health clients. To qualify, a hospital must be accredited by the Metabolic and Bariatric Surgery Accreditation and Quality Improvement Program (MBSAQIP).

Citation of Rules Affected by this Order: Amending WAC 182-550-2301.

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: This emergency continues the current emergency filed under WSR 17-18-011 which is set to expire before the permanent rules become effective. The permanent rule was filed on December 6, 2017, under WSR 17-24-104, and becomes effective January 6, 2017.

Under the current rules, one hospital in Washington state is approved to perform and be paid for bariatric surgery for apple health clients. The approved hospital does not serve the entire state. This creates an access to care issue for apple health clients located in counties which the approved hospital does not serve. This emergency rule is necessary to lessen the existing requirements to accreditation by MBSAQIP while the permanent rules are promulgated.

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 the Request of a Non-governmental 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: December 11, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-2301 Hospital and medical criteria requirements for bariatric surgery. (1) The medicaid agency pays a hospital for bariatric surgery and bariatric surgery-related services only when the surgery is provided in an inpatient hospital setting and only when:

(a) The client:

(i) Qualifies for bariatric surgery by successfully completing all requirements under WAC 182-531-1600; and

~~((b) The client))~~ (ii) Continues to meet the criteria to qualify for bariatric surgery under WAC 182-531-1600 up to the actual surgery date;

~~(e) The hospital providing the bariatric surgery and bariatric surgery-related services meets the requirements in this section and other applicable WAC; and~~

~~(d))~~;

(b) The hospital;

(i) Is accredited by the metabolic and bariatric surgery accreditation and quality improvement program (MBSAQIP); and

(ii) Receives prior authorization from the agency before performing a bariatric surgery for a Washington apple health client.

(2) ~~((A hospital must meet the following requirements to be paid for bariatric surgery and bariatric surgery-related services provided to an eligible Washington apple health client. The hospital must:~~

~~(a) Be approved by the agency to provide bariatric surgery and bariatric surgery-related services and:~~

~~(i) For dates of admission after June 30, 2007, be located in Washington state or approved bordering cities (see WAC 182-501-0175);~~

~~(ii) For dates of admission after June 30, 2007, be located in Washington state, or be an agency-designated critical border hospital;~~

~~(b) Have an established bariatric surgery program in operation under which at least one hundred bariatric surgery procedures have been performed. The program must have been in operation for at least five years and be under the direction of an experienced board-certified surgeon. In addition, the agency requires the bariatric surgery program to:~~

~~(i) Have a mortality rate of two percent or less;~~

~~(ii) Have a morbidity rate of fifteen percent or less;~~

~~(iii) Document patient follow-up for at least five years postsurgery;~~

~~(iv) Have an average loss of at least fifty percent of excess body weight achieved by patients at five years post-surgery; and~~

~~(v) Have a reoperation or revision rate of five percent or less.~~

~~(c) Submit documents to the agency's division of health care services that verify the performance requirements listed in this section.~~

~~(3) The agency waives the program requirements listed in subsection (2)(b) of this section if the hospital participates in a statewide bariatric surgery quality assurance program such as the surgical Clinical Outcomes Assessment Program (COAP).~~

~~(4))~~ See WAC 182-531-1600(13) for requirements for surgeons who perform bariatric surgery.

~~((5))~~ (3) Authorization does not guarantee payment. Authorization for bariatric surgery and bariatric surgery-related services is valid only if:

(a) The client is eligible on the date of admission and date of service; and

(b) The hospital and professional providers meet the criteria in this section and other applicable WAC to perform bariatric surgery or to provide bariatric surgery-related services.

WSR 18-01-050
EMERGENCY RULES
DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed December 12, 2017, 1:10 p.m., effective December 12, 2017, 1:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-887-134, the pharmacy quality assurance commission (commission) is adopting a new section of rule to add fentanyl derivatives not approved by the Food and Drug Administration, synthetic cannabinoids, synthetic cathinones, and synthetic opioids to Schedule I under the Uniform Controlled Substance[s] Act making it illegal to sell, possess, manufacture, or deliver chemicals or products containing these substances. This filing replaces emergency rules filed as WSR 17-17-144 filed on August 22, 2017. The requirements in this second emergency rule are the same as the requirements filed in the first emergency rule which expire on December 20, 2017.

Citation of Rules Affected by this Order: New WAC 246-887-134.

Statutory Authority for Adoption: RCW 69.50.201 and 69.50.203.

Other Authority: RCW 18.64.005(7).

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: RCW 69.50.201(e) allows the commission to schedule substances that pose an imminent hazard to public safety by emergency rule. The substances added in rule present a clear and imminent danger to the public. Health warnings have been issued by a number of state public health departments and national poison control centers listing adverse health outcomes such as chest pains, anxiety, elevated blood pressure, seizures, extreme paranoia, delusions, hallucinations, and dependency. These effects are similar to the effects of some illegal drugs, such as heroin, cocaine, methamphetamine, and ecstasy. In addition, there have been reports of injuries and deaths linked to activities resulting from use of these substances. The commission intends to adopt permanent rules on the sales, possession, manufacture or delivery of chemicals or products containing fentanyl derivatives. The commission plans to file formal proposed rules in early 2018.

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 the Request of a Non-governmental 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 1, Amended 0, Repealed 0.

Date Adopted: December 12, 2017.

Tim Lynch, PharmD, MS, Chair
 Pharmacy Quality Assurance Commission

NEW SECTION

WAC 246-887-134 Adding fentanyl derivatives not approved by the Food and Drug Administration (FDA), synthetic cannabinoids, synthetic cathinones, and synthetic opioids to Schedule I. (1) The Washington state pharmacy quality assurance commission finds the following substances have high potential for abuse and have no medical use in treatment in the United States or they lack accepted safety for use in treatment under medical supervision. The commission, therefore, places each of the following substances in Schedule I.

(2) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.

(a) Fentanyl derivatives not approved by the FDA. Unless specifically excepted or unless listed in another schedule, any of the following fentanyl derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)

(ii) Butyryl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, also known as N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide)

(iii) Beta-Hydroxythiofentanyl (N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, also known as N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide, (beta-hydroxythiofentanyl))

(iv) Furanyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)

(b) Synthetic cannabinoids (Spice) and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic cannabinoid derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Cannabicyclohexanol, CP-47,497 C8 Homologue (5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol)

(ii) MAB-CHMINACA(N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (also known as ADB-CHMINACA)

(iii) UR-144(1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)

(iv) XLR11([1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone) (also known as 5-fluoro-UR-144)

(v) AKB48(N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide) (also known as APINACA)

(vi) PB-22 (quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate) (also known as QUPIC)

(vii) 5F-PB-22(quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate) (also known as 5-fluoro-PB-22)

(viii) AB-FUBINACA(N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)

(ix) ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)

(x) AB-PINACA (N-[1-Amino-3-methyl-1-oxo-2-butan-1-yl]-1-pentyl-1H-indazole-3-carboxamide)

(xi) AB-CHMINACA (N-[1-Amino-3-methyl-1-oxo-2-butan-1-yl]-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)

(xii) THJ-2201([1-(5-Fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)

(xiii) 5F-ADB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) (also known as 5F-MDMB-PINACA)

