

WSR 20-09-001
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 1, 2020, 2:02 p.m., effective April 1, 2020, 2:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-484-0006 TANF/SFA time limit extensions, to add a temporary assistance for needy families (TANF) time limit extension hardship category related to impacts of the COVID-19 pandemic (commonly known as the "coronavirus").

Citation of Rules Affected by this Order: Amending WAC 388-484-0006.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 RCW.

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

Reasons for this Finding: In order to protect public health, safety, and welfare there is an emergent need to expand TANF hardship time limit extension criteria to include categorical hardship created by the COVID-19 pandemic.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 1, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-046, filed 2/13/20, effective 3/15/20)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call

these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless as described in RCW 43.185C.010 (12); or

(vii) A resident of Washington state during a declared state of emergency related to COVID-19.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

WSR 20-09-003

EMERGENCY RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed April 1, 2020, 3:54 p.m., effective April 1, 2020, 3:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To suspend hourly limits on postretirement employment during a period of emergency proclaimed by the governor under RCW 43.06.010(12).

Citation of Rules Affected by this Order: New WAC 415-02-160 Will post-retirement employment performed during a period of emergency affect my retirement benefit?

Statutory Authority for Adoption: RCW 41.50.050.

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: Suspending the postretirement employment restrictions will allow public sector employers to retain or rehire experienced employees into critical positions necessary for an effective response to the COVID-19 pandemic.

Date Adopted: April 1, 2020.

Tracy Guerin
Director

NEW SECTION

WAC 415-02-160 Will postretirement employment performed during a period of emergency affect my retirement benefit? During a period of emergency proclaimed by the governor under RCW 43.06.010(12) regarding the COVID-19 pandemic, and for which the governor has waived or suspended applicable statutory limitations, public service employment performed by a retiree shall not cause a suspension or reduction of retirement benefits.

For the purpose of this section, a "period of emergency" includes only the following: COVID-19 pandemic, for the period covered by the governor's proclamation.

WSR 20-09-009

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 2, 2020, 2:36 p.m., effective April 2, 2020, 2:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is temporarily repealing or amending the rules listed below to assure [ensure] long-term care programs are not significantly impeded during the hiring process due to inability to access the tuberculosis (TB) testing required as a part of the hiring process. This will help to increase the number of long-term care workers available to provide essential services to some of Washington's most vulnerable adults during the outbreak of COVID-19. Currently, clinics providing TB testing are short of staff and are only providing critical and emergent medical services. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state in recent weeks.

Citation of Rules Affected by this Order: Repealing WAC 388-76-10265, 388-76-10285, 388-78A-2484 and 388-107-0490; and amending WAC 388-76-10290(1), 388-78A-2480(1), 388-78A-2485(1), 388-101D-0650(1), 388-101D-0660(3), and 388-107-0460(1).

Statutory Authority for Adoption: RCW 70.128.040, 71A.12.030; chapters 18.20, 70.97 RCW.

Other Authority: Chapters 70.128, 71A.12, 74.34 RCW.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Currently, clinics providing TB testing are short of staff and are only providing critical and emergent medical services. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state in recent weeks.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 6, Repealed 4.

Date Adopted: April 2, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10290 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the adult family home must:

(1) ~~((Ensure that the person has a chest X-ray within seven days;~~

(2)) Ensure each resident or employee with a positive test result is evaluated for signs and symptoms of tuberculosis; and

((3)) (2) Follow the recommendation of the person's health care provider.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2480 Tuberculosis—Testing—Required. ~~((1) The assisted living facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.~~

(2)) For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any assisted living facility employee or temporary employee of the assisted living facility, excluding volunteers and contractors.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2485 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the assisted living facility must:

(1) ~~((Ensure that the staff person has a chest X-ray within seven days;~~

(2)) Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and

((3)) (2) Follow the recommendation of the resident or staff person's health care provider.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0650 What must a group training home do to detect and manage tuberculosis? To detect and manage tuberculosis, a group training home must:

(1) ~~((Ensure each employee has a tuberculin test no more than three days after beginning to work with clients unless otherwise exempt under this chapter;~~

(2)) Implement policies and procedures that comply with tuberculosis standards set by the Centers for Disease Control and Prevention and applicable state laws;

((3)) (2) Comply with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection; and

((4)) (3) Comply with chapter 296-842 WAC requirements to protect the health and safety of clients who may come into contact with people who have infectious tuberculosis.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0660 When is a group training home employee not required to complete a tuberculin test? (1) A group training home employee is not required to complete a tuberculin test if the employee:

(a) Has documentation of an FDA-approved tuberculin test with negative results from within the last twelve months;

(b) Has documentation of a positive FDA-approved tuberculin test with documented evidence of:

(i) Adequate therapy for active disease; or

(ii) Completion of treatment for latent tuberculosis infection preventive therapy;

(c) Self-reports a history of positive test results under subsection (2) or (3) of this section.

