

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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 31, Repealed 6.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.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, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0110 ~~What are ((there limitations)) the limits to the waiver services you ((can)) may receive? ((There are limitations))~~ The following limits apply to the waiver services((.Those are)) you may receive:

(1) A service must be available in your waiver and address an unmet need identified in your person-centered service plan.

(2) ~~((The need for a service must be identified and authorized in your person-centered service plan/individual support plan.~~

~~((3))~~ Behavioral health stabilization services may be added to your person-centered service ~~((plan/individual support))~~ plan after the services ~~((are))~~ have been provided.

~~((4))~~ (3) Waiver services are limited to services required to prevent ICF/IID placement.

~~((5))~~ (4) The daily cost of your waiver services ~~((cannot))~~ must not exceed the average daily cost of care in an ICF/IID.

~~((6))~~ (5) Waiver services ~~((cannot))~~ must not replace or duplicate other available paid or unpaid supports or services. You must first ~~((pursue))~~ exhaust benefits available to you through private insurance, the medicaid state plan~~((;))~~ - including early and periodic screening, diagnosis, and treatment - or other resources.

~~((7))~~ (6) Waiver funding ~~((cannot))~~ must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0550.

(7) DDA does not authorize the use of waiver funding for:

(a) Restrictive technology;

(b) Location tracking services; or

(c) Audio or video technology to surveil the client.

(8) For IFS and basic plus waivers, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

(9) Your choice of qualified providers and services is limited to the most cost-effective option that meets your health and welfare needs.

(10) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations of not more than thirty consecutive days.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities ~~((per))~~ under WAC 182-501-0175 are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River, and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater, and Astoria, Oregon.

(11) Other out-of-state waiver services require an approved exception to rule before DDA ~~((can))~~ will authorize payment.

(12) Waiver services ~~((do))~~ do not cover copays, deductibles, dues, membership fees, or subscriptions.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0210 What ~~((is the scope of))~~ services ~~((for))~~ are available under the basic plus waiver? The following services are available under the basic plus waiver:

((BASIC-PLUS-WAIVER))	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: <u>Positive behavior support and consultation</u> Community guide Environmental adaptations Occupational therapy <u>Chemical extermination of bedbugs (cimex lectularius)</u> Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed ((6192)) <u>six thousand one hundred ninety-two dollars</u> per year on any combination of these services
	Wellness education EMPLOYMENT SERVICES: Prevocational services Supported employment Individual technical assistance	Limits are determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015
	Community ((access)) <u>inclusion</u>	Limits are determined by DDA assessment

((BASIC-PLUS-WAIVER))	SERVICES	YEARLY LIMIT
	BEHAVIORAL HEALTH STABILIZATION SERVICES: <u>Positive behavior support and consultation</u> Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA
	Personal care	Limits determined by the CARE tool used as part of the DDA assessment
	Respite care	Limits are determined by the DDA assessment
	((Sexual deviancy evaluation)) <u>Risk assessment</u>	Limits are determined by DDA
	Emergency assistance is only for basic plus waiver aggregate services	((6000)) <u>Six thousand dollars</u> per year; preauthorization required

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0215 What ~~((is the scope of))~~ services ~~((for))~~ are available under the core waiver? The following services are available under the core waiver:

((CORE-WAIVER))	SERVICES	YEARLY LIMIT
	<u>Positive behavior support and consultation</u> Community guide Community transition Environmental adaptations Occupational therapy <u>Chemical extermination of bedbugs (cimex lectularius)</u> Physical therapy ((Sexual deviancy evaluation)) <u>Risk assessment</u> Skilled nursing	Determined by the person-centered service ((plan/individual support)) plan, not to exceed the average cost of an ICF/IID for any combination of services

((CORE-WAIVER))	SERVICES	YEARLY LIMIT
	Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Wellness education	
	Residential habilitation	
	Community ((access)) <u>inclusion</u>	Limits are determined by DDA assessment
	Employment services Prevocational services Supported employment Individualized technical assistance	Limits are determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015
	BEHAVIORAL HEALTH STABILIZATION SERVICES: <u>Positive</u> behavior support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA
	Respite care	Limits are determined by the DDA assessment

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0220 What is the scope of services for the community protection waiver? The following services are available under the community protection waiver:

((COMMUNITY-PROTECTION-WAIVER))	SERVICES	YEARLY LIMIT
	<u>Positive</u> behavior support and consultation	Determined by the person-centered service ((plan/

((COMMUNITY-PROTECTION-WAIVER))	SERVICES	YEARLY LIMIT
	Community transition Environmental adaptations Occupational therapy <u>Chemical extermination of bedbugs (cimex lectularius)</u> Physical therapy ((Sexual deviancy evaluation)) <u>Risk assessment</u> Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	individual support)) plan, not to exceed the average cost of an ICF/IID for any combination of services
	Residential habilitation	
	Employment Services: Prevocational services Supported employment Individual technical assistance	Limits determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavioral support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0225 What is the scope of services for the children's intensive in-home behavioral support

(CIIBS) waiver? The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

((CHBS-Waiver))	Services	Yearly Limit
	<ul style="list-style-type: none"> ((*) Occupational therapy (*) Physical therapy (*) Sexual deviancy evaluation (*) Specialized psychiatric services (*) Speech, hearing and language services (*) Transportation 	<p>Determined by the person-centered service ((plan/individual support)) plan. Total cost of waiver services ((cannot)) <u>must not exceed the average cost of ((\$4,000)) four thousand dollars</u> per month per participant.</p>
	Respite care	Limits determined by the DDA assessment. Costs are included in the total average cost of (((\$4000)) <u>four thousand dollars</u> per month per participant for all waiver services.
	<p>Behavioral health stabilization services: ((Behavioral)) <u>Positive behavior support and consultation</u> Crisis diversion bed services ((Specialized psychiatric services))</p>	Limits determined by behavioral health specialist

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0230 ~~What ((is the scope of)) services ((for))~~ are available under the individual and family services (IFS) waiver? (1) IFS waiver services include:

((IFS Waiver))	Services	Yearly Limit
	<ul style="list-style-type: none"> (*) Sexual deviancy evaluation (paid for outside of annual allocation) (*) Nurse delegation (*) Peer mentoring 	Total cost of waiver services ((cannot)) <u>must not exceed annual allocation determined by the person-centered service ((plan/ISP)) plan.</u>
	<ul style="list-style-type: none"> (*) Assistive technology (*) Positive behavior support and consultation (*) Community engagement (*) Staff/family consultation and training (*) Environmental adaptations (*) Occupational therapy (*) Physical therapy (*) Specialized psychiatric services (*) Speech, hearing and language services (*) Transportation (*) Assisted technology (*) Therapeutic equipment and supplies (*) Specialized ((nutrition and)) clothing (*) Vehicle modifications 	
	<ul style="list-style-type: none"> (*) Assisted technology (*) Positive behavior support and consultation (*) Community engagement (*) Staff/family consultation and training (*) Environmental adaptations (*) Occupational therapy (*) Physical therapy (*) Sexual deviancy evaluation (paid for outside of annual allocation) (*) Nurse delegation (*) Peer mentoring (*) Person-centered plan facilitation (*) Respite care (*) Skilled nursing (*) Specialized clothing (*) Specialized medical equipment/supplies (*) Specialized nutrition (*) Specialized psychiatric services (*) Speech, hearing and language services (*) Supported parenting services (*) Transportation (*) Therapeutic equipment and supplies 	

((IFS Waiver))	Services	Yearly Limit
	((*) Vehicle modifications ((*) Wellness education <u>Risk assessment</u>	Limits determined by DDA
	((*) Behavioral health stabilization services: ((*) Behavioral) <u>Positive behavior support and consultation</u> ((*) Specialized psychiatric services	Limits determined by behavioral health specialist.

(2) Your IFS waiver services annual allocation is based upon the DDA assessment described in chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0425 Are there limits to the assistive technology you (~~can~~) may receive? The assistive technology you may receive has the following limits:

- (1) Clinical and support needs for assistive technology are identified in your DDA assessment and documented in the person-centered service (~~(plan/individual support))~~ plan.
- (2) Assistive technology may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the technology is not covered by medicaid or private insurance.
- (3) The department does not pay for experimental technology as defined in WAC 182-531-0550.
- (4) The department requires your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:
 - (a) The treating professional has personal knowledge of and experience with the requested assistive technology; and
 - (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.
- (5) Assistive technology requires prior approval by the DDA regional administrator or designee.
- (6) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (4) of this section.