(xiv) 5F-AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)

(xv) 5F-APINACA (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide) (also known as 5F-AKB48)

(xvi) ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)

(xvii) MDMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate) (also known as MMB-CHMINACA)

(xviii) MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)

(c) Synthetic cathinones (Bath salts) and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic cathinones derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) 4-MEC (4-methyl-N-ethylcathinone)

(ii) 4-MePPP (4-methyl-alpha-pyrrolidinopropiophenone)

(iii) [alpha]-PVP (alpha-pyrrolidinopentiophenone)

(iv) Pentedrone (2-(methylamino)-1-phenylpentan-1-one)

(v) 4-FMC, Flephedrone (4-fluoro-N-methylcathinone)

(vi) 3-FMC (3-fluoro-N-methylcathinone)

(vii) Naphyrone (1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one)

(viii) [alpha]-PBP (alpha-pyrrolidinobutiophenone)

(d) Synthetic opioids and its derivatives. Unless specifically excepted or unless listed in another schedule, any of the following synthetic opioid derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)

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

WSR 18-01-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-340—Filed December 12, 2017, 5:29 p.m., effective December 13, 2017]

Effective Date of Rule: December 13, 2017.

Purpose: Amends the rules for the commercial sea urchin fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000E; and amending WAC 220-340-750.

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 reopen harvest for green sea urchins in District 1 and the northern portion of District 2 because there are enough remaining pounds under the quota limit 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 the Request of a Non-governmental 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 12, 2017.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-340-75000F Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, 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: marine fish/shellfish catch areas 23A, 23B, 25A, and 25B in Sea Urchin District 2, Sea Urchin District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and Sea Urchin District 4 west of a line projected true north from the shore-

line 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: District 1; marine fish/shellfish catch areas, 21A, 21B, 22A, 22B, 23A in Sea Urchin District 2; Sea Urchin District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude; Sea Urchin District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude; Sea Urchin District 6; and Sea Urchin 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 landings for red and green sea urchins for each weekly fishery opening period is 1,500 pounds per 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 December 13, 2017:

WAC 220-340-75000E Commercial sea urchins fisheries.
(17-338)

WSR 18-01-079

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed December 15, 2017, 9:58 a.m., effective December 15, 2017, 9:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Repealing WAC 246-840-035 Initial licensure for registered nurses, regarding nurses who complete out-of-state nontraditional nursing education; and new WAC 246-840-048 Students enrolled in a nontraditional nursing program. The nursing care quality assurance commission (commission) repeals WAC 246-840-035 because the legislature repealed the authorizing statute. The commission also creates a new section of rules addressing the needs of students effected [affected] by the repeal of RCW 18.79.380.

Citation of Rules Affected by this Order: New WAC 246-840-048; and repealing WAC 246-840-035.

Statutory Authority for Adoption: RCW 18.79.110.

Other Authority: HB 1721 (chapter 203, Laws of 2017), RCW 18.79.180, 18.79.200.

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 repeal of RCW 18.79.380 Licensed practical nurse/nontraditional registered nurse program—Obtaining required clinical experience, effective July 23, 2017, leaves a number of students currently enrolled in nontraditional nursing programs without an avenue to apply for licensure in Washington state after their graduation. Current national and state nursing education standards require faculty-directed clinical practice experiences at all levels of nursing education to develop both practical and clinical reasoning skills necessary for quality, safe patient care. No mechanism exists for these students to complete the required registered nurse practice experience in a safe, supervised manner. The commission establishes standards to ensure these students complete the required clinical practice experience. Ultimately, patient and public protection are most important. Supervision of students by qualified faculty members assures students receive quality learning experiences necessary to practice at a level to protect the public when the student obtains licensure as a registered nurse. This rule only impacts students currently enrolled in a nontraditional nursing program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 15, 2017.

Paula R. Meyer MSN, RN, FRE

Executive Director

Nursing Care Quality Assurance Commission

NEW SECTION

WAC 246-840-048 Students enrolled in a nontraditional nursing program. This section applies to a licensed practical nurse (LPN) enrolled in a nontraditional LPN to registered nurse (RN) program on July 27, 2017, and describes the eligibility requirements for obtaining an interim permit.

(1) Graduates may apply for interim permits after degree confirmation by the nontraditional program.

(a) An LPN enrolled in a nontraditional nursing program on July 27, 2017, has until July 27, 2020, to complete the nontraditional program, as defined in WAC 246-840-010.

(b) An LPN successfully completing a nontraditional nursing program after July 27, 2020, must obtain licensure by endorsement by completing at least one thousand hours of practice as an RN and without discipline on the registered nurse license.

(2)(a) An LPN successfully completing the nontraditional nursing program and passing the National Council of State Boards of Nursing Registered Nurse Licensing Examination (NCLEX-RN®) may be eligible to receive an interim permit for the purpose of completing one thousand hours of clinical practice experience in the role of an RN.

(b) Only students licensed as an LPN in Washington state and identified by the nontraditional program on July 27, 2017, will be considered eligible to obtain initial licensure from the commission under this section.

(3) An LPN successfully completing a nontraditional nursing program as identified in subsection (2)(b) of this section must:

(a) Submit a completed RN application indicating the need for an interim permit with the required fee, as defined in WAC 246-840-990;

(b) Request an official transcript be sent directly to the commission from the nontraditional nursing education program confirming a conferred associate degree in nursing;

(c) Successfully pass the National Council of State Boards of Nursing Registered Nurse Licensing Examination (NCLEX-RN®);

(d) Complete one thousand hours of practice under an interim permit in the role of an RN; and

(e) Provide documented evidence from a commission approved supervising licensed RN documenting the interim permit holder successfully completed the one thousand hours of practice in an RN role.

(4) The supervising RN from the acute care, skilled nursing, or transitional care facility must:

(a) Submit a commission approved application;

(b) Have an active, unencumbered RN license;

(c) Attest to not being related to or personal friends of the interim permit holder;

(d) Have three years experience as an RN;

(e) Have demonstrated teaching and mentoring skills; and

(f) Be able to evaluate, with input from others, the practice of the interim permit holder in the role of an RN.

(5) The interim permit expires one year after the submission of the application and is not renewable.

(6) An interim permit holder who does not successfully fulfill the practice requirements, as identified in subsection (3)(c) and (d) of this section, does not meet the requirements for licensure by examination as an RN in the state of Washington.

(7) The holder of the interim permit is subject to chapter 18.130 RCW, Regulation of health professionals—Uniform Disciplinary Act.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-840-035 Initial licensure for registered nurses—
Out-of-state nontraditional nursing education program approved by another United States nursing board as defined by WAC 246-840-010(16).

WSR 18-01-082

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed December 15, 2017, 11:35 a.m., effective December 15, 2017, 11:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The Public Records Act is chapter 42.56 RCW. RCW 42.56.120 as amended effective July 23, 2017 (section 3, chapter 304, Laws of 2017) requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies) the agency must have a rule declaring the reason that it is not calculating actual cost [cost] because to do so would be unduly burdensome. The new emergency rule, WAC 390-14-030 makes those findings. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. WAC 390-14-030 also provides for fee waivers.

