

WSR 18-02-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-342—Filed December 20, 2017, 1:15 p.m., effective December 23, 2017, 7:00 a.m.]

Effective Date of Rule: December 23, 2017, 7:00 a.m.

Purpose: Amend recreational salmon fishing rules for Tokul Creek.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000D; 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 recreational fishing in Tokul Creek early. The Tokul Creek Hatchery facility has met their egg take goals for winter steelhead providing additional fishing opportunity. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 20, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-312-04000D Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective 7:00 a.m. December 23, 2017 through January 15, 2018, it is permissible to fish in those waters of Tokul Creek from the Fish Hatchery Road Bridge to the posted boundary marker downstream of the diversion dam fish ladder for trout and other gamefish. Unless otherwise amended all other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 16, 2018:

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

WSR 18-02-023
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed December 21, 2017, 11:34 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: Effective January 1, 2018, the agency will cover all emergency and nonemergency ambulance services provided to apple health clients through fee-for-service, including those transports for clients enrolled in an agency-contracted managed care organization. The agency is removing references to managed care from appropriate sections of chapter 182-546 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-546-0150 and 182-546-0400.

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: In order to implement HB 2007 (ground emergency medical transportation (GEMT)), subsection (10), Laws of 2015, 64th legislature, 2015 regular session and finalize rule making filed under WSR 15-24-129, this emergency rule is required. HB 2007 (GEMT) required approval from the Centers for Medicare and Medicaid Services (CMS) before implementation of the requirements in HB 2007 could occur. CMS recently approved the state plan amendment with the requirement that the agency begin paying for all ground ambulance services through fee-for-service by January 1, 2018. This emergency removes all references to managed care for ground ambulance services.

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 2, 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 2, Repealed 0.

Date Adopted: December 21, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

WAC 182-546-0150 Client eligibility for ambulance transportation. (1) Except for persons in the Family Planning Only and TAKE CHARGE programs, fee-for-service clients are eligible for ambulance transportation to covered services with the following limitations:

(a) Persons in the following Washington apple health (WAH) programs are eligible for ambulance services within Washington state or bordering cities only, as designated in WAC 182-501-0175:

(i) Medical care services (MCS) as described in WAC 182-508-0005;

(ii) Alien emergency medical (AEM) services as described in chapter 182-507 WAC.

(b) Persons in the WAH categorically needy/qualified medicare beneficiary (CN/QMB) and WAH medically needy/qualified medicare beneficiary (MN/QMB) programs are covered by medicare and medicaid, with the payment limitations described in WAC 182-546-0400(5).

(2) Persons enrolled in an agency-contracted managed care organization (MCO) must coordinate:

(a) Ground ambulance services through ~~((their designated MCO, subject to the MCO coverage and limitations))~~ the agency under fee-for-service, subject to the coverage and limitations within this chapter; and

(b) Air ambulance services through the agency under fee-for-service, subject to the coverage and limitations within this chapter.

(3) Persons enrolled in the agency's primary care case management (PCCM) program are eligible for ambulance services that are emergency medical services or that are approved by the PCCM in accordance with the agency's requirements. The agency pays for covered services for these persons according to the agency's published medicaid provider guides and provider notices.

(4) Persons under the Involuntary Treatment Act (ITA) are not eligible for ambulance transportation coverage outside the state of Washington. This exclusion from coverage applies to individuals who are being detained involuntarily for mental health treatment and being transported to or from bordering cities. See also WAC 182-546-4000.

(5) See WAC 182-546-0800 and 182-546-2500 for additional limitations on out-of-state coverage and coverage for persons with other insurance.

(6) The agency does not pay for ambulance services for jail inmates and persons living in a correctional facility, including persons in work-release status. See WAC 182-503-0505(5).

AMENDATORY SECTION (Amending WSR 13-16-006, filed 7/25/13, effective 8/25/13)

WAC 182-546-0400 General limitations on payment for ambulance services. (1) In accordance with WAC 182-

502-0100(8), the agency pays providers the lesser of the provider's usual and customary charges or the maximum allowable rate established by the agency. The agency's fee schedule payment for ambulance services includes a base rate or lift-off fee plus mileage.

(2) The agency:

(a) ~~((Does not))~~ Pays providers under fee-for-service for ground ambulance services provided to a client who is enrolled in an agency-contracted managed care organization (MCO). ~~((Payment in such cases is the responsibility of the client's agency-contracted MCO;))~~

(b) Pays providers under fee-for-service for air ambulance services provided to a client who is enrolled in an agency-contracted MCO.

(3) The agency does not pay providers for mileage incurred traveling to the point of pickup or any other distances traveled when the client is not on board the ambulance. The agency pays for loaded mileage only as follows:

(a) The agency pays ground ambulance providers for the actual mileage incurred for covered trips by paying from the client's point of pickup to the point of destination.

(b) The agency pays air ambulance providers for the statute miles incurred for covered trips by paying from the client's point of pickup to the point of destination.

(4) The agency does not pay for ambulance services if:

(a) The client is not transported;

(b) The client is transported but not to an appropriate treatment facility; or

(c) The client dies before the ambulance trip begins (see the single exception for ground ambulance providers at WAC 182-546-0500(2)).

(5) For clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and medically needy/qualified medicare beneficiary (MN/QMB) programs the agency's payment is as follows:

(a) If medicare covers the service, the agency will pay the lesser of:

(i) The full coinsurance and deductible amounts due, based upon medicaid's allowed amount; or

(ii) The agency's maximum allowable for that service minus the amount paid by medicare.

(b) If medicare does not cover or denies ambulance services that the agency covers according to this chapter, the agency pays its maximum allowable fee; except the agency does not pay for clients on the qualified medicare beneficiaries (QMB) only program.

WSR 18-02-031

EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 21, 2017, 12:28 p.m., effective December 21, 2017, 12:28 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to align the office of superintendent of public instruction's (OSPI) citizen complaint procedures for federally funded programs under the Elementary and Secondary Education Act (ESEA),

as amended by the Every Student Succeeds Act (ESSA) in 2016. The procedures are set forth in chapter 392-168 WAC, and are amended as follows: (1) Federal terms and references are updated to be brought in line with ESSA; and (2) a forty-five day timeline is established for OSPI to investigate and resolve citizen complaints regarding equitable services provided to private school students. The emergency rule also includes clarifying nonsubstantive amendments to chapter 392-168 WAC.

Citation of Rules Affected by this Order: Amending chapter 392-168 WAC.

Statutory Authority for Adoption: RCW 28A.300.070, 34.05.220 (1)(a).

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: Since the passage of ESEA in 1965, school districts have been required to provide equitable services to private school students and teachers, and in some cases, other education personnel and parent[s], under a number of ESEA programs. Private school services must start at the same time as public school services. In 2016, ESSA made changes to ESEA's timelines for filing complaints regarding equitable services. School districts and participating private schools are now required under federal law to conduct consultation for services. This typically occurs in spring and summer before the school year starts. OSPI is filing emergency rules so that the federally required process for citizen complaints regarding programs under ESEA is in place in time for consultation of equitable services in the 2017-18 school year. A public hearing regarding a proposed permanent rule (WSR 17-21-120) was held on December 6, 2017, and OSPI is actively undertaking the appropriate procedures to adopt this emergency rule as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 7, 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 2, 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 21, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-115 Applicability. This chapter shall apply to federal programs authorized under the Elementary and Secondary Education Act and administered by the superintendent of public instruction, including the following:

(1) Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies;

(2) Title I, Part B(~~(- Subpart 1: Reading First)~~): State Assessment Grants;

(3) (~~Title I, Part B, Subpart 3: William F. Goodling Even Start Family Literacy Program~~;

~~(4))~~ Title I, Part C: Education of Migratory Children;

~~((5))~~ (4) Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;

~~((6) Title I, Part F: Comprehensive School Reform~~;

~~(7))~~ (5) Title II, Part A: (~~Teacher and Principal Training and Recruiting Fund~~) Supporting Effective Instruction;

~~((8) Title II, Part D: Enhancing Education Through Technology~~;

~~Title III—Language Instruction for Limited English Proficient and Immigrant Students~~

~~(9))~~ (6) Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement Act;

~~((10) Title IV—21st Century Schools~~;

~~(11))~~ (7) Title IV, Part A(~~(- Subpart 1: Safe and Drug Free Schools and Communities)~~): Student Support and Academic Enrichment Grants;

~~((12))~~ (8) Title IV, Part B: 21st Century Community Learning Centers;

~~((Title V—Promoting Informed Parental Choice and Innovative Programs~~

~~(13))~~ (9) Title IV, Part C: Expanding Opportunity Through Quality Charter Schools;

(10) Title V, Part A: (~~Innovative Programs~~) Funding Transferability for State and Local Education Agencies;

~~((Title VI—Flexibility and Accountability~~

~~(14) Title VI, Part A, Subpart 1: Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments~~;

~~(15))~~ (11) Title (~~(VI)~~) V, Part B, Subpart 1: Small, Rural School Achievement Program;

~~((16))~~ (12) Title (~~(VI)~~) V, Part B, Subpart 2: Rural and Low-Income Schools;

~~((17))~~ (13) Title (~~(IX)~~) VIII—General Provisions(~~(;~~

~~(18) Title IX, Part E (Section 9532): Unsafe School Choice Option)~~.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-132 Informing citizens about complaint procedures. The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities;

(2) Conducting ~~((in service))~~ training sessions on the complaint process ~~((through educational service districts; and~~

~~((3) Including information about the system in statewide conferences))~~ for local school districts, educational service districts, or other subgrantees, which may include webinars and screencasts.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-145 Procedure for filing a complaint.