(7) The dollar amounts for your IFS waiver annual allocation limit the amount of assistive technology you are authorized to receive.

(8) Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0500 What is positive behavior support and consultation? (1) Positive behavior support and consultation may be provided to persons on any of the DDA HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

- (a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and
- (b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

(2) Positive behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0501 What is included in positive behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver? (1) In addition to the definition in WAC 388-845-0500, positive behavior support and consultation in the CIIBS waiver must include the following characteristics:

- (a) Treatment must be evidence based, driven by individual outcome data, and consistent with DDA's positive behavior support guidelines as outlined in contract;
 - (b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:
 - (i) Functional behavioral assessment; and
 - (ii) Positive behavior support plan based on functional behavioral assessment((-));
 - (c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and
 - (d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.
- (2) Positive behavior support and consultation in the CIIBS waiver may also include the following components:
- (a) Behavioral technicians (as defined in WAC 388-845-0506) may implement positive behavior support plans which may include 1:1 behavior interventions and skill development activity.

(b) Positive behavior support plans may include recommendations by either a music ~~((and/or))~~ or recreation therapist, or both, as defined in WAC 388-845-2005.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0505 Who is a qualified provider of positive behavior support and consultation? Under the basic plus, core, ~~((CP))~~ community protection (CP), and IFS waivers, the provider of positive behavior support and consultation must be one of the following professionals contracted with DDA and duly licensed, registered, or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselor(s) registered or certified ~~((in accordance with the requirements of))~~ under chapter 18.19 RCW;
- (11) Polygrapher; or
- (12) State-operated positive behavior support agency limited to behavioral health stabilization services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0506 Who is a qualified provider of positive behavior support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver? ~~((+))~~ Under the CIIBS waiver, providers of positive behavior support and consultation must be contracted with DDA to provide CIIBS intensive services as one of the following ~~((two provider types))~~:

- ~~((a))~~ (1) Master's or PhD-level behavior specialist, licensed, certified, or ~~((certified/))~~ registered to provide behavioral assessment, intervention, and training; or
- ~~((b))~~ (2) Behavior technician, licensed, certified, or ~~((certified/))~~ registered to provide behavioral intervention and training, following the lead of the behavior specialist.

~~((2))~~ Providers of behavior support and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.)

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0510 Are there limits to the positive behavior support and consultation you ~~((can))~~ may receive? (1) Clinical and support needs for positive behavior support and consultation are identified in your DDA assess-

ment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) DDA and the treating professional will determine the need and amount of service you will receive, subject to the ~~((limitations))~~ limits in subsection (3) of this section.

(3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the ~~((IFS))~~ individual and family services (IFS) waiver limit the amount of service unless provided as a behavioral health stabilization service.

(4) DDA ~~((reserves the right to))~~ may require a second opinion from a department-selected provider.

(5) Positive behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the DDA regional administrator or designee for the following waivers:

- (a) Basic plus;
 - (b) Core;
 - (c) Children's intensive in-home behavior support (CIIBS); and
 - (d) IFS.
- (6) Positive behavior support and consultation services are limited to services:
- (a) Consistent with waiver objectives of avoiding institutionalization; and
 - (b) Not otherwise covered under the medicaid state plan, including early and periodic screening, diagnosis, and treatment.

NEW SECTION

WAC 388-845-0515 What is chemical extermination of bedbugs? (1) Chemical extermination of cimex lectularius (bedbugs) is professional chemical extermination of bedbugs.

(2) DDA covers professional chemical extermination of bedbugs in your primary residence if you:

- (a) Receive residential habilitation services; or
- (b) Live in a private house or apartment for which you are financially responsible.

NEW SECTION

WAC 388-845-0520 Who are qualified providers of chemical extermination of bedbugs? A qualified chemical extermination provider must be:

- (1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and
- (2) Contracted with DDA to provide chemical extermination of bedbugs.

NEW SECTION

WAC 388-845-0525 Are there limits to the chemical extermination of bedbugs services I may receive? (1) Chemical extermination services covers only:

- (a) The assessment or inspection by the qualified provider;
 - (b) Application of chemical-based pesticide; and
 - (c) One follow-up visit.
- (2) Chemical extermination of bedbugs is limited to two treatments per plan year.

(3) Chemical extermination of bedbugs excludes:

(a) Lodging during the chemical extermination process; and

(b) Preparatory housework associated with the extermination process.

(4) DDA does not cover chemical extermination of bedbugs for a client who lives with their family.

(5) DDA requires prior approval by the regional administrator or designee for chemical extermination of bedbugs.

AMENDATORY SECTION (Amending WSR 17-12-002, filed 5/24/17, effective 6/24/17)

WAC 388-845-0603 Who is eligible to receive community ~~((access))~~ inclusion services? You are eligible for community ~~((access))~~ inclusion services if you are enrolled in the basic plus or core waivers and:

(1) You are sixty-two or older; or

(2) You meet age requirements under WAC 388-845-2110(1) and ~~((s))~~;

(a) You have participated in the developmental disabilities ~~((administration (DDA's)))~~ administration's (DDA) supported employment services for nine consecutive months; or

(b) DDA has determined that you are exempt from the nine-month DDA supported employment service requirement because:

(i) Your medical or behavioral health records document a condition that prevents you from completing nine consecutive months of DDA supported employment services; or

(ii) You were referred to and were available for DDA supported employment services, but the service was not delivered within ninety days of the referral.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0700 What ~~((is-a))~~ are community guide services? Community guide services ~~((increases))~~ increase access to informal community supports. Community guide services are short-term ~~((and))~~ services designed to develop creative, flexible, and supportive community resources for individuals with developmental disabilities to meet a goal identified in the waiver participant's person-centered service plan. ~~((This service is))~~ These services are available in basic plus and core waivers.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0820 Are there limits to your use of emergency assistance? All of the following ~~((limitations))~~ limits apply to your use of emergency assistance:

(1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service ~~((plan/individual support))~~ plan to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and ~~((cannot))~~ must not exceed six thousand dollars per twelve months based on the effective date of your current person-centered service ~~((plan/individual support))~~ plan;

(3) Emergency assistance services are limited to the following basic plus waiver aggregate services ~~((and))~~;

(a) Positive behavior support and consultation;

(b) Community guide;

(c) Environmental adaptations;

(d) Occupational therapy;

(e) Physical therapy;

(f) Specialized medical equipment and supplies;

(g) Specialized psychiatric services;

(h) Speech hearing and language services;

(i) Skilled nursing;

(j) Staff and family consultation and training, which excludes individual and family counseling; and

(k) Transportation;

(4) Emergency assistance may be used for interim services until:

(a) The emergency situation has been resolved; ~~((or))~~

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0910 What ~~((limitations))~~ limits apply to environmental adaptations? The following service ~~((limitations))~~ limits apply to environmental adaptations:

(1) Clinical and support needs for environmental adaptations are identified in the waiver participant's DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) One ~~((bid is required for adaptations costing one))~~ thousand five hundred dollars or less ~~((Two bids are required for adaptations costing))~~, one bid is required;

(b) More than one thousand five hundred dollars and equal to or less than five thousand dollars ~~((Three bids are required for adaptations costing))~~, two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

~~((3))~~ (4) DDA may require an occupational therapist, physical therapist, or construction consultant to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

~~((4))~~ (5) Environmental adaptations ~~((or improvements))~~ to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, or central air conditioning.

~~((5))~~ (6) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to authorizing payment for work.

~~((6) Deteriorated)~~ (7) The condition of the dwelling or other (~~remodeling~~) projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA.

~~((7))~~ (8) Location of the dwelling in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

~~((8))~~ (9) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

~~((9))~~ (10) Environmental adaptations (~~cannot~~) must not add to the total square footage of the home.