Purpose: The purpose of the rule is to implement the new Public Records Act requirement and provide the necessary findings so the public disclosure commission (PDC) may begin using the amended statutory default fee schedule effective on July 23, 2017, and waive copy fees under listed circumstances effective July 23, 2017. The additional purpose of the rule is to explain procedures for payment.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120 (as amended by chapter 304, Laws of 2017), 42.17A.110(1).

Other Authority: RCW 34.05.350(2), PDC is in the process of permanent rule making.

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

Reasons for this Finding: The 2017 legislature amended RCW 42.56.120 (section 3, chapter 304, Laws of 2017) to require that effective July 23, 2017, if an agency uses the new laws amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The

PDC office is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in WAC 390-14-030. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. In order to waive copy fees for records responsive to a request submitted on or after July 23, 2017, WAC 390-14-030 describes the circumstances under which the office will waive copy fees. The office also finds that it is in the general welfare and the public interest, benefits requestors and the agency to adopt the emergency rule to preserve and update fees in accordance with the legislatively adopted schedule, and allow for fee waivers.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

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

Date Adopted: December 15, 2017.

B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-14-030 What are the charges for inspecting or copying public records? (1) The commission does not charge a fee for the inspection of public records made available in the commission office or on the commission web site.

(2) The commission does not charge a fee for locating public records and making them available to you for copying.

(3)(a) ~~The commission may charge ((a published fee for copying records, if you order copies. The commission's schedule of charges for copies is published on the commission's web site at www.pdc.wa.gov and is available by contacting the public records officer. The executive director may revise the schedule periodically as needed.)) fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120.~~

(b) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated by the legislature for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and to calculate costs; and a study would interfere with and disrupt other essential agency functions.

(4) Before beginning to make copies, the public records officer may require you to deposit up to ten percent of the estimated costs of copying and ~~((mailing all)) transmitting the records ((selected by you)) responsive to your request.~~ The public records officer may also require you to pay the remainder of the copying costs before providing you all the records, or require you to pay the costs of ~~((copying)) providing an installment of records~~ before providing you that installment. If you do not retrieve or pay for an installment of records within the time frame set by the public records officer, the balance of the request will not be fulfilled and your request will be closed.

~~((5) If it is reasonable and feasible to do so, the commission may provide copies of records electronically. See WAC 390-14-028. Charges for electronic records, if any, are provided in the commission's schedule. Electronic disclosure of records includes providing them on the commission's web site.))~~

WSR 18-01-117

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed December 19, 2017, 11:58 a.m., effective December 19, 2017, 11:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department amended licensing regulations in WAC 388-148-1320 and 388-148-1321 due to new legislative requirements from the 2017 session that were required to go into effect on October 19, 2017. These emergency WAC were filed as WSR 17-22-001 and went into effect on October 19, 2017.

The department is amending WAC 388-148-1320 and 388-148-1321 because the department will no longer require fingerprint-based background checks for sixteen and seventeen year olds residing in a home that will provide foster care, as was required in the previous filing. The department will now require in-state background checks for sixteen and seventeen year olds, as was the practice of the department prior to October 19, 2017. The new legislation also allows for the department to conduct in-state background checks on those under sixteen years of age residing in a foster home, when it is warranted to ensure child safety. This is a new practice, and has been included in this WAC change.

The new legislation also requires the division of licensed resources (DLR) to issue provisional expedited licenses for individuals that were previously licensed within the last five years when they meet the specific criteria outlined in the law. In order to meet this requirement, the department created WAC 388-148-1321 to describe the criteria and process to obtain a provisional expedited license.

WAC 388-145-1325 is being amended to align with legislation and DLR's practice that went into effect on January 1, 2016. This legislation requires all group care agency employees to complete a fingerprint-based background check if the agency takes placement of developmental disabilities admin-

istration (DDA) children. As any DLR licensed agency could potentially take placement of a DDA child, the decision was made to fingerprint all group care agency employees.

WAC 388-145-1805 is being amended based on recommendations from the children's administration regional medical consultants. The revised WAC will clarify that neither formula nor breast milk can be warmed in a microwave oven. These changes are made to ensure child safety and are included in this emergency WAC filing.

This emergency cancels and supersedes the emergency rules filed as WSR 17-22-001 that went into effect on October 19, 2017.

Citation of Rules Affected by this Order: New WAC 388-148-1321; and amending WAC 388-145-1325, 388-145-1805, and 388-148-1320.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, and section 4, chapter 20, Laws of 2017, which will create a new section in chapter 74.15 RCW.

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

Reasons for this Finding: These changes are being filed to supersede the emergency rules that were filed as WSR 17-22-001 in order to meet the legislative deadline of October 19, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: December 19, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-06-041, filed 2/24/16, effective 3/26/16)

WAC 388-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the division of licensed resources, children's administration.

(2) You must submit ~~((the following))~~ a completed background authorization form for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC~~((:)).~~

~~((a) Completed background authorization form; and))~~

(3) You must ensure that an agency employee who may have unsupervised access to children complete a FBI fingerprint check.

~~((b))~~ (4) You must ensure that agency volunteers or interns that have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check ((if the individual over eighteen years of age has lived out of state during any portion of the previous three years)).

~~((c))~~ (5) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until ((a full and satisfactory)) you are notified by children's administration that a background check ((is)) was completed ((and returned to you, qualifying the individual for)) that qualifies the individual to have unsupervised access. If ((your employee requires FBI fingerprints, they are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540)) you have both a license issued by DLR and a contract with the department you must adhere to the most stringent background check requirement.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

WAC 388-145-1805 Are there special requirements for serving milk? (1) The milk or milk products you serve must be pasteurized and follow these recommended guidelines:

(a) Children under the age of twelve months must receive formula or breast milk unless written authorization from the child's ~~((physician))~~ licensed health care provider requires a different liquid intake; and

(b) Children between the age of twelve and twenty-four months must receive whole milk unless you have written authorization from a ~~((physician))~~ licensed health care provider not to serve whole milk.

(2) Before serving a child breast milk you must have approval of the child's DSHS worker, ~~((physician))~~ licensed health care provider, parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(3) When you are using bottles to feed infants you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within twenty-four hours. If more than one child is bottle-fed, the child's name and date the bottle is prepared must be on each bottle.

(4) You must hold infants, under the age of six months, for all bottle feedings. Infants who are six months of age or over who are developmentally able may hold their own bottles as long as an adult remains in the room and within sight. You must take bottles from the child when the child finishes

feeding, when the bottle is empty, or when the child falls asleep. You must not prop bottles when feeding infants.

(5) To prevent burns, formula or breast milk must not be warmed in a microwave oven (~~in the bottle that will be used for feeding the infant~~).

AMENDATORY SECTION (Amending WSR 16-01-121, filed 12/18/15, effective 1/18/16)

WAC 388-148-1320 When will the department grant me a foster family license? (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

(a) Complete first aid training and age-appropriate adult and/or infant CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and

(b) Complete HIV/AIDS and bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members and anyone else having unsupervised contact with your foster child(ren) must pass the following background check requirements per chapter 388-06A WAC (This includes people living on any part of your property):

(a) Anyone (~~over the age of~~) sixteen years old or older must pass a (~~criminal history~~) background check(-);

(b) Anyone (~~over the age of eighteen~~) younger than sixteen years old must pass (~~an FBI fingerprint~~) a background check(-) where the department determines it is warranted to ensure the safety of a child;

(c) Anyone eighteen years old or older must pass an FBI fingerprint check; and

(d) Anyone (~~over the age of~~) eighteen years old or older must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test in the previous twelve months. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a state-

ment from a licensed health care provider (MD, DO, ND, PA and ARNP).