The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-168-180.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days, unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances with respect to a particular complaint.

(4) Receipt of complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall activate a time limit not to exceed forty-five calendar days.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-155 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee.

Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Propose reasonable corrective action(s) deemed necessary to correct the violation.

(4) The superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is in violation of any federal program requirement as authorized under the Elementary and Secondary Education Act as amended by ~~((No Child Left Behind))~~ the Every Student Succeeds Act or this chapter.

(7) The superintendent of public instruction shall issue a written decision to the complainant and public agency that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. ~~((OSPI))~~ The superintendent may provide technical assistance activities or negotiations; and corrective measures necessary to resolve a complaint. All actions shall be instituted, as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) The written decision by the superintendent of public instruction is the final decision in the matter. A complaint is considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed.

(9) If compliance by a local district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction may initiate fund withholding, fund recovery, or any other sanction(s) deemed appropriate.

~~((10) For complaints arising under 20 U.S.C. § 7883 (participation by private school children), a complainant may appeal the superintendent's resolution to the Secretary of Education (U.S. Department of Education) within thirty days of receiving the written decision from the superintendent of public instruction.))~~

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-168-175 Complaints against the superintendent of public instruction—Designation of responsible employee(s).

(1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-168-140.

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly. Complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall be coordinated by the staff

assigned to fulfill the duties of the ombudsman for equitable services as provided in 20 U.S.C. Secs. 6320 and 7881.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-180 Complaints against the superintendent of public instruction—Investigation of and response to complaints. (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation, no later than sixty calendar days after the receipt of such complaint. For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, investigating staff shall provide the written report to the superintendent no later than thirty-five calendar days after receipt of the complaint.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than ten calendar days after the date of receipt of the written report described in subsection (3) of this section.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: Provided, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-168-190 Appeal to the secretary of education in complaints against the superintendent of public instruction. (1) In the event that a complainant remains aggrieved with the response of the superintendent of public instruction, the complainant may file an appeal directly with the secretary, department of education.

(2)(a) For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, the superintendent's response may be appealed to the secretary not later than thirty days after the superintendent responds to the complaint.

(b) If the superintendent fails to resolve a complaint concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, within the forty-five-day limit, the complainant may appeal directly to the secretary no later than thirty days after the expiration of the forty-five-day limit.

WSR 18-02-032
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed December 21, 2017, 12:30 p.m., effective December 21, 2017, 12:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to establish a definition of absence in public schools that is in line with the federal definition.

Citation of Rules Affected by this Order: New chapter 392-401 WAC; and repealing WAC 392-400-325.

Statutory Authority for Adoption: RCW 28A.300.046.

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 agency's current rule, school districts are required to report all school-related activities to the state as excused absences, including school field trips. That definition does not align with the definition of absence set by the United States Department of Education for federal public education data reporting purposes. The immediate adoption of this emergency rule is necessary to align the state and federal reporting requirements and provide for consistent data collection before the start of the 2017-18 school year. Clarifying the definition of absence for reporting purposes will help ensure that student absences for activities that are a part of the student's scheduled instructional school day do not contribute to the school's chronic absenteeism rates.

A public hearing regarding a permanent rule (WSR 17-17-167) was held on October 31, 2017. The office of superintendent of public instruction is actively undertaking the appropriate procedures to adopt this emergency rule as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, 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 5, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 0, Repealed 1.

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 21, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-401 WAC**STATEWIDE DEFINITION OF ABSENCE, EXCUSED AND UNEXCUSED**NEW SECTION

WAC 392-401-005 Purpose. The purpose of this chapter is to provide a definition of absence to districts that supports accurate and consistent attendance data collection across the state. This effort will support the state and districts to address the challenge of chronic absenteeism, in an effort to improve learning outcomes and success in school for all students and to support the whole child.

NEW SECTION

WAC 392-401-010 Authority. The authority for this chapter is RCW 28A.300.046, which requires the superintendent of public instruction to adopt rules establishing a standard definition of student absence from school.

NEW SECTION**WAC 392-401-015 Definition of absent or absence.**

- (1) "Absent" or "absence" means a student is:
- (a) Not physically present on school grounds; and
 - (b) Not participating in instruction or instruction-related activities at an approved off-grounds location for at least fifty percent of the student's scheduled school day.
- (2) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC should be reported as excused absences, unless the student is receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC.
- (3) A student who is marked tardy to class is not absent unless the student otherwise meets the criteria for absence provided in WAC 392-401-015(1).

NEW SECTION

WAC 392-401-020 Excused absences. The following are valid excuses for absences from school:

- (1) Participation in a district or school approved activity, that is not instruction-related;
- (2) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental or optometry) for the student or person for who the student is legally responsible;
- (3) Family emergency including, but not limited to, a death or illness in the family;
- (4) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;
- (5) Court, judicial proceeding, or serving on a jury;
- (6) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;
- (7) State-recognized search and rescue activities consistent with RCW 28A.225.055;
- (8) Absence directly related to the student's homeless status;

(9) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

(10) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC, unless the student is receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and

(11) Principal (or designee) and parent, guardian, or emancipated youth mutually agreed upon approved activity.

The school principal (or designee) has the authority to determine if an absence meets the above criteria for an excused absence.

NEW SECTION

WAC 392-401-030 Unexcused absences. Any absence from school is unexcused unless it meets one of the criteria provided in WAC 392-401-015.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-400-325 Statewide definition of excused and unexcused daily absences.

**WSR 18-02-033
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed December 21, 2017, 12:32 p.m., effective December 21, 2017, 12:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to align the rules for the highly capable program to the statutory changes made [made] to the program by EHB 2242 (2017).

Citation of Rules Affected by this Order: Amending WAC 392-170-030, 392-170-045, 392-170-055, and 392-170-075.

Statutory Authority for Adoption: RCW 28A.185.050.

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

Reasons for this Finding: Section 412 of EHB 2242 (2017) mended [amended] RCW 28A.185.020 to require that school district practices for identifying the most highly capable students must prioritize equitable identification of low-income students. These changes go into effect for the 2017-18 school year, which is when the new funding will start. State law therefore requires immediate adoption of the rule. A public hearing on a proposed permanent rule (WSR 17-21-121) was held on December 6, 2017. The office of superintendent of public instruction is actively undertaking the appropriate procedures to adopt the emergency rule as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, 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 21, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-07-020, filed 3/12/13, effective 4/12/13)

WAC 392-170-030 Substance of annual school district plan. The school district's annual plan shall contain the following:

(1) A report of the number of K-12 students who are highly capable that the district expects to serve by grade level;

(2) A description of the district's plan to identify students; consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students;

(3) A description of the highly capable program goals;

(4) A description of the services the highly capable program will offer;

(5) A description of the instructional program the highly capable program will provide;

(6) A description of ongoing professional development for educators of students who are highly capable and general education staff;

(7) A description of how the highly capable program will be evaluated that includes information on how the district's highly capable program goals and student achievement outcomes will be measured;

(8) A fiscal report; and

(9) Assurances signed by the school district's authorized representative that the district will comply with all applicable statutes and regulations.

AMENDATORY SECTION (Amending WSR 15-14-034, filed 6/23/15, effective 7/24/15)

WAC 392-170-045 Referral process for highly capable students. Each school district shall establish written procedures for the referral of students to participate in programs for highly capable students. Such procedures shall permit referrals based on data or evidence from teachers, other staff, parents, students, and members of the community.

A district's referral procedure for students who are highly capable may include screening procedures to eliminate students who, based on clear, current evidence, do not qualify for eligibility under WAC 392-170-055.

Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

AMENDATORY SECTION (Amending WSR 13-07-020, filed 3/12/13, effective 4/12/13)

WAC 392-170-055 Assessment process for selection as highly capable student. (1) Students nominated for selection as a highly capable student, unless eliminated through screening as provided in WAC 392-170-045, shall be assessed by qualified district personnel;

(2) Districts shall use multiple objective criteria for identification of students who are among the most highly capable. There is no single prescribed method for identification of students among the most highly capable; ~~((and))~~

(3) Districts shall have a clearly defined and written assessment process; and

(4) Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

AMENDATORY SECTION (Amending WSR 15-14-034, filed 6/23/15, effective 7/24/15)

WAC 392-170-075 Selection of most highly capable. Each school district's board of directors shall adopt a selection policy and school district shall establish written procedures for the selection of the most highly capable students by the multidisciplinary selection committee. Such policy and selection procedures:

(1) Shall not violate federal and state civil rights laws including, without limitation, chapters 28A.640 and 28A.642 RCW;

(2) Shall be based on professional judgment as to which students will benefit the most from inclusion in the district's program; ~~((and))~~

(3) Shall be based on a selection system that determines which students are the most highly capable as defined under WAC 392-170-055, and other data collected in the assessment process; and

(4) Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

WSR 18-02-034

EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 21, 2017, 12:34 p.m., effective December 21, 2017, 12:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Align the rules for the learning assistance program (LAP) to the statutory changes made [made] to the program by EHB 2242 (2017).

Citation of Rules Affected by this Order: Amending WAC 392-162-005, 392-162-010, 392-162-020, 392-162-033, 392-162-036, 392-162-041, 392-162-054, 392-162-112, and 392-122-605.

Statutory Authority for Adoption: RCW 28A.165.075.

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

Reasons for this Finding: Section 412 of EHB 2242 (2017) amended chapter 28A.165 RCW (learning assistance program) and RCW 28A.150.260 (the prototypical funding formula statute) to create a new LAP allocation for high poverty-based schools. These changes go into effect for the 2017-18 school year, which is when the new funding will start. State law therefore requires immediate adoption of the rule. The office of superintendent of public instruction (OSPI) is in the process of finalizing the regular rule-making process. A public hearing on a proposed permanent rule (WSR 17-21-122) was held on December 6, 2017. OSPI is actively undertaking the appropriate procedures to adopt the emergency rule as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 9, 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 21, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due. The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or school operated pursuant to a state-tribe education compact if the school district, charter school, or compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the

established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include two allocations: A district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system.

(b)(i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least fifty percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October headcount enrollment in grades K-12 for free and reduced-price lunch. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 for the prior year.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of ~~((a)) the learning assistance program ((designed to provide learning assistance to public school students enrolled in grades kindergarten through twelve who score below standard in English language arts or mathematics for his or her grade level))~~.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-010 Purpose. ~~((The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to assist underachieving students enrolled in grades kindergarten through twelve who score below standard in English language arts and mathematics for his or her grade level.))~~ The learning assistance program requirements in this chapter are designed to:

(1) Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;

(2) Promote the use of data when developing programs to assist ~~((underachieving))~~ students who are not meeting academic standards and reduce disruptive behaviors in the classroom;

(3) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist ~~((underachieving))~~ students who are not meeting academic standards and reduce disruptive behaviors in the classroom; and

(4) Guide school districts in providing extended learning opportunities to assist ~~((underachieving))~~ K-12 students who are not meeting academic standards in English language arts or mathematics, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-020 Definition—Learning assistance program (LAP). (1) As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students enrolled in grades kindergarten through twelve who do not meet state English language arts or mathematics standards by providing supplemental instruction and services to those students.

(2) School districts implementing a learning assistance program must first focus on addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills.

(a) A district may meet this requirement during the regular school year by ensuring that of the total number of students in grades kindergarten through four served by the learning assistance program, approximately fifty percent are students ~~((enrolled in grades kindergarten through four))~~ receiving English language arts services. Students served under readiness to learn programs provided under WAC 392-162-041 (1)(g) are excluded from this calculation.

(b) A district may serve a threshold lower than fifty percent if it demonstrates a lesser need through one of the following data sources:

(i) The district's prior year statewide assessment scores for third and fourth grade reading;

(ii) The district's prior year's reported number of kindergarten through grade four students reading on grade level under RCW 28A.320.203;

(iii) Districts serving a lower threshold under (b)(i) or (ii) of this subsection must be approved to do so at the start of the school year by the office of the superintendent of public instruction.

The learning assistance program may then be used to support ~~((underachieving))~~ students who are not meeting academic standards in grades kindergarten through twelve by providing supplemental English language arts or mathematics instruction, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, by addressing the needs of

eleventh and twelfth grade students to assist them in meeting state and district graduation requirements, and to reduce disruptive behaviors in the classroom.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

WAC 392-162-033 Definition—~~((Underachieving))~~ Students who are not meeting academic standards. As used in this chapter, the term "~~((underachieving))~~ students who are not meeting academic standards" means students with the greatest academic ~~((deficits))~~ needs in basic skills as identified by statewide, school, or district assessments or other performance tools.

AMENDATORY SECTION (Amending WSR 09-24-075, filed 11/30/09, effective 12/31/09)

WAC 392-162-036 Definition—Extended learning opportunities. As used in this chapter the term "extended learning opportunities" means a program of learning assistance in addition to the required basic education instruction designed to improve the educational performance of ~~((underachieving))~~ students who are not meeting academic standards selected under WAC 392-162-080. The minimum allocation for the learning assistance program shall provide an extended school day and extended school year for each level of school and a per student allocation for maintenance, supplies, and operating costs.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-041 Best practices. (1) Best practices are to be used to provide learning assistance program services to identified learning assistance students. The district must select and implement the best practices that are designed to increase student achievement and are aligned with research. To the extent they are included as a best practice or strategy in one of the state menus on or an alternative allowed under subsection (2)(b) of this section, the following are services and activities that may be supported by the learning assistance program:

(a) Extended learning opportunities occurring:

(i) Before or after the regular school day;

(ii) On Saturday; and

(iii) Beyond the regular school year.

(b) Extended learning opportunities provided under RCW 28A.320.190. Eligibility is for:

(i) Eleventh and twelfth grade students not on track to meet local or state graduation requirements; and

(ii) Students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade.

(c) Professional development for certificated and classified staff that focuses on:

(i) The needs of a diverse student population;

(ii) Specific literacy and mathematics content and instructional strategies; and

(iii) The use of student work to guide effective instruction and appropriate assistance.

(d) Consultant teachers to assist in implementing effective instructional practices by teachers serving participating students.

(e) Tutoring support for participating students.

(f) Outreach activities and support for parents of participating students, including employing parent and family engagement coordinators.

(g) Up to five percent of district's learning assistance program base allocation may be used to deliver a readiness to learn program. Students served are to be significantly at-risk of not being successful in school and services must be focused on reducing barriers to learning, increasing student engagement, and enhancing students' readiness to learn. The program may include academic or nonacademic supports offered by the district or through development of partnerships with community-based organizations, educational service districts, and other local agencies. The school board must approve in an open meeting any community-based organization or local agency before learning assistance program funds may be expended.

(2) Beginning in the 2016-17 school year districts must either:

(a) Select a practice or strategy that is on one of the state-approved menus for the learning assistance program; or

(b) Use a practice or strategy that is not on the state menus for up to two years. Districts must annually notify the office of the superintendent of public instruction if selecting an alternative practice or strategy. At the end of the two years, the district must be able to demonstrate improved outcomes for participating learning assistance program students. If the district is able to demonstrate improved outcomes commensurate with the state approved menu for such students, the office of the superintendent of public instruction will approve the use of the alternative practice for one additional year. For each subsequent year, the district must provide data that demonstrates that participating students are meeting or exceeding academic achievement compared to those students who are being served by a state approved best practices and strategy.

(3) School districts may enter into cooperative agreements with state agencies, local governments, or school districts for administrative or operational costs needed to provide services in accordance with the state menus developed beginning in 2016-17.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-054 (~~(Definition—District eligibility and distribution)~~) Allocation, supplement not supplant, and use of funds. (1) The funds for the learning assistance program shall be (~~(appropriated in accordance with the Omnibus Appropriations Act and RCW 28A.150.260. The distribution formula is for school district allocation purposes only, but funds appropriated for the)~~) allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be distributed to the school building that gen-

erated the funding and may not supplant the learning assistance program base allocation.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through 28A.165.065. ((A school district's funded students for the learning assistance program shall be the sum of the district's full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year.))

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-112 Carry over of funds. (1) Districts may carry over from one year to the next up to ten percent of the (~~(LAP funds—state or education legacy trust funds)~~) learning assistance program base allocation provided allocated under ((this program)) WAC 392-122-605; however, carry-over funds shall be expended for the learning assistance program.

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carryover must be expended for the learning assistance program and for the specific school generating the allocation.

WSR 18-02-036

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-339—Filed December 21, 2017, 2:32 p.m., effective December 21, 2017, 2:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000H and 220-340-45500E; and amending WAC 220-340-420 and 220-340-455.

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

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

Reasons for this Finding: The provisions of this rule will maintain the opening of all commercial crab harvest areas in Puget Sound. There is sufficient allocation available in all of the commercial regions to accommodate the continued effort. This rule adjusts pot limits in various regions in an effort to optimize landings for the fleet over a given timeline. These provisions are in conformity with agreed management plans with applicable tribes. This regulation will close the Everett Flats portion of Region 2 East on December 31, as agreed to in the 2017-18 Region 2 East Management Plan. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet

harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

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

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

Date Adopted: December 21, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-42000I Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420:

(1) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Regions 1, Region 2 East, or Region 2 West. These regions include Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, 26A East, 25B, 25D, and 26A West.