(2) If a group training home employee self-reports a history of positive test results with chest X-ray results from the last twelve months, the employee must:

(a) Provide a copy of the normal X-ray results to the group training home; and

(b) Be evaluated for signs and symptoms of tuberculosis.

(3) ~~((If a group training home employee self-reports a history of positive test results without chest X-ray results, the employee must:~~

~~(a) Be referred to a medical provider;~~

~~(b) Complete a chest X-ray within seven days; and~~

~~(c) Be cleared by a medical professional before returning to work if the X-ray is abnormal and consistent with tuberculosis.~~

(4)) A group training home volunteer working less than four hours a month is exempt from tuberculin test requirements.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0460 Tuberculosis (TB)—Testing—Required. The enhanced services facility must:

~~((1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and~~

(2)) Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10265 Tuberculosis—Testing—Required.

WAC 388-76-10285 Tuberculosis—Two step skin testing.

WAC 388-78A-2484 Tuberculosis—Two step skin testing.

WAC 388-107-0490 Tuberculosis (TB)—Two-step skin testing.

WSR 20-09-010

EMERGENCY RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed April 2, 2020, 4:08 p.m., effective April 2, 2020, 4:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To provide alternatives to requirements for a notarized signature in retirement applications, forms and documents.

Citation of Rules Affected by this Order: Amending WAC 415-100-051, 415-100-055, 415-103-225, 415-104-215, 415-106-600, 415-106-610, 415-108-326, 415-108-434, 415-110-610, 415-112-015, 415-112-504, 415-112-505, and 415-112-507.

Statutory Authority for Adoption: RCW 41.50.050.

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: Immediate adoption of these amendments will allow members of Washington state's

retirement systems to submit verified documentation required by the department, while maintaining social distancing in response to the COVID-19 pandemic.

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 13, 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: April 2, 2020.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 96-01-047, filed 12/14/95, effective 1/14/96)

WAC 415-100-051 Married member's benefit selection—Spousal consent required. The member, if married, must provide the spouse's ~~((written))~~ consent to the option selected under WAC 415-100-055, verified by a notarized signature or other means acceptable to the department. If a married member does not provide ~~((spousal))~~ verified consent, the department will pay the retired member a joint and one-half survivor benefit allowance and record the member's spouse as the survivor, in compliance with RCW 2.10.146(2). ~~((“Spousal consent” means that the married member's spouse consents to the retirement option selected by the member. (The spouse's notarized signature on a completed retirement application constitutes spousal consent.))~~

AMENDATORY SECTION (Amending WSR 01-13-009, filed 6/8/01, effective 7/9/01)

WAC 415-100-055 Retirement benefit options. RCW 2.10.146, enables the department to provide retiring members with four retirement benefit options. The member must choose an option when applying for service or disability retirement.

(1) **Option One: Benefit option without survivor features (standard allowance).** The department pays the retiree a monthly retirement allowance based solely on the single life of the member, in accordance with RCW 2.10.146. When the retiree dies, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(b) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(2) Benefit options with a survivor feature.

(a) A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(ii) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(iii) The member's estate; or

(iv) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(b) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor a monthly retirement allowance equal to the gross monthly allowance received by the retiree.

(c) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor one-half of the amount of the retiree's gross monthly retirement allowance.

(d) Option Four (joint and two-thirds allowance).

(i) Option Four is available to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor two-thirds (66.667%) of the member's gross monthly retirement allowance.

(3) Benefit increases when survivor predeceases retiree (pop-up provision).

(a) This subsection applies to members retiring on or after January 1, 1996, who selected Option Two, Three, or Four.

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance will increase, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One described in subsection (1) of this section; plus

(ii) Any cost-of-living adjustments received prior to the survivor's death based on original selection.

(c) Pop-up recalculation example.