(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home. The department may license you to serve children under the age of two even though you or someone in your home is unable to obtain an influenza vaccination for medical reasons. In this case, a licensed health care provider's statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other persons in the home must still be vaccinated.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licensor will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

NEW SECTION

WAC 388-148-1321 May I request a provisional expedited foster family license? (1) You may request a provisional expedited foster family license if you meet all of the following requirements:

(a) You have been licensed to provide foster care within the previous five years;

(b) You have not had your foster care license closed due to a denial, revocation, or an agreement to relinquish;

(c) You reside in the same home in which you previously held a foster care license and no additional individuals have moved into your home;

(d) You are applying for an expedited license that will be supervised by the same agency that previously licensed or certified you and the agency agrees to supervise your home; and

(e) You and all household members age sixteen years old and older have passed (~~a fingerprint-based~~) the required background check for this provisional expedited foster family license.

(2) To initiate a provisional expedited license, you must submit a completed expedited license application and completed background check authorization forms for all household members who are sixteen years old and older to DLR or a licensed child-placing agency.

(3) In order for your full license to be processed you must submit your licensing application packet within fourteen days. Application packets are available from DLR and licensed child-placing agencies.

(4) You will be issued a provisional expedited foster family license if you have submitted the policy agreements and all of the required household members in your home have passed the required background check. The provisional expedited foster family license will be issued for ninety days and will close after ninety days.

(5) Your licensing or certifying agency will continue to work with you and make every effort to ensure that individuals qualified for and seeking a provisional expedited foster family license may become fully foster care licensed within forty days of the department's receipt of a complete application for a provisional expedited foster family license.

(6) You do not have the right to appeal the department's decision that you do not meet the criteria for a provisional expedited foster family license.

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

WSR 18-01-125
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-341—Filed December 19, 2017, 2:30 p.m., effective December 19, 2017, 2:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational salmon fishing rules for the Nisqually River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000A and 220-312-04000C; and amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is needed to open a portion of the Nisqually River to recreational salmon fishing. Based on spawner survey information counts of spawning chum salmon have reached the goal of eighteen thousand in the Nisqually River. There is insufficient time [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 the Request of a Non-governmental 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 19, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000C Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective immediately through January 31, 2018, the following rules apply. Unless otherwise amended all permanent rules remain in effect.

(1) The Nisqually River from the mouth to military tank crossing bridge (located one mile upstream of mouth of Muck Creek) Open for fishing:

(a) Limit 6 salmon; no more than 2 adults may be retained.

(b) Release gamefish and wild Chinook salmon.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-312-04000A Freshwater exceptions to statewide rules—Puget Sound. (17-327)

The following section of the Washington Administrative Code is repealed effective February 1, 2018:

WAC 220-312-04000C Freshwater exceptions to statewide rules—Puget Sound.

WSR 18-01-130
EMERGENCY RULES
UNIVERSITY OF WASHINGTON

[Filed December 19, 2017, 4:15 p.m., effective December 22, 2017]

Effective Date of Rule: December 22, 2017.

Purpose: This is our second emergency filing in order to keep the university in compliance with updates to RCW 42.56.120(2) as amended by chapter 304, Laws of 2017, while we complete permanent rule making. We filed our proposal to be published in WSR [Issue] 17-24 on December 20, 2017.

Citation of Rules Affected by this Order: Amending WAC 478-276-100.

Statutory Authority for Adoption: RCW 28B.20.130, 42.56.100, 42.56.040(1), and 42.56.120 (as amended by chapter 304, Laws of 2017).

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

Reasons for this Finding: The University of Washington finds good cause to file this second emergency rule, WAC 478-276-100 for the following reasons: The Public Records Act is chapter 42.56 RCW. The 2017 legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, to require that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The office is not calculating actual costs for copying records because to do so would be unduly burdensome for the reasons specified in WAC 478-276-100. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. In order to waive copy fees for records responsive to a request submitted on or after July 23, 2017, WAC 478-276-100 describes the circumstances under which the office will waive copy fees.

There is insufficient time under permanent rule-making procedures for the office to bring its copy fees into statutory compliance by July 23, 2017, or within a short time after. The office also finds that it is in the general welfare and the public interest, and benefits requesters and the agency, to adopt this second emergency rule in order to preserve and update fees in accordance with the legislatively adopted schedule, allow for fee waivers, and provide payment procedures. The office is in the process of permanent rule making and filed our proposal to be published in WSR [Issue] 17-24 on December 20, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 19, 2017.

Barbara Lechtanski
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 13-05-073, filed 2/19/13, effective 3/22/13)

WAC 478-276-100 Copying fees. (1) **Copying facilities available.** Facilities shall be made available to requestors for the copying of public records as set forth under WAC 478-276-095, except when and to the extent that this would unreasonably disrupt the operations of the public records office.

(2) **Copying costs.** ~~((The university may charge for providing copies of public records. Charges are posted on the office's web site.~~

~~(3) **Other costs.**~~ Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the University of Washington declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions. Therefore, the University of Washington adopts the following fees consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017:

(a) Fifteen cents per page for photocopies of public records, and printed copies of electronic public records when requested by the person requesting records;

(b) The university may charge ~~((for nonpaper media))~~ the actual cost of any digital storage media or device (for example, without limitation, compact disks (CDs), digital versatile disks (DVDs), audiotape, or videotape) used to provide copies, ~~((packaging,))~~ the actual cost of any container and envelope used to mail or transmit the copies to the requestor, and the actual postage or delivery charge, or other charges as allowed by law. Such charges shall not exceed the amount necessary to reimburse the university for actual costs.

~~((4))~~ (3) **Deposits.** The university may require a ten percent deposit on copying or other charges. Any required deposit must be paid before the request is processed.

~~((5))~~ (4) **Prepayment.** The public records office shall not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth above. Fee waivers are an exception and are available at the discretion of the public records officer. If payment is not received by the public records office within fifteen business days of issuance of the university's notice of availability, the university may consider the request closed, and any records or copies responsive to such request shall be subject to disposition as provided under WAC 478-276-105.

WSR 18-01-146
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed December 20, 2017, 10:58 a.m., effective December 20, 2017, 10:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is revising the following rules to align with changes to the foundational community supports program protocol that was recently approved by the Centers for Medicare and Medicaid Services (CMS): WAC 182-559-100 Foundational community supports program—General, 182-559-150 Foundational community supports program—Definitions, 182-559-200 Foundational community supports program—Eligible providers, 182-559-300 Foundational community supports program—Eligibility, and 182-559-400

Foundational community supports program—Payment. The agency is revising the name of WAC 182-559-300 to reflect that this section contains eligibility for community support services (also known as supportive housing services) only. The agency is adding new WAC 182-559-350 Foundational community supports program—Eligibility for supported employment services, to provide more detailed information as required by the protocol. The agency is adding new WAC 182-559-600 Foundational community supports program—Grievance and appeals system, to clarify the grievance and appeals process for clients receiving services through the foundational community supports program. In order to receive federal funding for the foundational community supports program, the rules must align with the CMS protocol and be in place before December 31, 2017.