(2) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-1, Region 3-2, Region 3-3 East or 3-3 West. These regions include Marine Fish-Shellfish Management and Catch Reporting Areas 25A, 25E, 23D, 23A, 23B, 23C and 29.

(3) All remaining buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

(4) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light true south to the shore of Dungeness Bay.

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

NEW SECTION

WAC 220-340-45500F Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455:

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(3) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Port Gardner: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(b) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(c) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(4) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light true south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence

southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(5) Effective at 5:30 pm, December 31, 2017, until further notice, the Everett Flats portion of Region 2 East will be closed. This area is defined as follows:

(a) That portion of catch area 26A east of a line projected from Howarth Park northwest to the southernmost point of Gedney Island, and that portion of 24B east of a line projected from the northernmost end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-42000H Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (17-328)
- WAC 220-340-45500E Commercial crab fishery—Seasons and areas—Puget Sound. (17-328)

WSR 18-02-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-344—Filed December 22, 2017, 3:55 p.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: Amends fishing rules for recreational coastal marine and freshwater areas.

Citation of Rules Affected by this Order: Amending WAC 220-312-020 and 220-313-070.

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: Inseason run-size assessment using spawning ground survey data as well as hatchery rack return information has downgraded the run-size of coho in Willapa Bay, for both natural and hatchery-origin coho to below the escapement goals. This inseason modification is needed to optimize both wild and hatchery broodstock escapements. 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 2, Amended 0, Repealed 0.

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

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

Date Adopted: December 22, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-312-02000U Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective January 1, 2018, until further notice the following rules apply. Unless otherwise amended, all permanent rules remain in effect.

(1) It is unlawful to retain wild (unmarked) coho salmon; daily limit one adult salmon.

- (a) Bear River
- (b) Fork Creek
- (c) Naselle River and all forks
- (d) Nemah River and all forks
- (e) Niawiakum River
- (f) North River
- (g) Palix River
- (h) Smith Creek
- (i) Willapa River and South Fork Willapa River

NEW SECTION

WAC 220-313-07000E Salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-070, effective January 1, 2018, until further notice, in the waters of Willapa Bay (Marine Area 2.1) it is unlawful to retain wild (unmarked) coho salmon; daily limit one adult salmon. Unless otherwise amended, all permanent rules remain in effect.

WSR 18-02-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-345—Filed December 26, 2017, 2:08 p.m., effective December 26, 2017, 2:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational razor clam fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000K; and amending WAC 220-330-160.

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 the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. 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 26, 2017.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-330-16000K Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. December 31, 2017 through 11:59 p.m. December 31, 2017, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. December 31, 2017 through 11:59 p.m. January 1, 2018, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. December 31, 2017 through 11:59 p.m. December 31, 2017, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. December 31, 2017 through 11:59 p.m. January 1, 2018, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) It is unlawful to dig for razor clams at any time in the Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 2, 2018:

WAC 220-330-16000K Razor clams—Areas and seasons.

WSR 18-02-050

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 28, 2017, 9:03 a.m., effective December 29, 2017]

Effective Date of Rule: December 29, 2017.

Purpose: The department is creating new sections in chapter 388-106 WAC, Long-term care services, for two new benefit packages for medicaid alternative care (MAC) and tailored supports for older adults (TSOA) as part of Washington's medicaid transformation demonstration.

Citation of Rules Affected by this Order: New WAC 388-106-1900, 388-106-1905, 388-106-1910, 388-106-1915, 388-106-1920, 388-106-1925, 388-106-1930, 388-106-1935, 388-106-1940, 388-106-1945, 388-106-1950, 388-106-1955, 388-106-1960, 388-106-1965, 388-106-1970, 388-106-1975, 388-106-1980, 388-106-1985, and 388-106-1990.

Statutory Authority for Adoption: RCW 74.08.090, 74.08.390, 74.09.5222.

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

Reasons for this Finding: The department is creating new sections in chapter 388-106 WAC, Long-term care services, for two new benefit packages for MAC and TSOA as part of Washington's medicaid transformation demonstration. The department filed a supplemental CR-102 on December 6, 2017, as WSR 17-24-128, with a public hearing on January 23, 2018. The original CR-103E, filed as WSR 17-18-044 on August 30, 2017, will expire on December 28, 2017. This filing will extend the emergency language as the department proceeds with permanent adoption.

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 19, 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 19, Amended 0, Repealed 0.
Date Adopted: December 21, 2017.

Katherine I. Vasquez
Rules Coordinator

MAC AND TSOA SERVICES

NEW SECTION

WAC 388-106-1900 What definitions apply to MAC and TSOA services? The following definitions apply to MAC and TSOA services:

"**Care plan**" means the plan developed by the department in TCARE or GetCare that summarizes the services described in WAC 388-106-1915 that you chose to receive.

"**Care receiver**" means an adult age fifty-five and over who has been authorized for MAC or TSOA services.

"**Caregiver**" means a spouse, relative, or friend (age eighteen and over) who has primary responsibility for the care or supervision of an adult who meets eligibility criteria and does not receive direct, public, or private payment such as a wage for the caregiving services they provide.

"**Caregiver assistance services**" are services that take the place of those typically performed by an unpaid caregiver in support of unmet needs the care receiver has for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

"**GetCare**" means a statewide web-based information system that includes a client management component for use by area agencies on aging (AAA) and other aging and disability network partners.

"**GetCare assessment**" is a process where the department gathers information for an individual without a caregiver in the following areas: functional needs, diagnoses and conditions, behavior health supports, oral health, and nutritional health to assist the individual with choosing step three services.

"**GetCare screening**" is a process where the department gathers information for an individual without a caregiver in order to determine risk scores. The information covers the following areas: function needs, fall risk, availability of informal help, memory and decision making issues, and emotional well-being. The risk scores are used to determine if the individual is referred for a full GetCare assessment.

"**Health maintenance and therapies**" are clinical or therapeutic services that assist the care receiver to remain in their home or the caregiver to remain in their caregiving role and provide high quality care. Services are provided for the purpose of preventing further deterioration, improving, or maintaining current level of functioning.

"**Identity discrepancy**" means a negative psychological state that occurs when the activities and responsibilities that a caregiver assumes with regard to the care receiver are inconsistent with the caregiver's expectations or personal norms concerning these activities and responsibilities.

"**MAC**" means medicaid alternative care, which is a federally funded program authorized under section 1115 of the

Social Security Act. It enables an array of person-centered services to be delivered to unpaid caregivers caring for a medicaid eligible person who lives in a private residence (such as their own home or a family member's home) and chooses to receive community based services.

"**Medicaid transformation project demonstration**" refers to the authority granted to the state by the federal government under section 1115 of the Social Security Act. This waiver is a five year demonstration to support health care systems prepare for and implement health reform and provide new targeted medicaid services to eligible individuals with significant needs. It includes MAC and TSOA programs.

"**Personal assistance services**" are supports involving the labor of another person to help the care receiver complete activities of daily living and instrumental activities of daily living that they are unable to perform independently. Services may be provided in the care receiver's home or to access community resources.

"**RDAD**" means reducing disability in Alzheimer's disease. This program is designed to improve the ability of the person with memory problems to complete activities of daily living while also helping family members provide assistance to the person.

"**Service provider**" means an agency or organization contracted with the department.

"**Specialized medical equipment and supplies**" are goods and supplies needed by the care receiver that are not covered under the medicaid state plan, medicare, or private insurance.

"**TCARE**" means tailored caregiver assessment and referral which is an evidence-based caregiver coordination process designed to assist department assessors who work with family caregivers to support adults living with disabilities. TCARE is designed to tailor services to the unique needs of each caregiver to help reduce stress, depression, and burdens associated with caregiving.

"**TCARE assessment**" is a part of the TCARE process where department assessors gather responses to all of the TCARE screening questions as well as additional questions focused on both the caregiver's experience and the care receiver's situation such as memory issues, behavioral needs, assistance needs with activities of daily living and instrumental activities of daily living, and diagnoses/conditions.

"**TCARE screening**" is a part of the TCARE process that gathers information from the caregiver to determine scores and ranges for the caregiver's identity discrepancy, burdens, uplifts, and depression. The ranges are used to determine if the caregiver is referred for a full TCARE assessment.

"**Training and education**" are services and supports to help caregivers gain skills and knowledge to implement services and supports needed by the care receiver to remain at home and skills needed by the caregiver to remain in their role.

"**TSOA**" means tailored supports for older adults, which is a federally-funded program approved under section 1115 of the Social Security Act. It enables the delivery of person-centered services to:

(1) Caregivers who care for an eligible person as defined in WAC 388-106-1910; and

(2) Eligible persons as defined in WAC 388-106-1910, without a caregiver.