Agnes retires in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is

reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the pop-up provision, Agnes' monthly benefit will increase to the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(ineligible)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
			Total COLAs	191.05

Original Option One Benefit Amount	+ Total COLAs	= New Benefit Amount
\$2000	+ \$191.05	= \$2,191.05*

* In the future (i.e., Year 5), Agnes' COLA will be based on the increased benefit amount (\$2,191.05).

(d) If the survivor dies and the retiree's benefit increases under this subsection, and thereafter the retiree also dies before all contributions are exhausted, all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

(a) Such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems; or

(b) If there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse; or

(c) The member's estate; or

(d) If there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(4) Survivor. For the purposes of this section, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed (~~and notarized~~) form provided by the department, verified by a notarized signature or other means acceptable to the department.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options? This section applies to WSPRS Plan 2 members. Upon retirement for service under RCW 43.43.250, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) Which option will pay my beneficiary a monthly benefit after my death? Options described in subsection (2)(b) through (d) of this section include a survivor option. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survi-

vor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly benefit for the duration of his or her life. Your monthly retirement benefit will be actuarially reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit is affected by choosing a survivor option.

(2) What are my benefit options?

(a) Option one: Standard benefit (nonsurvivor option). The department will pay you a monthly retirement benefit throughout your life. Your monthly benefit will cease upon your death.

(b) Option two: Joint and one hundred percent survivor benefit. The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) Option three: Joint and fifty percent survivor benefit. The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) Option four: Joint and two-thirds survivor benefit. The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667 percent) of your gross monthly benefit.

(3) Do I need my spouse's consent on the option I choose? The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must submit your spouse's (~~notarized~~) consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary? Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do? If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a non-spouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 43.43.271.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options? If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly benefit for duty disability under RCW 41.26.470, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by notarization or other means acceptable to the

department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a non-spouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-106-600 What are my retirement benefit options? Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent,

verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-106-610 How do I apply for retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

(1) A completed ~~(and)~~ and signed ~~((and-notarized))~~ retirement application, verified by notarization or other means acceptable to the department, including:

(a) Your selection of one of the benefit options described in WAC 415-106-600.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's consent may be required as described in WAC 415-106-600.

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-108-326 What are my retirement benefit options? Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.-210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's ~~((notarized))~~ consent, verified by a notarized signature or other means acceptable to the department. If you do not provide spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide ~~((notarized))~~ spousal consent,

verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What is the supplemental COLA option for Plan 1 members?** If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement benefit will be actuarially reduced to offset the cost of this benefit.

(6) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(7) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(8) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 1 and 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement

benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 09-18-051, filed 8/27/09, effective 9/27/09)

WAC 415-108-434 PERS Plan 1 nonduty disability benefits. This section covers benefits provided in RCW 41.40.230 through 41.40.250 for PERS Plan 1 members who incur a disability outside the performance of duty. You may also be eligible for benefits from the Washington state departments of labor and industries and social and health services, the U.S. Social Security Administration, your employer, and other disability insurers.

(1) **Am I eligible for a PERS Plan 1 nonduty disability benefit?** You are eligible for a PERS Plan 1 nonduty disability benefit if the department determines that all of the following are true:

(a) You are a PERS Plan 1 member and have been employed with a PERS eligible employer for at least five years;

(b) You separate from PERS employment;

(c) At the time you separated from PERS employment, you were totally incapacitated to perform the duties of your job or any other position for which you are qualified by training or experience;

(d) Your disability is likely to be permanent;

(e) Your disability was not incurred during the performance of your job duties; and

(f) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.40.054.

(2) **What is the PERS Plan 1 nonduty disability benefit?** If you qualify to receive a nonduty disability benefit, you will receive a benefit under RCW 41.40.235 or, if you were a PERS Plan 1 member on February 25, 1972, you may irrevocably choose to receive a benefit under RCW 41.40.250.

If you are eligible to receive a benefit under RCW 41.40.235, your benefit will equal two percent of your average final compensation for each year of service credit, reduced by two percent for every year or fraction of a year that your age is less than fifty-five. For example, if you are fifty years old, your monthly disability benefit will be reduced by ten percent.

(a) Your monthly disability benefit will not exceed sixty percent of your average final compensation.

(b) The degree of your disability or impairment will not affect the amount of your benefit.

(c) Your monthly disability benefit will be reduced by any amounts you receive for the same disability under workers' compensation or similar law. See RCW 41.40.300.