Citation of Rules Affected by this Order: New WAC 182-559-350 and 182-559-600; and amending WAC 182-559-100, 182-559-150, 182-559-200, 182-559-300, and 182-559-400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The implementation of the foundational community supports program is dependent upon the protocol. The protocol is an attachment to a binding contract between the agency and CMS. The agency's rules must align with the protocol in order to receive funding for the program. The authorized foundational community supports funding for year one of the medicaid transformation project expires on December 31, 2017. The agency filed a CR-101 to begin the permanent rule-making process under WSR 18-01-133 on December 20, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 5, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 5, Repealed 0.

Date Adopted: December 20, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

WAC 182-559-100 Foundational community supports program—General. (1) Under the authority of the

medicaid transformation project, RCW 71.24.385, and subject to available funds, the medicaid agency covers targeted foundational community supports to eligible medicaid beneficiaries, which include the following benefits:

(a) ~~((Supportive housing))~~ Community support services; and

(b) Supported employment services.

(2) ~~((Supportive housing))~~ Community support services ~~((may))~~ include:

~~((a))~~ One-time community transition services to eligible clients moving from institutional to community settings and those who meet an institutional level of care, such as:

~~(i) Security deposits;~~

~~(ii) Essential furnishings;~~

~~(iii) Moving expenses;~~

~~(iv) Set-up fees or deposits for utility or service access;~~ and

~~(v) Health and safety assurances such as pest eradication, allergen control, or a one-time cleaning prior to occupancy.~~

~~(b) Ongoing community support services, including:~~

~~(i) Individual housing transition services which provide direct support to eligible clients.~~

~~(ii) Individual housing and tenancy support services that promote housing success, foster community integration and inclusion, develop natural support networks, and assist clients to maintain their housing.~~

~~(3) Supportive housing services do not include rental support or other room and board related expenses.~~

~~(4) Supportive housing))~~ (a) Pretenancy supports:

(i) Conducting a functional needs assessment identifying the participant's preferences related to housing (type, location, living alone or with someone else, identifying a roommate, accommodations needed, or other important preferences) and needs for support to maintain community integration, including what type of setting works best for the client, assistance in budgeting for housing/living expenses, assistance in connecting the client with social services to assist with filling out applications and submitting appropriate documentation in order to obtain sources of income necessary for community living and establishing credit, and in understanding and meeting obligations of tenancy;

(ii) Assisting clients to connect with social services to help with finding and applying for housing necessary to support the clients in meeting their medical care needs;

(iii) Developing an individualized community integration plan based upon the assessment as part of the overall person-centered plan;

(iv) Identifying and establishing short and long-term measurable goal(s), and establishing how goals will be achieved and how concerns will be addressed;

(v) Participating in person-centered plan meetings at redetermination and/or revision plan meetings as needed;

(vi) Providing supports and interventions per the person-centered plan.

(b) Tenancy-sustaining services:

(i) Service planning support and participating in person-centered plan meetings at redetermination and revision plan meetings as needed;

(ii) Coordinating and linking the client to services including primary care and health homes; substance use treat-

ment providers; mental health providers; medical, vision, nutritional and dental providers; vocational, education, employment and volunteer supports; hospitals and emergency rooms; probation and parole; crisis services; end of life planning; and other support groups and natural supports;

(iii) Entitlement assistance including assisting clients in obtaining documentation, navigating and monitoring application process and coordinating with the entitlement agency;

(iv) Assistance in accessing supports to preserve the most independent living, including skills coaching, financing counseling, anger management, individual and family counseling, support groups, and natural supports;

(v) Providing supports to assist the client in communicating with the landlord and/or property manager regarding the participant's disability (if authorized and appropriate), detailing accommodations needed, and addressing components of emergency procedures involving the landlord and/or property manager;

(vi) Coordinating with the client to review, update and modify their housing support and crisis plan on a regular basis to reflect current needs and address existing or recurring housing retention barriers; and

(vii) Connecting the client to training and resources that will assist the client in being a good tenant and lease compliance, including ongoing support with activities related to household management.

(c) The CSS benefit does not include:

(i) Payment of rent or other room and board costs;

(ii) Capital costs related to the development or modification of housing;

(iii) Expenses for utilities or other regular occurring bills;

(iv) Goods or services intended for leisure or recreation;

(v) Duplicative services from other state or federal programs; and

(vi) Services to clients in a correctional institution or an institute for mental disease (IMD) (other than services that meet the exception to the IMD exclusion).

(d) Community support services must be provided:

((a)) (i) In an integrated setting of the client's choice; and

((b)) (ii) In a manner that ensures the client's individual right of privacy, dignity, respect, and freedom from coercion and restraint;

((c)) (iii) Post tenancy, in settings consistent with home and community-based services, as defined in 42 C.F.R. Sec. 441.530, such as those that:

((1)) (A) Do not have the qualities of an institution;

((2)) (B) Are not located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment;

((3)) (C) Are not on the grounds of, or immediately adjacent to a public institution;

((4)) (D) Do not have the effect of isolating the client from community members who are not receiving medicaid services; and

((5)) (E) Are not a licensed residential care facility such as an adult family home or assisted living facility.

((6)) (3) Supported employment, such as individual placement and support (IPS) services, ~~((a))~~ is individual-

ized and ~~((may include any combination))~~ includes one or more of the following services:

~~(a) (Vocational/job related discovery and assessment;~~

~~(b) Person-centered employment planning;~~

~~(c) Career advancement services;~~

~~(d) Individualized job development and placement;~~

~~(e) Negotiation with and follow-along supports to employers;~~

~~(f) Job analysis;~~

~~(g) Job carving;~~

~~(h) Job coaching;~~

~~(i) Benefits support, training, and planning;~~

~~(j) Transportation (only in conjunction with the delivery of an authorized service);~~

~~(k) Asset development; or~~

~~(l) Other workplace support services including services not specifically related to job skill training that enable the program participant to be successful in integrating into the job setting.~~

~~(6) Supported employment services do not include wages or wage enhancements for clients.~~

~~(7)) Preemployment services:~~

~~(i) Prevocational/job-related discovery or assessment;~~

~~(ii) Person-centered employment planning;~~

~~(iii) Individualized job development and placement;~~

~~(iv) Job carving;~~

~~(v) Benefits education and planning; or~~

~~(vi) Transportation (only in conjunction with the delivery of an authorized service).~~

~~(b) Employment sustaining services:~~

~~(i) Career advancement services;~~

~~(ii) Negotiation with employers;~~

~~(iii) Job analysis;~~

~~(iv) Job coaching;~~

~~(v) Benefits education and planning;~~

~~(vi) Transportation (only in conjunction with the delivery of an authorized service);~~

~~(vii) Asset development; or~~

~~(viii) Follow-along supports.~~

~~(c) The IPS benefit does not include:~~

~~(i) Generalized employer contacts that are not connected to a specific enrolled individual or an authorized service;~~

~~(ii) Employment support for individuals in subminimum wage, or sheltered workshop settings; and~~

~~(iii) Facility-based habilitation or personal care services.~~

~~(d) Supported employment services must be provided in settings consistent with settings defined in 42 C.F.R. 441.530 (a)(1)(i) through (v) and (a)(2).~~

~~(4) Clients who meet the eligibility criteria for both community support services and supported employment services are able to receive both services concurrently. See WAC 182-559-300 for community support services eligibility criteria and WAC 182-559-350 for supported employment eligibility criteria.~~

~~(5) In order to ensure the demand for services remains within available funds, the agency may impose enrollment wait lists for services.~~

~~(6) No services described in this chapter shall be provided without explicit authority of the medicaid transformation project.~~

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

WAC 182-559-150 Foundational community supports program—Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter.