~~((10))~~ (11) The dollar amounts for aggregate services in your basic plus waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

~~((11))~~ (12) For core, community protection, and CIIBS waivers, annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

(13) Damage repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original ~~(condition)~~ function;

(b) Limited to the dollar amounts of the IFS waiver participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the dwelling must be addressed in a positive behavior support plan prior to the repair of damages; ~~(and)~~

(d) Repairs to personal property such as furniture ~~(;)~~ and appliances ~~(, and normal wear and tear)~~ are excluded; and

(e) Repairs due to normal wear and tear are excluded.

~~((12))~~ (13) The following adaptations are not ~~(included in this service)~~ covered as an environmental adaptation:

(a) Building fences and fence repairs; ~~(and)~~

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, or ceiling fans; and

(d) Roof repair or siding.

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

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1000 What are extended state plan services? (1) Extended state plan services (~~refer to~~) means physical therapy ~~(;)~~, occupational therapy ~~(;)~~, and speech, hearing, and language services not available to you under the medicaid ~~(without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the)~~ state ~~(medicaid)~~ plan. ~~(These services are available under all DDA HCBS waivers)~~

(2) Extended state plan services are available to clients age twenty-one and older under the following waiver programs:

(a) Basic plus;

(b) Core;

(c) Individual and family services; and

(d) Community protection;

(3) Extended state plan services are available to a client if the therapy:

(a) Addresses a remedial need and allows the client to remain in the home; or

(b) Is medically necessary and all state plan services have been exhausted.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1015 Are there limits to the extended state plan services you ~~(can)~~ may receive? (1) ~~(Clinical and support needs for)~~ Extended state plan services are limited to ~~(those)~~ therapies identified in your DDA assessment and ~~(documented in the)~~ person-centered service plan ~~(individual support plan)~~.

(2) ~~(Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan.~~

~~(3))~~ The department does not pay for treatment determined by DSHS to be experimental as described in WAC 182-531-0550.

~~((4) The department and the treating professional)~~ (3) The department determines the need for and amount of service you ~~(can)~~ may receive ~~(;)~~.

(a) The department may require a second opinion from a ~~(department)~~ DDA-selected provider.

(b) The department will require evidence that you have ~~(accessed)~~ exhausted your full benefits through the medicaid state plan, your private health insurance, or other resources before authorizing this waiver service.

~~((5))~~ (4) The dollar amount for basic plus waiver aggregate services limit the amount of service you may receive.

~~((6))~~ (5) The dollar amount for your annual allocation on the IFS waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1150 What are behavioral health stabilization services? Behavioral health stabilization services assist persons who are experiencing a behavioral health crisis or meet criteria for enhanced respite or community crisis stabilization services. These services are available in the basic plus, core, CIIBS, IFS, and community protection waivers to individuals determined by behavioral health professionals or DDA to be at risk of institutionalization or hospitalization who need one or more of the following services:

(1) Positive behavior support and consultation;

(2) Specialized psychiatric services for people age twenty-one and older; or

(3) Behavioral health crisis diversion bed services not available to participants on the IFS waiver.

AMENDATORY SECTION (Amending WSR 17-12-011, filed 5/26/17, effective 6/26/17)

WAC 388-845-1615 Who may be qualified providers of respite care? Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

- (1) Individuals who meet the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;
- (4) Licensed and contracted adult family homes;
- (5) Licensed and contracted adult residential care facilities;
- (6) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;
- (7) Licensed child care centers under chapter 170-295 WAC;
- (8) Licensed child day care centers under chapter 170-295 WAC;
- (9) Adult day care providers under chapter 388-71 WAC contracted with DDA;
- (10) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services; ~~((or))~~
- (11) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under chapter 246-700 WAC and contracted with DDA to provide this service; or
- (12) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1620 Are there limits to the respite care you can receive? The following limitations apply to the respite care you can receive:

- (1) For basic plus, core, and CIIBS waivers, the DDA assessment will determine how much respite you can receive per chapter 388-828 WAC.
- (2) For the IFS waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.
- (3) Respite cannot replace:
 - (a) Day care while your parent or guardian is at work; or
 - (b) Personal care hours available to you. When determining your unmet need, DDA will first consider the personal care hours available to you.
- (4) Respite providers have the following limitations and requirements:
 - (a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;
 - (b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(5) Your individual respite provider may not provide:

- (a) Other DDA services for you during your respite care hours; or
- (b) DDA paid services to other persons during your respite care hours.
- (6) Your primary caregivers may not provide other DDA services for you during your respite care hours.
- (7) If your personal care provider is your parent and you live in your parent's adult family home you may not receive respite.

(8) DDA may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(9) If you require respite care from a licensed practical nurse (LPN) or a registered nurse (RN), respite services may be authorized ((as skilled nursing services per WAC 388-845-1700)) using an LPN or RN. Respite services are limited to the assessed respite care ((from a)) hours identified in your person-centered service plan. Respite provided by an LPN or RN requires a prior approval ((per WAC 388-845-1700(2). If you are on the IFS or basic plus waiver, skilled nursing services are limited to the dollar amounts of your basic plus aggregate services or IFS annual allocation per WAC 388-845-0210 and 388-845-0230)) by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1650 What are ~~((sexual deviancy evaluations))~~ is a risk assessment? (1) ~~((Sexual deviancy evaluations))~~ A risk assessment:

- (a) ~~((Are))~~ Is a professional evaluation((s)) that ((assess the)) assesses a person's needs and the person's level of risk of ((sexual offending or sexual recidivism)) sexual predatory behavior or aggression;
 - (b) Determines the need for psychological, medical, or therapeutic services; and
 - (c) Provides treatment recommendations to mitigate any assessed risk.
- (2) ~~((Sexual deviancy evaluations are))~~ A risk assessment is available in all DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1655 Who is a qualified provider of ~~((sexual deviancy evaluations))~~ a risk assessment? The provider of ~~((sexual deviancy evaluations))~~ a risk assessment must:

- (1) Be a ~~((certified sexual offender treatment provider (SOTP); and))~~ licensed psychologist under chapter 246-924 WAC; or
- (2) ~~((Meet the standards contained in))~~ Be a certified sexual offender treatment provider (SOTP) and meet requirements under WAC 246-930-030 ((education required prior to certification)) and WAC 246-930-040 ((professional

experience required prior to examination)) if the provider is performing a risk assessment.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1660 Are there ~~((limitations))~~ limits to the ((sexual deviancy evaluations)) risk assessment you ((can)) may receive? (1) Clinical and support needs for ~~((sexual deviancy evaluations))~~ a risk assessment are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan. ~~((Sexual deviancy evaluations))~~ A risk assessment must meet the standards ~~((contained))~~ in WAC 246-930-320.

(2) ~~((Sexual deviancy evaluations require))~~ A risk assessment requires prior approval by the DDA regional administrator or designee.

(3) The ~~((costs))~~ cost of ~~((sexual deviancy evaluations de))~~ a risk assessment does not count toward the dollar limits for aggregate services in the basic plus waiver~~((s))~~ or the annual allocation in the IFS waiver.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1700 What is waiver skilled nursing? (1) Waiver skilled nursing ~~((is continuous))~~ means long-term, intermittent, ((or part time)) and hourly skilled nursing services~~((These services are))~~;

(a) Available in the basic plus, core, IFS, and ((CP)) community protection (CP) waivers; and

(b) That address nursing care tasks not available to you under the medicaid state plan - including early and periodic screening, diagnosis, and treatment.

(2) Waiver skilled nursing services include nurse delegation services~~((per))~~ provided by a registered nurse under WAC 388-845-1170~~((provided by a registered nurse, including the initial visit, follow-up instruction, and supervisory visits)).~~

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1710 Are there ~~((limitations))~~ limits to the skilled nursing services you ((can)) may receive? The following ~~((limitations))~~ limits apply to your receipt of skilled nursing services:

(1) Clinical and support needs for skilled nursing services are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) Skilled nursing services with the exception of nurse delegation and nursing evaluations require prior approval by the DDA regional administrator or designee.

(3) ~~((DDA and the treating professional determine the need for and amount of service))~~ Skilled nursing hours must not exceed the number of hours determined by the nursing care consultant skilled nursing assessment.

(4) DDA ~~((reserves the right to))~~ may require a second opinion by a department-selected provider.