(d) Your monthly disability benefit will be actuarially reduced if you choose a benefit option with a survivor feature. See WAC 415-108-326.

(3) **How do I apply?** To apply for a nonduty disability benefit the following documents must be submitted to the department:

(a) A properly completed three-part disability retirement application, consisting of:

(i) Part 1: Application for disability retirement. You must complete and sign the application. If you are married, your spouse must sign consenting to the option you choose. Your signature(s) must be ~~((notarized))~~ verified by notarization or other means acceptable to the department.

(ii) Part 2: Employer's statement and report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by your employer.

(iii) Part 3: Medical report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by a person licensed according to Washington state law to practice medicine and/or surgery (including osteopathic medicine and/or surgery), advanced nursing, or psychology.

(b) Additional information, such as vocational and/or occupational information, requested by the department; and

(c) Any other material you want the department to consider.

(4) **Who is responsible for expenses related to my application?** You are responsible for all costs associated with your application for benefits.

(5) **What is the time limit for filing an application for a nonduty disability benefit?** There is no time limit for filing an application for a nonduty disability benefit. However, you must prove that you were totally incapacitated at the time you separated from PERS employment.

(6) **What information will the department use to determine whether I am entitled to a nonduty disability benefit?** To determine your eligibility for a nonduty disability benefit, the department will consider any relevant infor-

mation submitted by you, your employer, or your physician, or otherwise available, including:

(a) Information and determinations by the department of labor and industries or a self-insurer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

(d) Your membership records, maintained by the department; and

(e) Any other relevant evidence.

(7) **If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement?** Yes, if you are eligible for both you may elect a disability retirement or a service retirement. If you elect a service retirement, you may not later change to a disability retirement.

(8) **When will the department evaluate my eligibility for benefits?** The department will evaluate your eligibility for a nonduty disability benefit once it receives all three parts of your properly completed application, supporting documentation, and all other information requested by the department.

(9) **If my application is approved, when will my benefit accrue?** If your application for a nonduty disability benefit is approved, your benefit will accrue from the first day of the calendar month following the month you separate from service.

(a) If you separate from service **before** your application is approved, you will be eligible for a retroactive payment of the benefit that accrued between the month following your date of separation from service and the approval of your application.

(b) If you separate from service **after** your application is approved, your disability benefit will not begin to accrue **until** you separate from service. If you are on an approved leave of absence (either paid or unpaid) at the time of your application for a benefit, you have not separated from service.

(i) If you do not separate from service within ninety days of the department's approval of your application, the approval will lapse.

(ii) If your approval for a benefit lapses while you are still on an authorized leave of absence, you may request a reinstatement of approval. The department will reinstate its approval only if your employer verifies that you have been on an authorized leave of absence continuously from the time your application was first approved.

(10) **What are my options if my application is denied?**

(a) If your application is denied and you continue in or resume PERS employment, you may reapply for a nonduty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you meet the requirements in subsection (1) of this section.

(b) If your application is denied, you may petition for review of the department's decision under the provisions of chapter 415-04 WAC.

(11) **What happens if I die within sixty days of applying for nonduty disability benefits?** If you die within sixty days of the date the department receives your application for

a nonduty disability benefit, the beneficiary you name on the application may choose to receive either:

(a) A lump sum amount equal to the contributions in your PERS account; or

(b) A monthly benefit calculated according to whichever of the following methods will give your beneficiary the greatest benefit:

(i) A benefit calculated according to subsection (2) of this section and the benefit option indicated on your application; or

(ii) If otherwise qualified, the benefit provided in RCW 41.40.270 (4)(a).

(12) What information must I provide to the department if I am receiving nonduty disability benefits? If you are receiving nonduty disability benefits, you must report the following to the department:

(a) Any compensation you are eligible to receive under workers' compensation or similar law for the same disability;

(b) Any improvement in your condition. Your doctor is also responsible to report any improvements; and

(c) If you resume employment, either public or private, the name of your employer and amount of compensation, regardless of the number of hours you work.

(13) Is my medical condition monitored while I receive disability benefits? The department may require comprehensive medical examinations, pursuant to RCW 41.40.310, to reevaluate your eligibility for disability benefits. The department will pay the medical fees associated with these examinations.

(14) How long will I receive a monthly disability benefit? During your lifetime, you will receive a monthly disability benefit unless one of the following occurs:

(a) If you return to gainful employment, your monthly disability benefit will be recalculated, as set forth in subsection (15) of this section.