~~("Community transition services" means one-time supports that cover certain costs necessary for a client to transition from an institution to a community-based setting, or prevent a client's placement in an institution.-)~~

"Adverse benefit determination" means one or more of the following:

(a) The denial or limited authorization of a requested foundational community support services, including determinations based on the type of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a service;

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

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

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

(e) The failure of the third-party administrator (TPA) to act within the time frames provided in WAC 182-559-600 for standard resolution of grievances and appeals.

"Community support services (also called supportive housing services)" means active search and promotion of access to, and choice of, safe and affordable housing that is appropriate to the client's age, culture and needs. These services include:

(a) Providing services to eligible clients who are homeless or at risk of becoming homeless through outreach, engagement and coordination of services with shelter and housing;

(b) Ensuring the availability of community support services, with an emphasis on supporting clients in their own home or where they live in the community; and

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

"Individual placement and support (IPS)" refers to an evidence-based approach to supported employment services based on the following principles:

(a) Services are open to all eligible clients who wish to work;

(b) Competitive employment is the goal;

(c) Integrated with other services provided to the client;

(d) Personalized benefits planning;

(e) Job search begins soon after the client expresses interest in working;

(f) Job search based on client preferences;

(g) Supports are not time-limited; and

(h) Client preferences are honored.

"Supported employment" means coordination with state and local entities to provide assistance and support, such as skills assessment, training, education and counseling to eligible clients who want to work.

~~("Supportive housing" means active search and promotion of access to, and choice of, safe and affordable housing that is appropriate to the client's age, culture and needs. This includes:~~

~~(a) Providing services to eligible clients who are homeless or at risk of becoming homeless through outreach, engagement and coordination of services with shelter and housing;~~

~~(b) Ensuring the availability of community support services, with an emphasis on supporting clients in their own home or where they live in the community; and~~

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

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

WAC 182-559-200 Foundational community supports program—Eligible providers. (1) Providers of ~~((supportive housing))~~ community support services and supported employment services under this authority must be:

(a) Health care professionals, entities, or contractors as defined by WAC 182-502-0002;

(b) Agencies, centers, or facilities as defined by WAC 182-502-0002;

(c) Health home providers as described in WAC 182-557-0050;

(d) Behavioral health providers licensed and certified according to chapter 388-877 WAC; or

(e) Housing, employment, social service, or related agencies with ~~((at least one year of))~~ demonstrated experience and ability to provide ~~((supportive housing))~~ community support services, supported employment, or equivalent services.

(i) Community support services experience may be demonstrated by:

(A) Two years' experience in the coordination of supportive housing or in the coordination of independent living services in a social service setting under qualified supervision; or

(B) Certified in supportive housing services (WAC 388-877A-0335 or 388-877B-0740) by the department of social and health services/division of behavioral health and recovery (DSHS/DBHR).

(ii) Supported employment experience may be demonstrated by one or more of the following:

(A) Accredited by the commission on accreditation of rehabilitation facilities (CARF) in employment services;

(B) Certified in employment services (WAC 388-877A-0330 or 388-877B-0730) by DSHS/DBHR; or

(C) All staff that will be performing supported employment services meet one of the following criteria:

(I) Be a certified employment support professional (CESP) by the employment support professional certification council (ESPCC);

(II) Be a certified rehabilitation counselor (CRC) by the commission of rehabilitation counselor certification (CRCC);

(III) Have a bachelor's degree or higher in human or social services from an accredited college or university and at least two years of demonstrated experience providing supported employment or similar services; or

(IV) Have four or more years of demonstrated experience providing supported employment or similar services.

(2) Providers of ~~((supportive housing))~~ community support services or supported employment services must ~~((either))~~:

(a) Obtain a core provider agreement in accordance with WAC 182-502-0005;

(b) Enroll with the medicaid agency as a nonbilling provider in accordance with WAC 182-502-0006; or

(c) Be qualified to bill for aging and long-term support administration services to provide ~~((supportive housing))~~ community support services or supported employment services.

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

WAC 182-559-300 Foundational community supports program—Eligibility for community support services. ~~((+))~~ To be eligible for ~~((supportive housing))~~ community support services, a client must:

~~((a))~~ (1) Be age eighteen or older;

~~((b))~~ (2) Be eligible for Washington apple health (medicaid);

~~((c))~~ Be assessed by a qualified provider and determined to have a functional need for the services; and

~~((d))~~ Meet one of the following population criteria:

~~((i))~~ Be chronically homeless as defined by the federal Department of Housing and Urban Development;

~~((ii))~~ ~~((Have))~~ (3) Meet the following needs-based criteria and be expected to benefit from community support services:

(a) Assessed to meet at least one of the following health criteria:

Clients assessed by a licensed behavioral health agency, under chapter 388-877 WAC, to have a behavioral health need, which is defined as one or both of the following criteria:

(i) Mental health needs, including a need for improvement, stabilization, or prevention of deterioration of functioning (including the ability to live independently without support) resulting from the presence of a mental illness; or

(ii) Substance use needs determined by an assessment using the American Society of Addiction Medicine (ASAM) criteria indicates that the client meets at least ASAM level 1.0, indicating the need for outpatient substance use disorder (SUD) treatment. The ASAM is a multi-dimensional assessment approach for determining a client's need for SUD treatment.

(b) Clients assessed via a CARE assessment, per WAC 388-106-0050, to have a need for assistance demonstrated by:

(i) The need for assistance with at least three activities of daily living (ADLs) defined in WAC 388-106-0010, one of which may be body care; or

(ii) Hands-on assistance with at least one ADL which may include body care.

(c) Clients assessed to be a homeless person with a disability, according to 24 C.F.R. 578.3, which is defined as a long continuing or indefinite physical condition requiring improvement, stabilization, or prevention of deterioration of functioning (including ability to live independently without support).

(4) Exhibit at least one of the following risk factors:

(a) Homeless clients who:

(i) Have been homeless for at least twelve months; or

(ii) Have been homeless on at least four separate occasions in the last three years, as long as the combined occasions equal at least twelve months.

(iii) Homeless is defined as living in a safe haven, an emergency shelter, or a place not meant for human habitation. See 24 C.F.R. 578.3.

(b) A history of frequent or lengthy institutional contact(~~(;~~

~~((iii))~~ Have frequent or lengthy).