NEW SECTION

WAC 388-106-1905 Am I eligible for MAC services?

(1) You are eligible to receive MAC services if you, as a care receiver, meet the following criteria:

- (a) Are age fifty-five or older;
- (b) Meet nursing facility level of care as defined in WAC 388-106-0355;
- (c) Meet medicaid financial eligibility requirements as defined in WAC 182-513-1605;
- (d) Have an unpaid caregiver who:
 - (i) Is age eighteen or older;
 - (ii) Has participated in the following:
 - (A) Care plan for step one services;
 - (B) TCARE screening and care plan for step two services; or
 - (C) TCARE assessment and care plan for step three services;
- (e) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and
- (f) Do not receive any other medicaid funded long-term services and supports (LTSS) while receiving MAC services.

(2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends the last day of the month following the month when your MAC services were first authorized.

(b) In the event the department implements a wait list under WAC 388-106-1970 for MAC services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

(d) Under presumptive eligibility you may receive services as described in WAC 388-106-1915.

NEW SECTION

WAC 388-106-1910 Am I eligible for TSOA services?

(1) You are eligible to receive TSOA services if you, as a care receiver, meet the following criteria:

- (a) Are age fifty-five or older;
- (b) Meet nursing facility level of care as defined in WAC 388-106-0355;
- (c) Meet financial eligibility requirements defined in WAC 182-513-1615 or 182-513-1620;
- (d) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and
- (e) Meet the criteria in either (e)(i) or (ii) of this subsection:
 - (i) Have an unpaid caregiver who is age eighteen or older and has participated in the following:
 - (A) A care plan for step one services;

(B) A TCARE screening and care plan for step two services; or

(C) A TCARE assessment and care plan for step three services; or

(ii) You do not have an available caregiver and have participated in the following:

- (A) A care plan for step one services;
- (B) A GetCare screening and care plan for step two services; or
- (C) A GetCare assessment and care plan for step three services.

(2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends with the earlier date of:

(i) The day the decision was made on your TSOA application; or

(ii) The last day of the month following the month in which your presumptive eligibility services were authorized if you did not submit your TSOA application.

(b) In the event the department implements a wait list under WAC 388-106-1970 for TSOA services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

(d) Under presumptive eligibility you may receive services as described in WAC 388-106-1915.

NEW SECTION

WAC 388-106-1915 What services may I receive in MAC and TSOA?

MAC and TSOA services include the following three benefit levels referred to as steps. Caregivers and care receivers may receive services under any of the three steps depending upon their requests and needs identified in the screening process for step two and the assessment process for step three. Steps do not need to be used in order. For example, an individual may begin services at step two or three. In general, step one services are used by caregivers or care receivers requesting lesser supports than those using step three services.

(1) Step one: After the department obtains your demographics and approves your program eligibility, you may receive the following services:

- (a) Information and referrals to family caregiver or community resources;
- (b) A selection of the following services up to a one time limit of two hundred and fifty dollars:
 - (i) Training and education, which includes but is not limited to:
 - (A) Support groups;
 - (B) Group training;
 - (C) Caregiver coping and skill building training;
 - (D) Consultation on supported decision making;
 - (E) Caregiver training to meet the needs of the care receiver;

- (F) Financial or legal consultation; and
- (G) Health and wellness consultation;
- (ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:
 - (A) Supplies;
 - (B) Specialized medical equipment;
 - (C) Assistive technology;
- (iii) Caregiver assistance services, which includes but is not limited to short term respite to allow the caregiver to attend an educational event or training series; and
- (iv) Health maintenance and therapy supports, which may include but are not limited to:
 - (A) Adult day health;
 - (B) RDAD and evidence based exercise programs;
 - (C) Health promotion and wellness services; and
 - (D) Counseling related to caregiving role.
- (2) Step two: After the department obtains your demographics, approves your program eligibility, and completes a GetCare or TCARE screening, you may receive the following:
 - (a) Information and referrals to family caregiver or community resources;
 - (b) The following services up to an annual limit of five hundred dollars minus any expenditures for step one services:
 - (i) Training and education, which includes but is not limited to:
 - (A) Support groups;
 - (B) Group training;
 - (C) Caregiver coping and skill building training;
 - (D) Consultation on supported decision making;
 - (E) Caregiver training to meet the needs of the care receiver;
 - (F) Financial or legal consultation; and
 - (G) Health and wellness consultation;
 - (ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:
 - (A) Supplies;
 - (B) Specialized medical equipment;
 - (C) Assistive technology; and
 - (D) Personal emergency response system (PERS);
 - (iii) Caregiver assistance services, which include but are not limited to:
 - (A) Short-term respite to allow the caregiver to attend an educational event or training series;

- (B) Housework/errands and yard work;
- (C) Home delivered meals for the care receiver;
- (D) Minor home modifications and repairs to the care receiver's home;
- (E) Home safety evaluation of the care receiver's home; and
- (F) Transportation, only in conjunction with the delivery of a service;
- (iv) Health maintenance and therapy supports, which include but are not limited to:
 - (A) Adult day health;
 - (B) RDAD and evidence based exercise programs;
 - (C) Health promotion and wellness services; and
 - (D) Counseling related to the caregiving role;
- (v) Personal assistance services for the TSOA without an unpaid caregiver, which include but are not limited to:
 - (A) Adult day care;
 - (B) Transportation, only in conjunction with the delivery of a service;
 - (C) Housework/errands and yard work;
 - (D) Home delivered meals;
 - (E) Home safety evaluation of the care receiver's home; and
 - (F) Minor home modifications and repairs to the care receiver's home.
- (3) Step three:
 - (a) For MAC and TSOA care receivers with caregivers:
 - (i) You may receive information and referrals to family caregiver or community resources.
 - (ii) After the department has obtained your demographics and approved your program eligibility, the caregiver must complete a TCARE assessment in order to access step three services. In order to qualify for a TCARE assessment, the TCARE screening must result in at least three medium scores or one high score for the TCARE burdens. TCARE uses an evidence-based algorithm to identify a primary goal based on the caregiver's answers to the TCARE assessment questions. An individualized care plan will be developed that uses the strategies and services recommended by the TCARE assessment and contains the services chosen by the caregiver up to the limits established in WAC 388-106-1920.
 - (iii) The Xs in the table below indicate the services that may be available for each strategy as defined in WAC 388-106-1930 and recommended by the TCARE assessment:

Services	Strategies				
<i>Training and education</i>					
Group training		X			
Caregiver coping and skill building training	X	X	X	X	
Consultation on supported decision making	X	X	X		
Caregiver training to meet needs of care receiver	X	X	X		
Financial or legal consultation		X			
Health and wellness consultation		X			
Support groups	X	X	X		
<i>Specialized medical equipment and supplies</i>					
Supplies		X			

Services	Strategies				
Specialized medical equipment		X			
Assistive technology		X			
Personal emergency response system		X			
Caregiver assistance services					
Home delivered meals		X			
Minor home modifications and repairs		X			
Housework/errands and yard work		X			
In-home respite		X			
OT/PT evaluation	X	X		X	
Home safety evaluation		X			
Out-of-home respite		X			
Transportation		X			
Health maintenance and therapy supports					
Adult day health		X			
RDAD and evidence based exercise programs		X		X	
Health promotion and wellness services				X	X
Counseling related to the caregiver role	X		X	X	

(b) For TSOA care receivers who do not have an available caregiver:

(i) You may receive information and referrals to community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, you must complete a GetCare assessment in order to access step three services. In order to qualify for a GetCare assessment, the GetCare screening must result in a risk score of moderate or high. An individualized care plan will then be developed based upon the needs identified in the assessment and the services you have selected up to the limits established in WAC 388-106-1920.

(iii) The services available include services noted in subsections (1) and (2) of this section (except for subsections (1)(b)(iii) and (2)(b)(iii) of this section) and the following personal assistance services:

- (A) Personal care; and
- (B) Nurse delegation.

NEW SECTION

WAC 388-106-1920 What is the maximum amount of step three services I may receive a month? (1) The maximum amount of step three services you and your caregiver may receive in MAC and TSOA is an average of five hundred and fifty dollars per month not to exceed three thousand three hundred dollars in a six month period unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001.

(2) If you are a care receiver who does not have an available unpaid caregiver and you are receiving TSOA personal assistance services, the maximum amount of step three services you may receive per month is five hundred and fifty

dollars unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001.

NEW SECTION

WAC 388-106-1925 What are the goals in TCARE?

The three primary goals for caregivers identified in TCARE are:

(1) Maintain current identity: The goal appropriate for caregivers who experience modest levels of identity discrepancy and stress and are willing and able to continue in their current role. Suggested support services will help caregivers make small adjustments in their personal norms and the manner in which they undertake their caregiving responsibilities.