(5) The dollar amount for aggregate services in your basic plus waiver or the dollar amount of your annual allocation in your IFS waiver limits the amount of skilled nursing services you may receive.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1865 Are there ~~((limitations))~~ limits to your receipt of specialized clothing? (1) The following ~~((limitations))~~ limits apply to your receipt of specialized clothing:

(a) Clinical and support needs for specialized clothing are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(b) Specialized clothing may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third-party payments are available.

(c) The department requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

(d) The department may require a second opinion from a department selected provider that meets the criteria in subsection (1)(c) of this section.

(2) For the IFS waiver, the dollar amount for your annual allocation limits the amount of service you may receive.

(3) You must receive prior approval from the DDA regional administrator or designee to receive specialized clothing.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1900 What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing behavioral health symptoms. These services are available ~~((in all DDA HCBS waivers))~~ to people age twenty-one and older.

(2) ~~((Service))~~ Specialized psychiatric services may be any of the following:

(a) Psychiatric evaluation~~((s))~~;

(b) Medication evaluation and monitoring~~((s))~~;

(c) Psychiatric consultation.

(3) These services are also available as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all DDA HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the person-centered service plan/individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support;
- (e) Augmentative communication systems;
- (f) Diet and nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental consultation; and
- (j) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2010 Are there ~~((limitations))~~ limits to the ((staff/family)) staff and family consultation and training you ((can)) may receive? (1) Clinical and support needs for ~~((staff/family))~~ staff and family consultation and training are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under ~~((staff/family))~~ staff and family consultation and training.

(3) The dollar amounts for aggregate service in your basic plus waiver or the dollar amount of the annual allocation in your IFS waiver limit the amount of ~~((staff/family))~~ staff and family consultation and training you may receive.

(4) Basic plus waiver individual and family counseling is limited to family members who:

- (a) Live with the waiver participant; and
- (b) Have been assaulted by the waiver participant and the assaultive behavior was:
 - (i) Documented in the person-centered service plan; and
 - (ii) Addressed in the waiver participant's positive behavior support plan or therapeutic plan.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2170 Are there ~~((limitations on))~~ limits to your receipt of therapeutic equipment and supplies? The following ~~((limitations))~~ limits apply to your receipt of therapeutic equipment and supplies under the CIIBS and IFS waivers:

(1) Therapeutic equipment and supplies may be authorized as a waiver service if the service is not covered by Medicaid or private insurance. You must assist the department in determining whether third party payments are available.

(2) The department does not pay for experimental equipment and supplies.

(3) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating

professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(4) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (3) of this section.

(5) The dollar amount of your annual allocation in your IFS waiver limits the amount of therapeutic equipment and supplies you are authorized to receive.

(6) Therapeutic equipment and supplies requires a prior approval by the DDA regional administrator or designee.

(7) Therapeutic equipment and supplies excludes non-specialized recreational items such as trampolines, swing sets, or hot tubs.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-845-1200 What are "person-to-person" services?
- WAC 388-845-1205 Who are qualified providers of person-to-person services?
- WAC 388-845-1210 Are there limits to the person-to-person service I can receive?
- WAC 388-845-1840 What is specialized nutrition?
- WAC 388-845-1845 Who are qualified providers of specialized nutrition?
- WAC 388-845-1850 Are there limitations to your receipt of specialized nutrition?

WSR 18-03-004

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-01—Filed January 3, 2018, 4:52 p.m., effective January 4, 2017 [2018]]

Effective Date of Rule: January 4, 2017 [2018].

Purpose: Amend commercial sea urchin rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000G; 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 red sea urchin harvest in District 3 and the western half of District 2 (23A) 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: January 3, 2018.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-340-75000A Commercial sea urchin fisheries Notwithstanding the provisions of WAC 220-340-750, effective January 4, 2018, 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 23B, 25A, and 25B in Sea Urchin District 2, and Sea Urchin District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude. It is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size is largest test diameter exclusive of spines).

(2) The following areas are open for green sea urchin harvest seven days-per-week: marine fish/shellfish catch areas 23A in Sea Urchin District 2, Sea Urchin District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, Sea Urchin District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, Sea Urchin District 6, and Sea Urchin District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122° 35 minutes west longitude to 47° 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122° 41 minutes west longitude to 47° 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landings for red and green sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 4, 2018:

WAC 220-340-75000G Commercial sea urchin fisheries.
(17-347)

WSR 18-03-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-02—Filed January 3, 2018, 4:55 p.m., effective January 3, 2018, 4:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial crab harvest rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000I; and amending WAC 220-340-420.

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

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

Reasons for this Finding: The 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 increases pot limits in Region 2 West in an effort to land the remaining allocation prior to the hard closure date of January 31, 2018. These provisions are in conformity with agreed management plans with applicable tribes. 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 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: January 3, 2018.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-340-42000A 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 Region 1 and Region 2 East. These regions include Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, 26A East.

(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 2 West, 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 23A, 23B, 23C, 23D, 25A, 25B, 25D, 25E, 26A West, 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.

REPEALER

The following sections of the Washington Administrative code are repealed immediately:

WAC 220-340-42000I Commercial crab fishery—Unlawful acts. (17-339)

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

WSR 18-03-007
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 4, 2018, 8:57 a.m., effective January 4, 2018, 8:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule-making order is to amend WAC 392-121-182 to help ensure that

school districts and charter schools comply with statutory full-day kindergarten (FDK) requirements, RCW 28A.150-315, when offering alternative learning experience (ALE) courses or course work to students.

Citation of Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Reasons for this Finding: RCW 28A.150.315 requires that FDK must be implemented statewide in the 2017-18 school year. Accordingly, FDK programs offered starting in August and September of the current year—including ALE courses or course work provided to FDK students—are required to meet the statutory conditions set forth in RCW 28A.150.315. Immediate adoption of this emergency rule is necessary to ensure that kindergarten students are receiving access to legally appropriate education services.

A preproposal statement of inquiry regarding the adoption of permanent rules regarding this subject (WSR 17-18-105) was filed on September 6, 2017, and the office of superintendent of public instruction is actively undertaking the appropriate procedures to adopt the 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 1, Repealed 0.

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

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

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

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

Date Adopted: January 4, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district or public charter school have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts and charter schools;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts and charter schools must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district or charter school must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources. This section does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or charter school, or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's or charter school's policy and this chapter.

(ii) The categories of alternative learning experience courses are:

(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work;

(c) "Certificated teacher" means an employee of a school district or charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and

the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, email, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session or when a charter school is in session;

(j) "School-based support staff" means an employee of a school district or a charter school, of a school district contrac-

tor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted or charter school adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(l) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(m) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan;

(n) "Written student learning plan" means a written plan for learning that includes at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This

requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school.

(o) "Full-day kindergarten" means a program that is eligible for state-funded full-day kindergarten, as provided for in RCW 28A.150.315 in which any student's alternative learning experience enrollment is claimed as greater than 0.50 full-time equivalent.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(i) Direct personal contact; or

(ii) In-person instructional contact; or

(iii) Synchronous digital instructional contact.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communi-

cate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

(viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district or charter school.

(5) Required school district or charter school board policies for alternative learning experiences: The board of directors of a school district or charter school board claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) or charter school official(s) responsible for overseeing the district's or charter school's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors or charter school board on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's or charter school's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts or charter schools that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor, or charter school or charter school contractor, to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts and charter schools must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience courses or course work must be con-

sistent in quality with those available to the district's or charter school's overall student population.

(g) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district or charter school may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's or charter school's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's or charter school's regular instructional program. Items so purchased remain the property of the school district or charter school upon program completion.

(i) School districts and charter schools are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's or charter school's regular instructional program. This prohibition extends to a district's or charter school's contracted providers of alternative learning experience programs, and each district and charter school shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts or charter schools from contracting with school district or charter school employees to provide services or experiences to students; or

(ii) Prohibit school districts or charter schools from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts or charter schools that contract with school district or charter school employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district or charter school that provides alternative learning experience courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district or charter school and made available for audit.

(ii) In the event a school district or charter school cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district or charter school may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district or charter school does not

obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor, or charter school or charter school contractor, is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district or charter school including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts and charter schools may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district, school district contractor, charter school, or charter school contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district or charter school must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district or charter school.