(b) If you return to active PERS membership, your disability benefit will be discontinued.

(c) If a doctor determines that you are no longer totally incapacitated, your disability benefit will be discontinued.

(d) If you refuse to submit to medical examinations required by RCW 41.40.310, your disability benefit will be discontinued.

(15) If I return to employment, how will my monthly disability benefit be recalculated? The recalculation of your disability benefit is based on whether your current compensation is greater than your allowable earnings. Your "allowable earnings" are the difference of your compensation at retirement, adjusted for inflation, and your monthly disability benefit.

(a) If your current compensation is **greater** than your allowable earnings your benefit will be reduced or discontinued.

Example of benefit being reduced:

Due to a nonduty-related disability, Joe separated from service and began receiving a disability benefit of \$1,000 per month. Joe became gainfully employed earning \$2,500 per month. Joe's compensation at the time of separation adjusted for inflation is \$3,000. Because Joe's current compensation, \$2,500, is greater

than his allowable earnings ($\$3,000 - \$1,000 = \$2,000$) by \$500, his benefit will be reduced by \$500. Joe's reduced disability benefit will be \$500 per month ($\$1,000 - \500).

Example of benefit being discontinued:

Due to a nonduty-related disability, Heidi separated from service and began receiving a disability benefit of \$1,000 per month. Heidi became gainfully employed earning \$4,000 per month. Heidi's compensation at the time of separation adjusted for inflation is \$3,000. Because Heidi's current compensation, \$4,000, is greater than her allowable earnings ($\$3,000 - \$1,000 = \$2,000$) by an amount (\$2,000) that is greater than her disability benefit (\$1,000), her benefit will be discontinued.

(b) If your current compensation is **less** than your allowable earnings, then your benefit will not be reduced or discontinued.

Example:

Due to a nonduty-related disability, you separated from service and began receiving a disability benefit of \$1,000 per month. You become gainfully employed earning \$1,000 per month. Your compensation at the time of separation adjusted for inflation is \$3,000. Because your current compensation, \$1,000, is less than your allowable earnings ($\$3,000 - \$1,000 = \$2,000$), your disability benefit will not be reduced or discontinued.

(16) Is my PERS Plan 1 nonduty disability benefit taxable? You should consult with your tax advisor regarding all payments you receive from the department. The department reports disability benefits to the Internal Revenue Service as required by federal law and does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property, or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(17) Are disability benefits subject to court or administrative orders? Your nonduty disability benefit may be subject to court or administrative orders. For more information, see RCW 41.40.052(3) or contact the department.

(18) If I am a member of more than one retirement system, does my eligibility for a PERS Plan 1 nonduty disability make me eligible for a benefit from the other system? If you are a member of more than one retirement system, you may be entitled to additional benefits under portability law. See chapters 41.54 RCW and 415-113 WAC.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-110-610 What are my retirement benefit options? Upon retirement for service under RCW 41.35.420 or 41.35.680, or for disability under RCW 41.35.440 or 41.35.690, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required, verified by a notarized signature or other means acceptable to the department. If you do not provide (~~notarized~~) verified spousal consent, the department will pay you

a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.35.060.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-01-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.35.220.

AMENDATORY SECTION (Amending WSR 08-10-025, filed 4/25/08, effective 5/26/08)

WAC 415-112-015 Definitions. All definitions in RCW 41.32.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.32 RCW are defined in this chapter.

(1) **Accrual date** means the first date from which a member's or beneficiary's benefit is calculated. See WAC 415-112-520, RCW 41.32.795 and 41.32.855.

(2) **Annual leave** means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual leave does not usually include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave, covering paid leave for vacation, illness, and any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(3) **Dual member** means a person who:

(a) Is or becomes a member of a retirement system, as defined in RCW 41.50.030 or 41.54.010(6), on or after July 1, 1988;

(b) Has been a member of one or more other systems; and

(c) Has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or 41.54.010(6). See WAC 415-113-041.

(4) **Ineligible position** means a position that does not meet the requirements of an eligible position as stated in RCW 41.32.010(37).

(5) **Pension benefit** means that portion of a retiree's monthly retirement allowance that is funded by the state of Washington and the retiree's former employer or employers.

(6) **Public educational institution** means a school district, the state school for the deaf, the state school for the

blind, educational service districts, institutions of higher education, or community or technical colleges.