(2) Embrace caregiver identity: The goal appropriate for caregivers who are likely to benefit from embracing a stronger identity as a caregiver and releasing, to some degree, their commitment to a familial identity. Suggested support services will encourage the caregiver to accept a greater identity with the caregiver role.

(3) Reduce caregiver identity: The goal appropriate for caregivers who are engaged in a level of caregiving that requires emotional or physical resources beyond their capability. Suggested support services will encourage caregivers to explore ways to reduce workload and stress related to their caregiving role.

NEW SECTION

WAC 388-106-1930 What is the purpose of the TCARE assessment?

The purpose of the TCARE assessment is to gather critical information about the caregiving context, identity, strengths, problems and concerns. This data is used to identify strategies and goals to address the caregiver's burdens and stresses. Program limits are established in WAC 388-106-1915.

The five strategies in TCARE are:

(1) Strategy A: Change personal rules for care, which entails encouraging and helping the caregiver to change or adjust their personal rules or norms.

(2) Strategy B: Reduce or minimize work load, which focuses on reducing the amount or intensity of a caregiver's work load and therefore aligns the caregiver's behaviors with their expectations.

(3) Strategy C: Support positive self-appraisal, which focuses on offering positive affirmation and assuring the caregiver that the behaviors that they must engage in as a caregiver are consistent with their norms.

(4) Strategy D: Reduce generalized stress, which focuses on giving the caregiver tools and skills to cope with daily stresses of caregiving.

(5) Strategy E: Improve overall health, which encourages the caregiver to seek appropriate health services.

NEW SECTION

WAC 388-106-1935 Where may I receive MAC and TSOA services? You may receive MAC and TSOA services:

- (1) In your own home; and
- (2) In the community setting, where the authorized service occurs, within the state of Washington or in a recognized out-of-state bordering city as defined in WAC 182-501-0175.

NEW SECTION

WAC 388-106-1940 When will my MAC or TSOA services be authorized? Your MAC or TSOA services will be authorized when you:

- (1) Have completed initial requirements for intake including but not limited to screenings and assessments;
- (2) Are found to be at least presumptively eligible, both financially and functionally;
- (3) Have chosen a provider(s) qualified for payment; and
- (4) Have given consent for services and approved your care plan.

NEW SECTION

WAC 388-106-1945 When do my MAC or TSOA services begin? Your MAC or TSOA services may begin as early as the date authorized by the department.

NEW SECTION

WAC 388-106-1950 How do I remain eligible for MAC and TSOA services? (1) In order to remain eligible for MAC and TSOA services, you, as the care receiver must:

(a) Remain functionally eligible as defined in WAC 388-106-0355 and financially eligible as defined in WAC 182-513-1605, 182-513-1615, and 182-513-1620; and

(b) Have your functional and financial eligibility reviewed at least annually.

(2) If eligibility laws, regulations, or rules change, and if you as the caregiver or the care receiver do not meet the changed eligibility requirements, the department will terminate services, even if your circumstances have not

changed. You will receive advance notice of any termination or change in your services and an opportunity to appeal.

NEW SECTION

WAC 388-106-1955 What do I pay for if I receive MAC or TSOA services? You, as a caregiver or a care receiver, will not be required to pay toward the cost of your MAC or TSOA services. This means that neither estate recovery nor participation towards cost of care are required.

NEW SECTION

WAC 388-106-1960 May I be employed and receive MAC or TSOA services? You, as the care receiver may be employed and receive MAC or TSOA services. Your caregiver may be employed in roles other than caregiving and receive services under MAC or TSOA.

NEW SECTION

WAC 388-106-1965 Are there limits to the services I may receive? The services you may receive under MAC or TSOA will not include the following:

- (1) Rent;
- (2) Groceries;
- (3) Car repairs;
- (4) Utility bills;
- (5) Household appliances;
- (6) Vacation expenses;
- (7) Entertainment items such as TVs, radios, computers, cell phones;
- (8) Pet care items;
- (9) Gift cards; and
- (10) Any services not defined in WAC 388-106-1915.

NEW SECTION

WAC 388-106-1970 Who may provide MAC and TSOA services? The following providers may provide MAC and TSOA services:

(1) Durable medical equipment vendors and adult day health providers that have a core provider agreement with the health care authority; and

(2) Providers who are contracted with the department to provide goods and services.

NEW SECTION

WAC 388-106-1975 Will there be a wait list for MAC and TSOA? (1) The department will implement a statewide wait list if program expenditures or enrollment exceeds availability of demonstration funding.

(2) If the department implements a wait list for new MAC and TSOA applicants:

(a) We will stop conducting presumptive eligibility determinations and financial and functional eligibility assessments.

(b) We may reduce benefit limits for step one, two, and three to maintain department spending within available demonstration funding. If we reduce benefit limits, individu-

als currently receiving benefits will maintain their current benefit level, including those with approved presumptive eligibility.

(c) If additional funding becomes available, applicants on a wait list for MAC or TSOA services will be considered on a first come first serve basis based upon their request date for MAC or TSOA services.

NEW SECTION

WAC 388-106-1980 When may the department terminate or deny MAC or TSOA services? (1) The department will deny or terminate MAC or TSOA services if you are not eligible for services pursuant to WAC 388-106-1905, 388-106-1910, and 388-106-1945.

(2) The department may deny or terminate your MAC or TSOA services if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, one or more of the following conditions exist:

(a) Your rights and responsibilities as a client of the department are reviewed with you by a department representative under WAC 388-106-1300 and 388-106-1303, and you refuse to accept those services identified in your care plan that are vital to your health, welfare, or safety.

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider.

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

- (i) Threatening, uncontrolled animals (such as dogs);
- (ii) The manufacture, sale, or use of illegal drugs;
- (iii) The presence of hazardous materials (such as exposed sewage, evidence of a methamphetamine lab).

(3) The department will terminate services if the department does not receive written consent of the care plan within sixty days of the completion of your care plan. Written consent for step one and step two care plans may also be provided by secure email or other electronic means.

NEW SECTION

WAC 388-106-1985 Do I have the right to an administrative hearing regarding MAC or TSOA services? Yes, you may request an administrative hearing based on the rules outlined in WAC 388-106-1305 to contest the department's decisions regarding MAC or TSOA services.

NEW SECTION

WAC 388-106-1990 May I choose to receive traditional medicaid long term services and supports instead of services under the MAC program? Yes. You, as the care receiver, may choose to apply for traditional medicaid long term services and supports such as community first choice, community option program entry system (COPES), new free-

dom, and residential support waiver, instead of services under the MAC program. You must contact your case manager who will assist you with this process.

WSR 18-02-052 EMERGENCY RULES OFFICE OF FINANCIAL MANAGEMENT

[Filed December 28, 2017, 10:11 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: Initiative 1433 (I-1433) which was approved by Washington voters in November 2016, requires employers to provide paid sick leave to most employees effective January 1, 2018. This initiative modified chapter 49.46 RCW to include paid sick leave provisions (one hour for every forty hours worked).

Citation of Rules Affected by this Order: New WAC 357-31-121; and amending WAC 357-01-072, 357-01-172, 357-01-202, 357-01-227, 357-01-228, 357-31-100, 357-31-120, 357-31-125, and 357-31-130.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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: To align Title 357 WAC with the changes made to chapter 49.46 RCW resulting from I-1433.

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 9, 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 9, Repealed 0.

Date Adopted: December 28, 2017.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

AMENDATORY SECTION (Amending WSR 07-17-124, filed 8/20/07, effective 9/20/07)

WAC 357-01-072 Child. A biological, adopted, ((~~or~~)) foster child, ((~~or~~)) stepchild, ((~~or~~)) legal ward, or a child of a person standing *in loco parentis*, a child of a legal guardian, or a child of a de facto parent, regardless of age or dependency status.

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-01-172 Family members. Individuals considered to be members of the family are parent, (~~(step parent, sister, brother)~~) sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW 26.60.020 or a person with whom the employee has a dating relationship as defined in RCW 26.50.010.

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-202 Minor/dependent child. A biological, adopted, (~~(or)~~) foster child, (~~(or)~~) stepchild, (~~(or)~~) legal ward, a child of a de facto parent, regardless of age or dependency status, or a child of a person standing *in loco parentis*, who is:

- Under eighteen years of age, or
- Eighteen years of age or older and incapable of self-care because of a mental or physical disability.

Persons who are *in loco parentis* are those with day-to-day responsibilities to care for and financially support a child.

AMENDATORY SECTION (Amending WSR 06-19-063, filed 9/19/06, effective 10/20/06)

WAC 357-01-227 Parent. A biological (~~(or)~~), adoptive (~~(parent)~~), de facto, or foster parent, step-parent, or legal guardian of an employee or (~~(an individual)~~) the employee's spouse or registered domestic partner, or a person who stood in loco parentis to an employee when the employee was a child. A person who had day-to-day responsibilities to care for and financially support the employee when ((he or she was)) they were a child is considered to have stood in loco parentis to the employee.