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts and charter schools offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's or charter school's alternative learning experience courses by the office of the state auditor.

(7) Enrollment reporting procedures: Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district or charter school must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district or charter school in the subsequent month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) Assessment requirements:

(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district or charter school. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district or charter school in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident district alternative learning experience courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering

the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(d) School districts and charter schools offering alternative learning experience courses or course work to students enrolled in full-day kindergarten must administer the Washington kindergarten inventory of developing skills (WaKIDS) to identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction.

(i) The administration of WaKIDS under this section shall replace the administration of other school district or charter school assessments. Other assessments may only be administered if they seek to obtain information not covered by WaKIDS.

(ii) School districts and charter schools must provide an opportunity for parents and guardians to excuse their children from participation in WaKIDS.

(9) Reporting requirements:

(a) Each school district or charter school offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences. Each school district offering alternative learning experience courses or course work must further report monthly to the superintendent information about the resident and serving districts of such students.

(b) Each school district or charter school offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's or charter school's regular instructional program.

(c) Each school district or charter school offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(d) Each school district or charter school offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. School districts and charter schools must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(e) School districts and charter schools offering alternative learning experience courses or course work to students enrolled in full-day kindergarten must submit a report to the superintendent of public instruction by December 15, 2017, describing the ways the school district or charter school is addressing the requirements of RCW 28A.150.315. The report must be made in a form prescribed by the superintendent of public instruction.

(10) Documentation and record retention requirements: School districts and charter schools claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts and charter schools must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors or charter school board as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section.

(j) For students enrolled in full-day kindergarten, evidence of the following:

(i) On a monthly basis, how the school district or charter school is meeting the following requirements under RCW 28A.150.315(1):

(A) The provision of at least a one thousand-hour instructional program;

(B) The provision of a curriculum that offers a rich, varied set of experiences that assist students in:

(I) Developing initial skills in the academic areas of reading, mathematics, and writing;

(II) Developing a variety of communication skills;

(III) Providing experiences in science, social studies, arts, health, and physical education, and a world language other than English;

(IV) Acquiring large and small motor skills;

(V) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(VI) Learning through hands-on experiences.

(C) The establishment of learning environments that are developmentally appropriate and promote creativity;

(D) The demonstration of strong connections and communication with early learning community providers;

(E) The participation in kindergarten program readiness activities with early learning providers and parents.

(ii) On a monthly basis, the number of hours each student enrolled in the full-day kindergarten program is served in a site-based authentic classroom environment with direct instruction provided by a WaKIDS-trained, Washington state certificated teacher, including a description of instruction.

(iii) On a monthly basis, the number of hours each student enrolled in the full-day kindergarten program is served by someone other than a WaKIDS-trained, Washington state certificated teacher, including a description of the services and who is providing the services.

WSR 18-03-038

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed January 9, 2018, 12:10 p.m., effective January 9, 2018, 12:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-183 (Rule 183) explains the tax reporting instructions for persons who provide amusement, recreation, and physical fitness services. RCW 82.04.050 is the statute that explains the taxability of these same activities and services. The statute was significantly amended in 2015 due to legislation (HB 1550) which changed the taxability of many of these activities and services. The department began the standard rule-making process in 2017 to reflect these changes, but until the final rule is adopted the department wants the public to be aware that many of the tax reporting instructions in Rule 183 are only valid through December 31, 2015. There are no changes from the previous emergency rule filed September 13, 2017, under WSR 17-19-064.

Citation of Rules Affected by this Order: Amending WAC 458-20-183 Amusement, recreation, and physical fitness services.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

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: Taxpayers providing amusement, recreation, and physical fitness services rely on Rule 183 to assist them in determining their tax reporting requirements. Due to the multiple changes to the statute concerning the taxability of amusement, recreation, and physical fitness services, Rule 183 requires a substantive update using the

standard rule-making process. Until the amended rule is adopted, the department wants to ensure the public does not use current Rule 183 to determine their reporting requirements for periods beginning January 1, 2016.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: January 9, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-22-100, filed 11/1/95, effective 12/2/95)

WAC 458-20-183 Amusement, recreation, and physical fitness services. (1) Introduction. House Bill 1550 (chapter 169, Laws of 2015) made significant changes to many of the activities addressed in this rule. Readers should not rely on this rule for tax periods beginning January 1, 2016, but instead should refer to RCW 82.04.050 and dor.wa.gov for current tax information. This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin operated amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

(2) **Definitions.** The following definitions apply throughout this section:

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, (~~racquet ball~~) racquetball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "Direct overhead costs" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "Entry fees" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "Goods or services rendered" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see, WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "Indirect overhead costs" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs

include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "direct overhead costs" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "Physical fitness services" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc.; providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "Physical fitness services" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress-management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (l) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

(3) Business and occupation tax.

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

(4) Receiving income in the form of dues and/or initiation fees.

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for-profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or

other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

(i) Actual records of facilities usage.

(A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates

for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

(ii) **Cost of production method.**

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

(B) No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

(C) The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.

(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.

(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

(5) **Retail sales tax.**

(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise

classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be used to determine the person's retail sales tax liability under this subsection.

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

(6) **Transitory provisions for nonprofit youth organizations.** The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.

WSR 18-03-056

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed January 10, 2018, 10:19 a.m., effective January 10, 2018, 10:19 a.m.]

Effective Date of Rule: Immediately upon filing.

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

program—Eligible providers, 182-559-300 Foundational community supports program—Eligibility, and 182-559-400 Foundational community supports program—Payment. The agency is revising the name of WAC 182-559-300 to reflect that this section contains eligibility for community support services (also known as supportive housing services) only. The agency is adding new WAC 182-559-350 Foundational community supports program—Eligibility for supported employment services, to provide more detailed information as required by the protocol. The agency is adding new WAC 182-559-600 Foundational community supports program—Grievance and appeals system, to clarify the grievance and appeals process for clients receiving services through the foundational community supports program.

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.

This emergency filing replaces the emergency rules filed under WSR 18-02-64 [18-02-064], on December 29, 2017. The agency is correcting structural errors in WAC 182-559-300 (3)(a) and 182-559-350 (4)(a) and add clarifying language to WAC 182-559-300(3) and 182-559-350(4). These changes must be made to correctly identify eligibility criteria 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: January 10, 2018.

Wendy Barcus
Rules Coordinator

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

WAC 182-559-100 Foundational community supports program—General. (1) Under the authority of the medicaid transformation project, RCW 71.24.385, and subject to available funds, the medicaid agency covers targeted foundational community supports to eligible medicaid beneficiaries, which include the following benefits:

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

(b) Supported employment services.

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

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

~~(i) Security deposits;~~

~~(ii) Essential furnishings;~~

~~(iii) Moving expenses;~~

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

and

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

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

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

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

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

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

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

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

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

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

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

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

(b) Tenancy-sustaining services:

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

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

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

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

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

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

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

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

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

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

((f)) (3) Supported employment, such as individual placement and support (IPS) services, ~~(are)~~ is individualized and ~~(may include any combination)~~ includes one or more of the following services:

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

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

(c) ~~Career advancement services;~~

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

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

(f) ~~Job analysis;~~

(g) ~~Job carving;~~

(h) ~~Job coaching;~~

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

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

(k) ~~Asset development; or~~

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

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

(7)) ~~Preemployment services:~~

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

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

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

(iv) ~~Job carving;~~

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

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

(b) ~~Employment sustaining services:~~

(i) ~~Career advancement services;~~

(ii) ~~Negotiation with employers;~~

(iii) ~~Job analysis;~~

(iv) ~~Job coaching;~~

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

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

(vii) ~~Asset development; or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Competitive employment is the goal;

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

(d) Personalized benefits planning;

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

(f) Job search based on client preferences;

(g) Supports are not time-limited; and

(h) Client preferences are honored.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Meet one of the following population criteria:

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

~~((ii))~~ (3) Meet at least one of the following health criteria and be expected to benefit from community support services:

(a) 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 at least one of the following health criteria and is expected to benefit from supported employment services:

(a) 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 assess-

ment 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 18-03-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-04—Filed January 10, 2018, 3:52 p.m., effective January 10, 2018, 3:52 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal commercial crab rules.