(7)(a) **Public school** as defined in RCW 41.32.010 includes school districts, educational service districts, the state school for the deaf, and the state school for the blind but does not include the office of the superintendent of public instruction.

(b) As applied to TRS employers other than those listed in (a) of this subsection, "public school" means an institution, fifty percent or more of whose employees are "qualified to teach," whose primary function is to educate students. See subsection (8) of this section.

(8) **Qualified to teach** as used under RCW 41.32.010 (29) means:

(a) Having a valid certificate issued by the office of the superintendent of public instruction pursuant to WAC 181-79A-140;

(b) Having a valid permit to teach issued by a lawful authority of this state pursuant to WAC 181-79A-128; or

(c) Being employed under a contract to teach with an institution of higher education as defined in RCW 28B.10-016.

(9) **Service in an administrative or supervisory capacity** as used under RCW 41.32.010 and in this chapter:

(a) Means:

(i) Service in a managerial role relating to the administration of a public school; or

(ii) Service involving the exercise of direction over employees of the public school.

(b) Includes, but is not limited to, service as: Principal, assistant principal, superintendent, assistant superintendent, personnel manager and business manager.

(10) **Spousal consent** requires verified written evidence that the married member's spouse consents to the retirement option selected by the member. The spouse's (~~notarized~~) signature on the retirement application filed with the department, duly executed and (~~filed with~~) verified by notarization or other means acceptable to the department, constitutes "verified written evidence."

(11) **System acronyms** used in this chapter are defined as follows:

- "PERS" means the public employees' retirement system.

- "SERS" means the school employees' retirement system.

- "TRS" means the teachers' retirement system.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-112-504 What are my TRS Plan 1 retirement benefit options? Upon retirement from Plan 1 for service under RCW 41.32.480 or disability under RCW 41.32-550 (1)(c), you must choose to have your retirement benefit paid to you by one of the options described in this section. You may also select an optional supplemental cost-of-living (COLA) adjustment.

(1) **May I withdraw any of my contributions?** You may withdraw some or all of your accumulated contributions as follows:

(a) If you retire according to the provisions of RCW 41.32.498, you may withdraw some or all of your accumulated contributions at the time of retirement. Your monthly retirement benefit will be reduced according to the amount you withdraw.

(b) If you terminate service due to a disability under the conditions of RCW 41.32.550 (1)(a), you may withdraw all your accumulated contributions in a lump sum payment. You will receive no monthly retirement benefit.

(2) Which option will pay my beneficiary a monthly benefit after my death? Options described in subsection (3)(c) through (e) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(3) What are my benefit options?

(a) **Maximum benefit (nonsurvivor option).** The department will pay you the maximum benefit allowed by statute. Under this option you will receive a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be:

(i) Retained by the retirement fund if you retired for service under RCW 41.32.497 or 41.32.498; or

(ii) Paid according to subsection (9) of this section if you retired because of disability and were receiving a monthly retirement benefit under RCW 41.32.550 (1)(c).

(b) **Option one: Standard benefit for service retirement (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (9) of this section.

(i) This benefit option has a lower monthly benefit than the **maximum benefit** in (a) of this subsection because, with this option, any remaining accumulated contributions will be paid to your beneficiaries upon your death.

(ii) If you are retiring because of disability under RCW 41.32.550 (1)(c), you will not benefit from this option because your beneficiaries will receive any remaining accumulated contributions under the maximum benefit in (a) of this subsection.

(c) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(d) **Option three: Joint and fifty percent benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(e) **Option four: Joint and two-thirds benefit.¹** The department will pay you a reduced monthly retirement bene-

fit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(4) Do I need my spouse's consent on the option I choose? The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.530(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.530(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (5) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(5) Can a dissolution order require that a former spouse be designated as a survivor beneficiary? Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(6) What is the supplemental COLA option? In addition to choosing a retirement benefit option described in subsection (3) of this section, you may choose a supplemental annual COLA. If you select this option, your monthly retirement benefit will be reduced to offset the cost of this benefit.

(7) What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do? If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(8) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the maximum benefit option or the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(9) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid according to this subsection.

(i) Except as provided in (a)(ii) of this subsection, any remaining balance will be paid to the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you retired for service and chose the maximum benefit option, any remaining balance will be retained by the retirement fund.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid to the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(10) For more information, see RCW 41.32.530 and 41.32.550.