(i) Institutional care facilities include jails, substance abuse or mental health treatment facilities, hospitals, or other similar facilities, as defined in 24 C.F.R. 578.3, or skilled nursing facilities as defined in WAC 388-97-0001.

(ii) Frequent means more than one contact in the past twelve months.

(iii) Lengthy means ninety or more consecutive days within an institutional setting in the past twelve months.

(c) A history of frequent stays at adult residential care facilities as defined by WAC 388-110-020 ~~((and))~~ or residential treatment facilities as defined by WAC 246-337-005(~~(;~~

~~((iv))~~ Frequent means more than one contact in the past twelve months.

(d) Have frequent turnover of in-home caregivers as defined by WAC 388-106-0040(~~((;~~

~~((v))~~ , where within the last twelve months the client utilized three or more different in-home caregiver providers and the current placement is not appropriate for the client.

(e) Have a predictive risk score of 1.5 or above. See WAC 182-557-0225.

~~((2))~~ To be eligible for community transition services, a client must meet the criteria described in subsection (1) of this section and be determined by a qualified provider to meet an institutional level of care standard for admission to either:

(a) A nursing facility, as described in WAC 388-106-0355; or

(b) An inpatient medical hospital, not including institutes for mental disease (IMD), as described in WAC 182-513-1320.

(3) To be eligible for supported employment services, a client must:

(a) Be age sixteen or older;

(b) Be eligible for apple health (medicaid);

(c) Desire to obtain employment;

(d) Be assessed by a qualified provider and determined to have a functional need for the services; and

(e) Meet one of the following population criteria:

(i) Be enrolled in the aged, blind and disabled program as defined in WAC 388-449-0001, or the housing and essential needs program as defined in WAC 388-400-0065;

(ii) Be diagnosed with at least one of the following:

(A) A severe and persistent mental illness;

(B) Substance use disorder with multiple episodes of treatment;

(C) Co-occurring mental health and substance use disorders.

(iii) Be age sixteen through twenty-four with a behavioral health diagnosis; or

~~(iv) Be receiving long-term services and supports as defined in chapter 388-106 WAC.~~

~~(4) Clients who meet the eligibility criteria for both supportive housing and supported employment are able to receive both services concurrently.~~

~~(5) In order to ensure the demand for services remains within available funds, the medicaid agency may impose enrollment wait lists for services.)~~

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

WAC 182-559-400 Foundational community supports program—Payment. The medicaid agency pays for ~~((supportive housing))~~ **community support services** and supported employment described in WAC 182-559-100 when no other public funds are already dedicated to providing comparable services to the client, unless the provider can demonstrate that the client requires services that are:

(1) Outside the scope of services provided by the program already in place or for which the client is otherwise eligible; and

(2) Within the scope of the services identified as reimbursable in this section.

NEW SECTION

WAC 182-559-350 Foundational community supports program—Eligibility for supported employment services. To be eligible for supported employment services, a client must:

(1) Be age sixteen or older;

(2) Be eligible for apple health (medicaid);

(3) Desire to obtain employment;

(4) Meet the following needs-based criteria and is expected to benefit from supported employment services:

(a) Assessed to meet at least one of the following health criteria: Clients assessed by a licensed behavioral health agency, under chapter 388-877 WAC, to have a behavioral health need, which is defined as one or both of the following criteria:

(i) Mental health needs, including a need for improvement, stabilization, or prevention of deterioration of functioning (including ability to live independently without support) resulting from the presence of a mental illness; or

(ii) Substance use needs determined by an assessment using the American Society of Addiction Medicine (ASAM) criteria indicates that the client meets at least ASAM level 1.0, indicating the need for outpatient substance use disorder (SUD) treatment. The ASAM is a multi-dimensional assessment approach for determining a client's need for SUD treatment.

(b) Clients assessed via a CARE assessment, per WAC 388-106-0050, to have a need for assistance demonstrated by:

(i) The need for assistance with at least three activities of daily living (ADLs) defined in WAC 388-106-0010, one of which may be body care; or

(ii) Hands-on assistance with at least one ADL which may include body care.

(c) There is objective evidence, as defined by the progressive evaluation process in chapter 388-447 WAC, of

physical impairments because of which the client needs assistance with basic work-related activities, including one or more of the following: Sitting, standing, walking, lifting, carrying, handling, manipulative or postural functions (pushing, pulling, reaching, handling, stooping or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, using judgment, and adapting to changes in a routine work setting.

(5) Exhibit at least one of the following risk factors:

(a) Unable to be gainfully employed for at least ninety consecutive days due to a mental or physical impairment, as demonstrated by eligibility for the aged, blind and disabled program as defined in WAC 388-449-0001, or the housing and essential needs program as defined in WAC 388-400-0065;

(b) More than one instance of treatment for a substance use disorder within the past two years.

(c) At risk of deterioration of mental illness and/or substance use disorder, including one or more of the following:

(i) Persistent or chronic risk factors such as social isolation due to a lack of family or social supports, poverty, criminal justice involvement, or homelessness;

(ii) Care for mental illness and/or substance use disorder requires multiple provider types, including behavioral health, primary care, long-term services and supports, or other supportive services; or

(iii) Past psychiatric history, with no significant functional improvement that can be maintained without treatment and/or supports.

(d) Dysfunction in role performance due to a behavioral health condition, including one or more of the following:

(i) Behaviors that disrupt employment or schooling, or put employment at risk of termination or schooling suspension;

(ii) A history of multiple terminations from work or suspensions/expulsions from school;

(iii) Cannot succeed in a structured work or school setting without additional support or accommodations; or

(iv) Performance significantly below expectations for cognitive/developmental level.

(6) An inability to obtain or maintain employment resulting from age, physical disability, or traumatic brain injury.

NEW SECTION

WAC 182-559-600 Foundational community supports program—Grievance and appeals system. (1) This section contains information about the third-party administrator (TPA) grievance and appeal system and the medicaid agency's administrative hearing process for clients under the foundational community supports program.

(a) The TPA must have a grievance and appeal system and access to an agency administrative hearing to allow clients to file grievances and seek review of a TPA adverse benefit determination as defined in WAC 182-559-150.

(b) The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings

requested by a client to review the resolution of a client's appeal of a TPA adverse benefit determination.

(c) If a conflict exists between the requirements of this chapter and specific program rules, the requirements of this chapter prevail.

(d) The TPA's policies and procedures regarding the grievance system must be approved by the agency.

(e) The TPA must maintain records of grievances and appeals.

(2) TPA grievance and appeal system. The TPA grievance and appeal system includes:

(a) A grievance process for addressing complaints about any matter that is not an adverse benefit determination;

(b) A TPA appeals process to address a client's request for review of a TPA adverse benefit determination;

(c) Access to the agency's administrative hearing process for review of a TPA's resolution of an appeal; and

(d) Allowing clients and the client's authorized representatives to file grievances and appeals orally or in writing. The TPA cannot require clients to provide written follow up for a grievance or an appeal that the TPA received orally.

(3) The TPA grievance process.

(a) A client or client's authorized representative may file a grievance with the TPA. A provider may not file a grievance on behalf of a client without the client's written consent.

(b) Clients do not have a right to an agency administrative hearing regarding the resolution of a grievance.