Citation of Rules Affected by this Order: Amending WAC 220-340-420 and 220-340-450.

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 regulation is necessary, as the mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area and language improves enforcement of pot limits. A longer gear set period will allow for safer fishing conditions. A delay due to elevated marine toxins aligns with the tri-state crab agreement and similar rules in Oregon and California. 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 0, Amended 2, 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: January 10, 2018.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-42000B Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until March 4, 2018 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from January 12, 2018 to January 27, 2018, are only valid for the area south of 46°28.00 N. Lat.

(2) It is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery until 8:00 a.m. January 12, 2018 to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(3) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47°00.00 N. Lat., provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator must call 360-581-3337, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

(4) It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and;

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(5) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(6) All other provisions of the permanent rule remain in effect.

NEW SECTION

WAC 220-340-45000C Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

(a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(b) It is permissible to set crab gear beginning at 8:00 a.m., January 12, 2018.

(c) It is permissible to pull crab gear beginning at 9:00 a.m., January 15, 2018.

(d) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from fishing in the following areas for the durations specified:

- i. The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 a.m. February 7, 2018; and
- ii. The waters between Oysterville (46°33.00) and the U.S. Canadian border until 8:00 a.m. March 4, 2018.

(2) Open area: The area from Klipsan Beach (46°28.00) to the US/Canada Border and Grays Harbor.

(a) It is permissible to set crab gear beginning at 8:00 a.m., January 25, 2018.

(b) It is permissible to pull crab gear beginning at 9:00 a.m., January 28, 2018.

(3) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(4) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00 N. Lat. 124°20.70 W. Lon.

(b) Northwest Corner: 47°28.00 N. Lat. 124°34.00 W. Lon.

(c) Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(5) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The

SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(6) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner (Tatoosh Island)

(b) Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.

(c) Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.

(d) Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(7) All other provisions of the permanent rule remain in effect.

WSR 18-03-069

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 18-05—Filed January 11, 2018, 3:58 p.m., effective January 13, 2018]

Effective Date of Rule: January 13, 2018.

Purpose: Amend Puget Sound recreational salmon rules.

Citation of Rules Affected by this Order: Repealing WAC 220-313-0600J and 220-313-0600K; and amending WAC 220-313-060.

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

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

Reasons for this Finding: Washington department of fish and wildlife and tribal comanagers agreed to a limited number of Chinook encounters that anglers are allowed in Marine Areas 8-1 through 10. Harvestable surplus hatchery Chinook are available in Area 10, while Areas 8-1 through 9 still have high numbers of sublegal fish. This emergency rule is needed to modify these fisheries to stay within the agreed to number of encounters and increasing the possibility of providing season-long fisheries which will provide additional angling opportunity. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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 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: January 11, 2018.

J. W. Unsworth
Director

NEW SECTION

WAC 220-313-06000K Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, effective January 13, 2018, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect.

(1) **Marine Catch Record Card Area 10; excluding Elliott Bay Fishing Pier at Terminal 86, Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier:** Daily limit 2 salmon; release wild coho and wild Chinook.

REPEALER

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

WAC 220-313-06000J Puget Sound salmon—Saltwater seasons and daily limits.

The following section of the Washington Administrative Code is repealed effective March 01, 2018:

WAC 220-313-06000K Puget Sound salmon—Saltwater seasons and daily limits.

**WSR 18-03-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-07—Filed January 12, 2018, 1:59 p.m., effective January 12, 2018, 1:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial crab regulations for Columbia River, coastal and Willapa Bay areas.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000B; and amending WAC 220-340-420.

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 regulation is necessary to provide a technical change that clarifies that a reduced number of crab pots are allowed and that excess crab pot buoy tags assigned to coastal Dungeness crab licensees be maintained onboard participating vessels during the Columbia River, coastal, and Willapa Bay commercial Dungeness fisheries until the northern coastal crab fishery begins at 8:00 a.m., January 25, 2018. 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: January 12, 2018.

J. W. Unsworth
Director

NEW SECTION

WAC 220-340-42000D Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until March 4, 2018 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from January 12, 2018 to January 27, 2018, are only valid for the area south of 46°28.00 N. Lat.

(2) It is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery until 8:00 a.m. January 12, 2018 to 8:00 am January 25, 2018, to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(3) It is unlawful to fail to maintain onboard any vessel participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished from 8:00 am January 12, 2018 to 8:00 am January 25, 2018.

(4) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47°00.00 N. Lat., provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator must call 360-581-3337, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

(5) It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and;

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(6) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(7) All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

WAC 220-340-42000B Commercial crab fishery—Unlawful acts.

WSR 18-03-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-06—Filed January 16, 2018, 10:29 a.m., effective January 16, 2018, 10:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial crab regulations in Puget Sound.

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

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

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

Reasons for this Finding: The provisions of this rule will maintain the opening of all commercial crab harvest areas in Puget Sound with the exception of Region 2 East. Region 2 East will close at 5:30 p.m., January 16, 2018, when landings are projected to reach the full state allocation. There is sufficient allocation available in all of the other commercial regions to accommodate a continued fishery. These provisions are in conformity with agreed management plans with applicable tribes. 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: January 16, 2018.

J. W. Unsworth
Director

NEW SECTION

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

(1) Effective 5:30 pm, Tuesday, January 16, 2018, until further notice, ALL of Crab Management Region 2 East is closed. This region includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(2) 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 Region 1. This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

(3) 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 2 West, 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 23A, 23B, 23C, 23D, 25A, 25B, 25D, 25E, 26A West, and 29.

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

(5) 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.

NEW SECTION

WAC 220-340-45500G 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, 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.

REPEALER

The following sections of the Washington Administrative code are repealed at 5:30 pm, Tuesday, January 16, 2018:

WAC 220-340-42000A Commercial crab fishery—Unlawful acts. (18-02)

WAC 220-340-45500F Commercial crab fishery—Seasons and areas—Puget Sound. (17-339)

WSR 18-03-101 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 18-08—Filed January 17, 2018, 4:59 p.m., effective January 17, 2018, 4:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea urchin harvest rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000A; 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 because there are one thousand six hundred fifty pounds of red sea urchins remaining for harvest in District 3 (23C and 23D) and District 2 (23A). Opening these catch areas will allow harvest of the remaining pounds. 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: January 17, 2018.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-340-75000B Commercial sea urchin fisheries Notwithstanding the provisions of WAC 220-340-750, effective January 18, 2018, 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, 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 fish for, take, or possess 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 fish for, take, or possess green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(3) The maximum cumulative landings for red and green sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 18, 2018:

WAC 220-340-75000A Commercial sea urchin fisheries.
(18-01)

WSR 18-03-102
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-09—Filed January 17, 2018, 5:04 p.m., effective January 20, 2018]

Effective Date of Rule: January 20, 2018.

Purpose: Amends Columbia River recreational sturgeon rules.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

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 avoid recreational sturgeon harvest exceeding current guidelines of one hundred fish in The Dalles Pool. This action is consistent with decisions made by the states of Washington and Oregon on January 17, 2018. 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 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: January 17, 2018.

Joe Stohr for
J. W. Unsworth
Director

NEW SECTION

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, effective January 20, 2018, until further notice, retention of white sturgeon is prohibited in the Dalles Pool. Catch and release continues to be allowed in the Dalles Pool.

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

WSR 18-03-104
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed January 18, 2018, 10:13 a.m., effective January 19, 2018]

Effective Date of Rule: January 19, 2018.

Purpose: The department is amending WAC 388-827-0105 Who is eligible for a state supplementary payment? and 388-827-0120 May DDA deny, reduce, or terminate a state supplementary payment?, to clarify language from recent amendments that may be interpreted in a way that limits a person's eligibility for state supplementary payments (SSP). These emergency rules clarify and correct the ambiguous language that may limit SSP eligibility.

Citation of Rules Affected by this Order: Amending WAC 388-827-0105 and 388-827-0120.

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

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

Reasons for this Finding: If the developmental disabilities administration does not enact these emergency rules, some clients who received SSP before June 2017 may be at risk of losing their SSP funds, which is a benefit available to supplemental security income recipients. These rules are necessary to preserve the public health, safety, or general welfare of SSP clients who may rely on SSP funds.