AMENDATORY SECTION (Amending WSR 10-17-061, filed 8/13/10, effective 9/15/10)

WAC 357-01-228 Parent-in-law. A biological (~~(or)~~), adoptive (~~(parent)~~), de facto, or foster parent, step-parent, or legal guardian of an employee's spouse or an employee's registered domestic partner or (~~(an individual)~~) a person who stood *in loco parentis* to an employee's spouse or to an employee's registered domestic partner when the employee's spouse or the employee's registered domestic partner was a child. A person who had day-to-day responsibilities to care for and financially support the employee's spouse or the employee's registered domestic partner when (~~(he or she was)) they were~~ a child is considered to have stood *in loco parentis* to the employee's spouse or to the employee's registered domestic partner.

AMENDATORY SECTION (Amending WSR 14-11-035, filed 5/14/14, effective 6/16/14)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim, or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020;

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave; (~~(and)~~)

(4) Allow an employee to use sick leave for qualifying absences under the Family and Medical Leave Act (FMLA) for parental leave for the purpose of baby bonding with his/her newborn, adoptive, or foster child in accordance with WAC 357-31-495. The policy must state the maximum amount of sick leave allowed to be used during the twelve-week FMLA period;

(5) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC; and

(6) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC.

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

WAC 357-31-120 Do overtime exempt employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time overtime exempt general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time overtime exempt higher education employees (~~(who have more than ten working days or)~~) with leave without pay exceeding eighty hours in a month (prorated for part-time) do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

NEW SECTION

WAC 357-31-121 Do overtime eligible employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time overtime eligible general government employees who are in pay status for less than eighty hours in a month, earn a monthly accrual proportionate to the number of hours in pay status, in the month to that required for full-time employment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

(2) Full-time and part-time overtime eligible higher education employees with leave without pay exceeding eighty hours in a month (prorated for part-time) will accrue a minimum of one hour for every forty hours worked.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-31-125 For general government part-time employees, how is leave accrual prorated? Vacation and sick leave accruals for part-time general government employees will be proportionate to the number of hours in pay status, in the month to that required for full-time employment. Sick leave accruals must not exceed eight hours in a month. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 14-11-035, filed 5/14/14, effective 6/16/14)

WAC 357-31-130 When can an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) ~~((Because of and during))~~ An employee's mental or physical illness, disability, ~~((or))~~ injury, or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) ~~((To care for a minor/dependent child with a health condition requiring treatment or supervision.~~

(d) ~~To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency health condition.)~~ When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness,

injury, or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300, and 357-31-305.

(f) ~~((For personal health care appointments.~~

(g) ~~For family members' health care appointments when the presence of the employee is required if arranged in advance with the employing official or designee.~~

~~((h))~~ When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

~~((h))~~ (g) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

~~((h))~~ (h) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

~~((h))~~ (i) For qualifying absences under the Family and Medical Leave Act for parental leave for the purpose of bonding with ~~((his/her))~~ their newborn, adoptive, or foster child in accordance with WAC 357-31-495. The amount of sick leave allowed to be used must be addressed in the employer's leave policy in accordance with WAC 357-31-100.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement.

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255.

WSR 18-02-057**EMERGENCY RULES****DEPARTMENT OF REVENUE**

[Filed December 29, 2017, 7:45 a.m., effective December 29, 2017, 7:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This new section will provide the option of a brief adjudicative proceeding to those impacted by specific agency actions of the department of revenue in the adminis-

tration of unclaimed property, RCW 63.29.340 Interest and penalties.

Citation of Rules Affected by this Order: New WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

Statutory Authority for Adoption: RCW 63.29.370.

Other Authority: RCW 34.05.350.

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 will allow for the immediate appeal of actions by the department of revenue while it proceeds with the adoption of a permanent rule.

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

Date Adopted: December 29, 2017.

Erin T. Lopez
Rules Coordinator

Chapter 458-65A WAC

UNCLAIMED PROPERTY

NEW SECTION

WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Uniform Unclaimed Property Act, chapter 63.29 RCW. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 Revised Code of Washington (RCW), the Administrative Procedure Act (APA). The department will use a brief adjudicative proceeding as provided in RCW 34.05.482 through 34.05.494 to determine the following issues:

(a) Whether a holder is liable for accrued interest for failure to pay or deliver property to the department (RCW 63.29.340(1));

(b) Whether a holder is subject to the ten percent penalty for failure to timely file a report or pay or deliver any amounts or property due under a report (RCW 63.29.340(2));

(c) Whether a holder is subject to the ten percent penalty for an assessment following an examination, of amounts unpaid or property not delivered (RCW 63.29.340(3));

(d) Whether a holder is subject to the five percent penalty for failure to timely pay or deliver property due under an assessment (RCW 63.29.340(4)); and

(e) Whether a holder is subject to the five percent penalty for failing to electronically file a report or pay electronically (RCW 63.29.340(7)).

(2) **Multiple penalties.** The assessment of more than one type of penalty against a holder will be determined in a single brief adjudicative proceeding if those penalties were assessed in the same notice of assessment.

(3) **Holder defined.** Holder, as applied throughout this rule means a person obligated to report, or to deliver, property that is subject to chapter 63.29 RCW, the Uniform Unclaimed Property Act of 1983.

(4) **Record in brief adjudicative proceedings.** The record with respect to a holder's petition for review per RCW 34.05.482 through 34.05.485 will consist of:

(a) The holder's unclaimed property report and electronic confirmation of report (RCW 63.29.170);

(b) Application for penalty and interest waiver (RCW 63.29.340 and 63.29.191);

(c) Application for refund of property, interest, or penalty (RCW 63.29.192);

(d) The holder's unclaimed property petition for review (RCW 63.29.193);

(e) Request for relief from electronic filing and payment requirements (RCW 63.29.170 (5)(a) and 63.29.190 (1)(a));

(f) Department's letter of denial for refund or return of property (RCW 63.29.193); and

(g) All correspondence between the holder and the department regarding the penalty, interest, or refund in question.

(5) **Conduct of brief adjudicative proceedings.**

(a) If the department assesses penalties and interest under chapter 63.29 RCW, it will notify the holder of the penalties and interest in writing and state the reason for the penalties and interest. To initiate a review of the department's assessment of penalties and interest, the holder must file a written petition for review no later than thirty days after service of the department's written notice that the holder has been assessed penalties and interest. See RCW 63.29.193.

(b) A form notice of petition for review is available at dor.wa.gov or by calling 1-800-647-7706. The completed form must be mailed, emailed, or faxed to the department at:

Mail:

Washington State Department of Revenue
Special Programs, Unclaimed Property Section
P.O. Box 47477
Olympia, WA 98504-7477

Email: UCP@dor.wa.gov

Fax: 360-534-1498

(c) At the time the petition is filed, the holder must submit to the special programs, unclaimed property section, all arguments and any evidence or written material relevant to the matter that the party wishes the presiding officer to consider. No witnesses may offer testimony.

(d) A presiding officer, who will be the unclaimed property operations manager of the special programs division or such other person as designated by the director of the department, will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the assessment of penalties on the holder.

(e) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis in making a decision.

(f) Within twenty-one days of receipt of the holder's petition for review, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders will be in writing. The initial order will become the department's final order unless a timely petition for review is filed with the department's administrative review and hearings division as provided in subsection (6) of this rule.

(6) Review of initial orders from brief adjudicative proceeding.

(a) A holder may request a review by the department of an initial order issued per subsection (5) of this rule by filing a written petition for review with the department's administrative review and hearings division within twenty-one days of service of the initial order on the holder. See RCW 34.05.488. At the time the petition is filed, the holder must submit to the administrative review and hearings division all arguments and any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(b) An unclaimed property petition for review of an initial order per subsection (5) of this rule is available at dor.wa.gov. The petition must be sent to one of the following:

Mail:

Washington State Department of Revenue
Administrative Review and Hearings Division
P.O. Box 47460
6400 Linderson Way S.W.
Olympia, WA 98504-7460
Email: DORARHAdmin@dor.wa.gov
Fax: 360-534-1340

(c) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the department's initial order issued per subsection (5) of this rule was correctly based on the criteria set forth in RCW 63.29.-340. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding in accordance with subsection (7) of this rule.

(d) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(e) The reviewing officer will issue a written order that includes a brief statement of the reasons for the decision, within twenty days of the date the petition for review was filed. The order will include a notice that judicial review may

be available. The order of the reviewing officer represents the final decision of the department.

(f) A request for review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed, unless a continuance is issued under subsection (11) of this rule. See RCW 34.05.491(5).

(7) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the holder, the department, or the presiding or reviewing officer's own motion.

(a) The presiding or reviewing officer will convert the proceeding when it finds that the use of the brief adjudicative proceeding violates any provision of law, the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the holder and department, or when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.-479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the reviewing officer or may designate a replacement reviewing officer to conduct the formal proceedings upon notice to the holder and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002(2) will apply to the proceedings.