(c) The TPA must acknowledge receipt of each grievance either orally or in writing within two business days.

(d) The TPA must notify clients of the resolution of grievances within five business days of determination.

(4) The TPA appeals process.

(a) A client, the client's authorized representative, or a provider acting on behalf of the client with the client's written consent may appeal a TPA adverse benefit determination.

(b) The TPA treats oral inquiries about appealing an adverse benefit determination as an appeal to establish the earliest possible filing date for the appeal. The TPA confirms the oral appeal in writing.

(c) The TPA must acknowledge in writing the receipt of each appeal to both the client and the requesting provider within five calendar days of receiving the appeal request. The appeal acknowledgment letter sent by the TPA serves as written confirmation of an appeal filed orally by a client.

(d) The client must file an appeal of a TPA action within sixty calendar days of the date on the TPA's notice of adverse benefit determination.

(e) The TPA is not obligated to continue services pending the results of an appeal or subsequent agency administrative hearing.

(f) The TPA internal appeal process:

(i) Provides the client a reasonable opportunity to present evidence and allegations of fact or law, both in person and in writing;

(ii) Provides the client and the client's representative the client's case file, other documents and records, and any new or additional evidence considered, relied upon, or generated by the TPA (or at the direction of the TPA) in connection with the action. This information must be provided free of

charge in advance of the resolution time frame for appeals as specified in this section; and

(iii) Includes as parties to the appeal:

(A) The client and the client's authorized representative; and

(B) The legal representative of the deceased client's estate.

(g) The TPA ensures that the people making decisions on appeals were not involved in any previous level of review or decision making.

(h) Time frames for resolution of appeals.

(i) The TPA resolves each appeal and provides notice as expeditiously as the client's health condition requires and no longer than three calendar days after the day the TPA receives the appeal.

(ii) The TPA may extend the time frame by an additional fourteen calendar days if it is necessary in order to complete the appeal.

(i) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the client and the requesting provider;

(ii) Include the results of the resolution of the appeal process and the date it was completed; and

(iii) Include information on the client's right to request an agency administrative hearing and how to do so as provided in the agency hearing rules under WAC 182-526-0095, if the appeal is not resolved wholly in favor of the client.

(j) Deemed completion of the TPA appeal process. If the TPA fails to adhere to the notice and timing requirements for appeals, the client is deemed to have completed the TPA's appeals process and may request an agency administrative hearing under WAC 182-526-0095.

(5) Agency administrative hearing.

(a) Only a client or the client's authorized representative may request an agency administrative hearing. A provider may not request a hearing on behalf of a client.

(b) If the client does not agree with the TPA's resolution of an appeal at the completion of the TPA appeal process, the client may file a request for an agency administrative hearing based on the rules in this section and the agency hearing rules in chapter 182-526 WAC. The client must request an agency administrative hearing within ninety calendar days of the notice of resolution of appeal.

(c) The TPA is an independent party and responsible for its own representation in any administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(6) Effect of reversed resolutions of appeals. If the TPA or a final order as defined in chapter 182-526 WAC reverses a decision to deny or limit services, the TPA must authorize or provide the disputed services promptly and as expeditiously as the client's health condition requires.

(7) Available resources exhausted. When available resources are exhausted, any appeals process, or agency administrative hearing process related to a request to authorize a service will be terminated, since services cannot be authorized without funding regardless of medical necessity.

WSR 18-01-148
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed December 20, 2017, 11:16 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: Proposing updates to WAC 220-360-140 for changing the term dealer to buyer, since these terms (fish dealer and wholesale fish buyer) were updated in HB [ESHB] 1597 and are effective January 1, 2018.

Citation of Rules Affected by this Order: Amending WAC 220-360-140.

Statutory Authority for Adoption: RCW 77.04.090 and 77.04.130.

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

Reasons for this Finding: Proposing updates to WAC 220-360-140 for changing the term dealer to buyer, since these terms (fish dealer and wholesale fish buyer) were updated in HB [ESHB] 1597 and are effective January 1, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: December 20, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-360-14000A Identification of wild stocks of clams, mussels, or oysters—Reporting requirements for the commercial harvest of wild clams, mussels, or oysters from non-state aquatic lands—Conversion to private sector cultured aquatic products. Notwithstanding the provisions of WAC 220-360-140, effective January 1, 2018, the following rules apply:

(1) Based upon RCW 15.85.020(3), the following shellfish are distinguished from private sector cultured aquatic products and are identified as wild stocks that are regulated under this chapter:

(a) All clams, mussels, or oysters that were not propagated, farmed, or cultivated under the active supervision and management of a private sector aquatic farmer; and

(b) All clams, mussels, or oysters that were set naturally prior to the time an aquatic farm was established and placed under the active supervision and management of a private sector aquatic farmer.

(2) Examples of harvested wild stocks of shellfish include, but are not limited to, the following:

(a) Any harvest of clams, mussels, or oysters from a site that is not registered as an aquatic farm unless there is some ability to demonstrate that the shellfish was propagated, farmed, or cultivated under the active supervision of an aquatic farmer;

(b) Any harvest of clams, mussels, or oysters that were naturally set prior to the time an aquatic farm was established at the site and placed under the active supervision and management of an aquatic farmer; and

(c) Shellfish that is harvested from a newly registered aquatic farm during a period when the shellfish is presumed to come from a wild stock as specified in subsection (5) of this section.

(3) It is unlawful to sell wild stocks of clams, mussels, and oysters unless properly reported on a shellfish receiving ticket. The failure to report the sale of shellfish with a fish receiving ticket when it is required is unlawful activity and constitutes a violation of WAC 220-352-020 and RCW 77.15.630. Any person selling wild stocks of clams, mussels, and oysters must sell the harvest to a Washington wholesale fish buyer, who is then required to complete the fish ticket. Alternatively, if the person harvesting the clams, mussels, or oysters sells this shellfish at retail or arranges for the harvested shellfish to be transported out-of-state, they must be a wholesale fish buyer and must complete a fish receiving ticket for each day's sales or for each shipment.

(4) Wild stock sales may not be reported on aquatic farm quarterly production reports. Only private sector cultured aquatic products may be reported on quarterly production reports.

(5) The following shellfish are presumed to be wild shellfish that are subject to these regulations:

(a) All mussels, oysters, and clams other than geoducks that are commercially harvested from the nonstate lands within the first twelve months after a complete application for the aquatic farm registration is filed; and

(b) All geoducks commercially harvested from the non-state lands within the first thirty-six months after a complete application for the aquatic farm registration is filed.

The presumption that shellfish harvested from a newly registered aquatic farm during these time periods are from wild stocks may be overcome by a showing that the harvested shellfish were actually propagated, farmed, or cultivated under the active supervision of an aquatic farmer. After twelve or thirty-six months, respectively, all shellfish produced from a registered aquatic farm will be presumed to be private sector cultured aquatic products, and must be reported on quarterly aquatic farm reports. If a person does not commercially harvest mussels, oysters, or clams other than geoducks for the first twelve months after the aquatic farm registration, or does not commercially harvest geoducks for the first thirty-six months after registration, there is no requirement to obtain an emerging commercial fishery license or trial fishery permit.