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 2, 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 2, Repealed 0.

Date Adopted: January 8, 2018.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-13-022, filed 6/12/17, effective 7/13/17)

WAC 388-827-0105 Who is eligible for a state supplementary payment? (1) The developmental disabilities administration (DDA) must not enroll you in state supplementary payments after the effective date of this section,

unless you are eligible for a state supplementary payment for prevocational legacy.

(2) To be eligible for a state supplementary payment, you must meet all general eligibility requirements under subsection (3) of this section and any applicable program-specific requirements under subsections (4) through (8) of this section.

(3) To be eligible for a state supplementary payment, you must:

(a) Be determined DDA eligible under chapter 388-823 WAC;

(b) Complete an in-person interview and reassessment with DDA once every twelve months—or more often if DDA deems it necessary—to determine whether you continue to meet eligibility requirements; and

(c) Be financially eligible because:

(i) You receive supplementary security income cash assistance for the month in which the state supplementary payment is issued; or

(ii) You receive social security Title II benefits as a disabled adult child ~~((, your SSI was terminated due to the receipt of these benefits,))~~ and you would be eligible for SSI if you did not receive these benefits.

(4) To be eligible for children's legacy care state supplementary payments, you must live with your family as defined in WAC 388-832-0001.

(5) To be eligible for a state supplementary payment for waiver services, you must be enrolled in a home and community based services waiver program as described in chapter 388-845 WAC.

(6) To be eligible for prevocational legacy state supplementary payments, you must:

(a) Have left prevocational services on or after September 1, 2015; and

(b) Not be enrolled in a DDA residential habilitative service.

(7) To be eligible for residential habilitation state supplementary payments, you must be receiving a residential habilitation service as described in chapter 388-845 WAC and as identified in your person-centered service plan.

(8) To be eligible for state supplementary payments in lieu of individual and family services you must be:

(a) At least three years old; and

(b) Living with your family as defined in WAC 388-832-0001.

AMENDATORY SECTION (Amending WSR 17-13-022, filed 6/12/17, effective 7/13/17)

WAC 388-827-0120 May DDA deny, reduce, or terminate a state supplementary payment? (1) The developmental disabilities administration (DDA) may deny, reduce, or terminate a state supplementary payment if one or more of the following is true:

(a) You do not meet the eligibility requirements under WAC 388-827-0105;

(b) You do not cooperate with DDA during:

(i) Service planning; or

(ii) Required quality assurance and program monitoring activities;

(c) You choose to unenroll from state supplementary payments.

(2) Except for state supplementary payments for prevocational legacy and state supplementary payments for waiver services, DDA will terminate your state supplementary payment if you enroll in a DDA-administered home and community based services waiver.

(3) State supplementary payments are limited to available funding.

(4) DDA will terminate your state supplementary payments for prevocational legacy if you enter into a DDA prevocational service or a DDA residential habilitation service.

WSR 18-03-110
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 19, 2018, 8:29 a.m., effective January 19, 2018, 8:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To align state rules governing vocational education program minimum expenditures to the changes made in the 2017-2019 Appropriations Act.

Citation of Rules Affected by this Order: Amending WAC 392-121-570, 392-121-571, and 392-121-573.

Statutory Authority for Adoption: RCW 42.56.070, 42.56.120.

Other Authority: SSB 5883 - 2017-2019 Biennial Appropriations Act.

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 2017-2019 Biennial Operating Appropriations Act limits indirect cost charges to school district state-funded vocational-secondary programs. Emergency rules are therefore necessary to reduce the vocational program indirect rate to five percent, ensure that no district has minimum expenditures greater than its total program allocation, and ensure that districts and vocational education programs have access to the correct proportionate share of their allocations as directed in the Appropriations Act. A public hearing regarding a proposed permanent rule (WSR 17-23-193) was held on January 9, 2018, and 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 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: January 19, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-570 Vocational indirect cost limit—Applicable code provisions—Purpose—Effective date. (1) WAC 392-121-570 through 392-121-578 define the (~~five~~) five percent limit on indirect cost charges to school district state-funded vocational-secondary programs as required by the Biennial Operating Appropriations Act. These rules do not apply to federal vocational funding which is governed by federal policies.

(2) The purpose of these sections is to assure that state allocations for vocational education are expended by school districts and charter schools to support state vocational programs. The minimum levels defined here are not to be construed as recommended expenditure levels.

(3) These sections are effective for the (~~2002-03~~) 2017-18 school year and thereafter.

(4) WAC 392-121-570 through 392-121-578 also apply to program 34, with program 34 substituted wherever program 31 appears. Running start does not apply to program 34.

AMENDATORY SECTION (Amending WSR 17-01-020, filed 12/12/16, effective 12/24/16)

WAC 392-121-571 Vocational indirect cost limit—Definitions. As used in WAC 392-121-570 through 392-121-578:

(1) "Program 31" means the high school vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(2) "Program 34" means the middle school vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(3) "Basic allocation for vocational students" means the amount of money generated by a school district's or charter school's vocational full-time equivalent enrollment in the general apportionment formula using the state funding formula factors including the grade 4-12 staffing ratios without enhancement, and using the district's or charter school's average certificated instructional district-wide staff mix factor (~~(for program 31 staff)~~) from the district's S-275 personnel report.

(4) "Enhancement allocation for vocational students" means the additional money above the basic allocation for vocational students generated by a school district's or charter school's vocational full-time equivalent enrollment as a result of the enhanced state vocational staffing ratio and enhanced

nonemployee related cost allocation for vocational students. This enhancement shall be calculated using the ~~((district's))~~ district-wide or charter school's average certificated instructional staff mix factor ~~((for program 31))~~.

(5) "Vocational running start allocation" means the amount generated in the general apportionment formula by a school district's or charter school's running start students enrolled in vocational courses in a community or technical college pursuant to chapter 392-169 WAC.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-573 Vocational indirect cost limit—Calculation of minimum program 31 expenditures. Each school district's or charter school's minimum program 31 expenditures equal the sum of the following amounts:

- (1) ~~((Eighty-five))~~ Ninety-five percent of the total basic and vocational enhancement allocations for vocational students;
- (2) Ninety-three percent of the vocational running start allocation; plus
- (3) Any carryover from the prior school year allowed under WAC 392-121-578.

WSR 18-03-117

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed January 19, 2018, 11:11 a.m., effective January 26, 2018]

Effective Date of Rule: January 26, 2018.

Purpose: The department's current regulations require an applicant for a driver's license to provide the applicant's place of birth. A person's place of birth is not necessary for ascertaining a person's identity and should be removed.

Citation of Rules Affected by this Order: Amending WAC 308-104-014.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.119.

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: Without immediate adoption of a rule ending the department's collection of an applicant's place of birth, there is a risk that collection of information that does not prove identity and establishes a Washington resident's national origin could be lawfully obtained by federal law enforcement agencies for federal immigration enforcement purposes, or otherwise could be used to discriminate against a person based on national origin. *See* Governor's Executive Order 17-01.

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

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

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

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

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

Date Adopted: January 19, 2018.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-23-184, filed 11/22/17, effective 12/23/17)

WAC 308-104-014 Application for driver's license or identicard. A person applying for a driver's license, instruction permit, or identification card must provide the following information:

- (1)(a) The person's full name, current mailing and Washington residential address, and telephone number;
- (b) A person applying for an identicard who does not have a permanent primary resident address may be issued an identicard at the cost of production if the person:
 - (i) Is under the age of eighteen;
 - (ii) Applies in person;
 - (iii) Attests to a lack of permanent primary resident address at each application; and
 - (iv) Provides a temporary mailing address where the identicard can be mailed.
- (2) The person's physical description, including sex, height, weight, and eye color;
- (3) The person's date ~~((and place))~~ of birth;
- (4)(a) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;
- (b) If the Social Security number is required by state or federal law and the person has not been issued a Social Security number, the person must submit a sworn affidavit, under penalty of perjury, stating that he or she does not have a Social Security number. The department may require that a person who is applying for a license and who has signed an affidavit under this subsection provide additional documentation satisfactory to the department establishing the person's Washington residence address;
- (5) The person's mother's maiden name and whether the person is one of multiple siblings born at the same time;
- (6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;
- (7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, canceled, disqualified, withheld, or denied, and if so, where and

when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

WSR 18-03-151
EMERGENCY RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed January 22, 2018, 2:44 p.m., effective January 22, 2018, 2:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: (1) To comply with EHB 1595 and RCW 42.56.120, it is necessary to update this code; (2) it is unduly burdensome for the Community Colleges of Spokane (CCS) to calculate actual costs for copying records to fulfill public records requests; and (3) pursuant to RCW 42.56.120, these changes will allow CCS to be reimbursed the costs associated with fulfilling its duties under the Public Records Act. A hearing and adoption of final rules is scheduled for March 20, 2018.