(8) Court appeal.

(a) A holder may appeal a final order of the department under Part V, chapter 34.05 RCW, when a review of the initial decision has been requested under subsection (6) of this rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(b) A holder who has already paid or delivered property to the department may appeal directly to the superior court of Thurston County for a refund of such payment or property instead of appealing to the department. See RCW 63.29.194.

(9) Computation of time. In computing any period of time prescribed by this rule, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection (10) of this rule is deemed complete upon mailing.

(10) Service. All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the holder, their representatives/agents of record, and the department's representative.

(a) Service is made by one of the following methods:

- (i) In person;
- (ii) By first-class, registered or certified mail;
- (iii) By fax and same-day mailing of copies;
- (iv) By commercial parcel delivery company; or
- (v) By electronic delivery.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a holder and to their representative/agent of record must be to the address(es) shown on the petition for review.

(g) Service to the department's representative and to the presiding officer must be to the special programs division unclaimed property section at the address shown in subsection (5) of this rule.

(h) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (6) of this rule.

(i) Where proof of service is required, the proof of service must include:

(i) An acknowledgment of service; and

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy to (names); and that the service was accomplished by a method of service as provided in this subsection.

(j) Failure to serve documents on all parties of record in the proceeding in a manner prescribed by this subsection will result in an unlawful ex parte contact. An ex parte contact cannot constitute evidence of any fact at issue in the matter unless the party complies with RCW 34.05.455(5).

(11) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the holder, the department, or on its own motion.

WSR 18-02-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-347—Filed December 29, 2017, 12:19 p.m., effective December 29, 2017, 12:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial sea urchin rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000F; 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 green sea urchin harvest in District 1 and

the northern half of District 2 (21A, 21B, 22A, 22B) to prevent overharvest. Harvestable surpluses of sea urchin exist in the districts specified to remain open for 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 29, 2017.

Joe Stohr for
J. W. Unsworth
Director

NEW SECTION

WAC 220-340-75000G 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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

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

WSR 18-02-063

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 29, 2017, 1:42 p.m., effective December 29, 2017, 1:42 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is revising WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements, to align with new credentialing for ABA providers through the Washington state department of health under chapter 246-805 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SSB 5488, chapter 118, Laws of 2015, 64th legislature.

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: WAC 182-531A-0800 needs to be amended to align with SSB 5488 of 2015 and Washington state department of health's recently filed rules under chapter 246-805 WAC, which create new credentials for behavior analysts, assistant behavior analysts, and behavior technicians, effective July 1, 2017. As soon as chapter 246-805 WAC became effective, the agency began the permanent rule-making process under WSR 17-11-029 filed May 10, 2017. The agency has completed the external stakeholder review and plans to file the CR-102 once the agency responds to all stakeholder comments. This emergency filing is necessary to continue the current emergency rule until the rule-making process is completed.

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 1, Repealed 0.

Date Adopted: December 29, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Center of excellence.

(1) A center of excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team.

(2) The COE must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

- (i) An advanced registered nurse practitioner (ARNP);
- (ii) A developmental pediatrician;
- (iii) A neurologist;
- (iv) A pediatric neurologist;
- (v) A pediatric psychiatrist;
- (vi) A psychiatrist; or
- (vii) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (3) of this section (~~and~~), who has been designated by the agency as a COE, and who has successfully completed the agency's approved COE training.

(3) The COE must be prequalified by the agency as meeting or employing people who meet the following criteria:

(a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:

- (i) Using a validated diagnostic tool;
- (ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or
- (iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(4) The COE must be enrolled with the agency or the client's managed care organization, unless the client has third-party insurance.

(5) Examples of providers who can qualify as a designated COE include:

- (a) Multidisciplinary clinics;
- (b) Individual qualified provider offices; and
- (c) Neurodevelopmental centers.

(6) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

(7) The lead behavior analysis therapist (LBAT) must ~~((be))~~:

(a) Be licensed by the department of health (DOH) to practice independently as ~~((an ARNP, physician, psychologist, or licensed mental health practitioner)) a behavior analyst or assistant behavior analyst with supervision from a licensed behavior analyst~~ under Title 18 RCW ~~((, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW,))~~ and be an eligible provider according to chapter 182-502 WAC; or

~~(b) ((Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as an ARNP, physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW, and be an eligible provider according to chapter 182-502 WAC; or~~

~~(c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC.)) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or psychologist with a signed attestation regarding certification as a board-certified behavior analyst (BCBA) or an assistant behavior analyst (BCaBA) on file with the agency (see chapter 246-805 WAC).~~

(8) The LBAT must enroll as a servicing provider, be authorized to supervise ancillary providers, and be:

(a) ~~((board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB))) DOH-licensed behavior analyst (LBA) (see WAC 246-805-100); or~~

~~(b) ((Eligible to sit for board certification under standards set by the BACB; or~~

~~(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB)) A DOH-licensed assistant behavior analyst (LABA) (see WAC 246-805-200).~~

(9) If the LBAT's role is filled by a ~~((BCaBA)) LABA, the responsibilities below must be fulfilled by both the ~~((BCaBA)) LABA and the supervising ~~((BCBA)) LBA, as required by ~~((the BACB)) DOH. The LBAT must:~~~~~~~~

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the ~~((therapy assistant)) certified behavior technician per week.~~

~~((Therapy assistant.)) Certified behavior technician.~~

(10) The ~~((therapy assistant (TA))) certified behavior technician (CBT) must ~~((be))~~:~~

(a) Be able to practice independently by being ~~((licensed)) certified~~ by DOH as a ~~((licensed mental health practitioner or credentialed as a counselor)) certified behavior technician~~ under Title 18 RCW in good standing with no license restrictions; or

~~(b) ((Employed by or contracted with an agency enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or~~

~~(c) Employed by or contracted with an agency enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC.)) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or psychologist with a signed attestation regarding ABA qualifications on file with the agency (see chapter 246-805 WAC).~~

(11) The ~~((TA)) CBT must enroll as a performing or servicing provider and have:~~

(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a client with core symptoms of autism; and

(b) A letter of attestation signed by the lead LBAT, documenting that the ~~((TA)) CBT has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services.~~

(12) The ~~((TA)) CBT must:~~

(a) Deliver services according to the ABA therapy treatment plan; and

(b) Be supervised by an LBAT who meets the requirements under subsection (7)(;) and (8)(~~(, and~~ (9))) of this section; and

(c) Review the client's progress with the LBAT at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the LBAT.

Facility-based day program.

(13) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following licensure requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements;

~~(b) ((A clinic or nonhospital-based facility must be licensed as a community mental health agency by DBHR under chapter 388-877A WAC;~~

(e)) A provider rendering direct ABA services must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable; and

((c)) (c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW.

WSR 18-02-064

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed December 29, 2017, 1:50 p.m., effective December 29, 2017, 1:50 p.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 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.

The agency needs to refile the emergency to correct an error in the numerical structure of WAC 182-559-350 that will affect the eligibility for clients receiving benefits under the foundational community supports program.

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 29, 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, loca-

tion, 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 treatment 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:

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

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

((+)) (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:

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

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

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

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

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

((+)) (3) Supported employment, such as individual placement and support (IPS) services, ~~is~~ individualized 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) Vocational/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.

(e) 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 18-02-093

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed January 3, 2018, 9:16 a.m., effective January 4, 2018]

Effective Date of Rule: January 4, 2018.

Purpose: The department is amending WAC 388-845-1615 and 388-845-1620 as part of the developmental disabilities administration's (DDA) waiver renewal process. These emergency rules reflect the changes approved by the Centers for Medicare and Medicaid Services (CMS) in August 2017. As part of this subsequent emergency rule filing, DDA is combining these amendments filed under WSR 17-19-004 with the emergency rules filed under WSR 17-21-070, which are also part of the CMS-approved waiver amendments. This emergency filing cancels and supersedes both WSR 17-19-004 and 17-21-070.

Citation of Rules Affected by this Order: New WAC 388-845-0515, 388-845-0520 and 388-845-0525; repealing WAC 388-845-1200, 388-845-1205, 388-845-1210, 388-845-1840, 388-845-1845 and 388-845-1850; and amending WAC 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0501, 388-845-0505, 388-845-0506, 388-845-0510, 388-845-0603, 388-845-0700, 388-845-0820, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1150, 388-845-1615, 388-845-1620, 388-845-1650, 388-845-1655,

388-845-1660, 388-845-1700, 388-845-1710, 388-845-1865, 388-845-1900, 388-845-2000, 388-845-2010, and 388-845-2170.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: DDA must not authorize waiver services unless they are part of a waiver application approved by CMS. CMS has approved DDA's waiver applications. These emergency rules are necessary to provide the services approved by CMS and for DDA to receive federal funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 31, Repealed 6.

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 3, Amended 31, Repealed 6.

Date Adopted: January 2, 2017.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-03 issue of the Register.