Citation of Rules Affected by this Order: Amending WAC 132Q-276-010, 132Q-276-020, 132Q-276-030, 132Q-276-040, 132Q-276-050, 132Q-276-060, 132Q-276-080, 132Q-276-090, and 132Q-276-100.

Statutory Authority for Adoption: RCW 28B.50.140, 42.56.040, [42.56].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: To comply with EHB 1595 and RCW 42.56.120.

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: September 12, 2017.

John O'Rourke
Grants and Contracts Manager

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

WAC 132Q-276-010 Purpose. The purpose of this chapter shall be to insure compliance by Washington Community College District 17 with the provisions of chapter ~~((42.17)) 42.56~~ RCW, ~~((Disclosure Campaign finance Lobbying Records: And, in particular, with RCW 42.17.250 - 42.17.340 dealing with public records))~~ the Public Records Act.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-276-020 Definitions. (1) "**Public record**" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(2) "**Writing**" means handwriting, typewriting, printing, photocopying, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings and other documents including existing data compilations from which information may be obtained or translated.

(3) "**Washington State Community College District 17**" is a state agency created and organized by statute pursuant to RCW 28B.50.040, and shall hereinafter be referred to as the "district." Where appropriate, the term "district" shall also refer to college personnel and board of trustees of the district.

(4) "**District facilities**" of Washington State Community College District 17 include any or all real property owned, operated or maintained by the board of trustees of Community Colleges of Spokane, and shall include all buildings and appurtenances affixed thereon or attached thereto.

AMENDATORY SECTION (Amending WSR 13-15-154, filed 7/23/13, effective 8/23/13)

WAC 132Q-276-030 Central and field organization. Washington State Community College District 17 is a community college district organized under RCW 28B.50.040. The administrative office of the district and its staff is located

at 501 North Riverpoint Boulevard, P.O. Box 6000, Spokane, Washington, 99217-6000. The district operates two colleges, Spokane Community College, located at ~~((2000))~~ 1810 North Greene Street, Spokane, Washington, ~~((99217-5499))~~ 99217-5399; and Spokane Falls Community College, located at 3410 West Fort George Wright Drive, Spokane, Washington, 99224-5288. The district also delivers instructional programming in the counties of Ferry, Lincoln (except Consolidated School District 105-157-166J and the Lincoln County portion of Common School District 167-202), Pend Oreille, Spokane, Stevens, and Whitman.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-276-040 Operations and procedures.

Washington State Community College District 17 is established under RCW 28B.50.040 to implement the educational purposes established by RCW 28B.50.020. District 17 is operated under the supervision and control of a board of trustees appointed by the governor as provided in RCW 28B.50-100. The chief administrative officer of the district is the chancellor/chief executive officer, who also serves as secretary to the board of trustees. The day-to-day operation of the district, pursuant to policy established and approved by the board of trustees, is implemented through the office of the chancellor/chief executive officer or designee.

The board of trustees meets the third Tuesday of each month at 8:30 a.m. ~~((in the board room of the Spokane Community College administrative offices located at 2000 North Greene Street, Spokane, Washington, 99217-5499))~~ at the Lodge Building, 3305 West Fort George Wright Drive, Spokane, Washington, 99224, unless public notice is given of a special meeting. At such time, the trustees exercise the powers and duties granted to the board by RCW 28B.50.140.

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

WAC 132Q-276-050 Public records available. All public records of the district, as defined in WAC 132Q-276-020 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW ~~((42.17.340))~~ 42.56.210 and WAC 132Q-276-100.

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

WAC 132Q-276-060 Public records officer. ~~((The district's public records shall be in the charge and control of the public records officer designated by the district president. The person so designated shall be located in the administrative office of the district. The public records officer shall be responsible for implementing the district's rules and regulations regarding release of public records, coordinating the staff of the district in this regard, and generally insuring compliance by the staff with the public records disclosure of chapter 42.17 RCW.))~~ (1) Any person wishing to request access to public records of District 17, or seeking assistance in making such a request should contact the public records officer of District 17. Throughout this chapter, references to

the public records officer shall mean the public records officer or his/her designee.

(2) Contact information:

Public Records Officer
Community Colleges of Spokane
P.O. Box 6000
Spokane, WA 99217-6000
Phone: 509-434-5275
Fax: 509-434-5279
Email: publicrecords@ccs.spokane.edu

(3) Information is also available at the Community Colleges of Spokane web site at <http://www.ccs.spokane.edu/getdoc/696748c1-fee0-4f18-8777-a3ac9ea1cb95/prr.aspx>.

(4) The public records officer and District 17 shall assist requestors, comply with chapter 42.56 RCW, the Public Records Act, and provide public records training and assistance to college employees.

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

WAC 132Q-276-080 Requests for public records. In accordance with requirements of RCW ~~((42.17.290))~~ 42.56.100, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the district which shall be available at its administrative office and online at <http://www.ccs.spokane.edu/getdoc/f7dfbca0-8837-4866-af04-da9b18477a8c/ccs.2136-11.aspx>. The form shall be presented to the public records officer or to any member of the district's administrative staff, if the public records officer is not available, at the district office during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the records;
- (b) The address of the person requesting the records;
- (c) Other contact information, including telephone number and any email address;
- (d) Adequate identification of the public records for the public records office to locate the records;
- (e) The date and time of day ~~((and calendar date on which the request was made;~~
- (e) The nature of the request;
- (d) The matter requested as referenced within the current index maintained by the records officer, or if the matter is not identifiable by reference in the district's current index, an appropriate description of the record requested)) of the request.

(f) A verification that the records requested shall not be used to compile a commercial sales list.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or other staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

WAC 132Q-276-090 ((Copying)) Costs of providing copies of public records. ((No fee shall be charged for the inspection of public records of Washington State Community College District 17. The district may charge a fee per page for providing copies of public records, for use of the district's copy equipment and postage. This charge shall be an amount necessary to reimburse the district for its actual costs directly incident to such copying.)) (1) The following copy fees and payment procedures apply to public records requests made after the effective date of this rule.

(2) Pursuant to RCW 42.56.120 (2)(b), District 17 is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The district does not have the resources to conduct a study to determine all its actual copying costs;

(b) It is difficult to calculate all costs directly incident to copying records; and

(c) To conduct such a study would interfere with other essential district functions.

(3) Costs of copies. No fees shall be charged for the inspection of public records of Washington State Community College District 17. The district will charge for copies of public records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The district will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.-130, the district may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The district may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the district are summarized in the fee schedule available on the district's web site at <http://www.ccs.spokane.edu/getdoc/696748c1-fee0-4f18-8777-a3ac9ea1cb95/prr.aspx>.

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when: (i) All of the records responsive to an entire request are paper copies only and are twenty or fewer pages; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of twenty pages. If that email for any reason is not deliverable, records will be produced in accordance with this rule.

(b) Fee waivers are not applicable to records requested in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The district will notify the requestor when payment is due.

(7) Payment should be made by check, credit card, or money order to the Community Colleges of Spokane. The district prefers not to receive cash. For cash payments, it is

within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The district will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

WAC 132Q-276-100 Exemptions. (1) The district reserves the right to determine that the public record requested in accordance with the procedures outlined in WAC 132Q-276-080 is exempt under the provisions of chapter ~~((42-17)) 42.56~~ RCW.

(2) In addition, pursuant to RCW ~~((42-17.260)) 42.56-070~~, the district reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ~~((42-17)) 42.56~~ RCW. The public records officer shall fully justify any such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.