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-112-505 What are my TRS Plan 2 or Plan 3 retirement benefit options? Upon retirement for service under RCW 41.32.765 or 41.32.875, or disability under RCW 41.32.790 or 41.32.880, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b), (c), and (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit for service retirement (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (7) of this section.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.¹** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's (~~notarized~~) consent, verified by a notarized signature or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide (~~notarized~~) spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(d) If your survivor beneficiary has been designated by a dissolution order under RCW 41.50.790, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) May I change my benefit option after retirement?

Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?**(a) Plan 2:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution

portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.32.785 and 41.32.790 (Plan 2) and RCW 41.32.851 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-112-507 How do I apply for TRS retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

(1) A completed ~~(=)~~ and signed ~~(, and notarized)~~ retirement application, verified by a notarized signature or other means acceptable to the department, including:

(a) Your selection of one of the benefit options described in WAC 415-112-493.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's consent may be required as described in WAC 415-112-504 (Plan 1) or WAC 415-112-505 (Plan 2 or Plan 3).

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

WSR 20-09-011**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 20-55—Filed April 2, 2020, 5:15 p.m., effective April 2, 2020, 5:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000L; and amending WAC 220-358-030.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Modifies the 2020 winter select area commercial seasons to adapt to unexpected winter water flow. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 11, March 4, and April 2, 2020. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for

some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at 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: April 2, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000M Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point and South Channel Select Areas:

(a) Tongue Point and South Channel Select Areas

Open Dates	Open Days	Open Time	Open Duration
April-20	Monday (night)	6:00 pm - 10:00 pm	4 hrs
April-23	Thursday (night)	7:30 pm - 11:30 pm	4 hrs
April 28 - May 1	Tuesday, Thursday (night)	7 pm - 7 am	2 nights
May 4 - June 12	Monday, Wednesday, Thursday (nights)	7 pm - 7 am	18 nights
June 16 - June 19	Tuesday, Thursday (night)	7 pm - 7 am	2 nights
June 22 - July 3	Monday, Thursday (nights)	7 pm - 7 am	4 nights

(b) South Channel Select Area

April-03	Friday (morning)	2:30 am - 6:30 am	4 hrs
April-06	Monday (night)	6:00 pm - 10:00 pm	4 hrs
April 9 - April 10	Thursday-Friday (night)	8:30 pm - 12:30 am	4 hrs
April 13 - April 14	Tuesday (night)	11:30 pm - 3:30 am	4 hrs
April-17	Friday (morning)	3:30 am - 7:30 am	4 hrs

(c) Area: The Tongue Point Winter-Spring subarea, (Winter-Spring is immediately through June 12, 2020), is defined as waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

For summer fisheries, (defined as June 16 through July 3, 2020), the open waters include the entire Tongue Point Select Area as described in WAC 20-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

The South Channel Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(d) Gear: Gillnets.

Winter season (immediately through April 14, 2020): 7-inch minimum mesh size restriction

Spring and Summer seasons (April 17 through July 3, 2020): 9 3/4-inch maximum mesh size restriction.

The maximum net length is 1,500 feet (250 fathoms).

In the Tongue Point winter-spring subarea and the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom;

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(2) Blind Slough and Knappa Slough Select Areas:

(a) Blind Slough and Knappa Slough Select Areas

Open Dates	Open Days	Open Time	Open Duration
April 20 - April 24	Monday, Thursday (nights)	7 pm - 7 am	2 nights
April 28 - May 1	Tuesday, Thursday (nights)	7 pm - 7 am	2 nights
May 4 - June 12	Monday, Wednesday, Thursday (nights)	7 pm - 7 am	18 nights
June 16 - June 19	Tuesday, Thursday (nights)	7 pm - 7 am	2 nights
June 22 - July 3	Monday, Thursday (nights)	7 pm - 7 am	4 nights

(b) Blind Slough Select Area

Open Dates	Open Days	Open Time	Open Duration
April 2 - April 3	Thursday (night)	7 pm - 7 am	12 hrs
April 6 - April 17	Monday, Thursday (nights)	7 pm - 7 am	12 hrs

(c) Knappa Slough Select Area

Open Dates	Open Days	Open Time	Open Duration
April-03	Friday (morning)	2:30 am-6:30 am	4 hrs
April-06	Monday (night)	6:00 pm-10:00 pm	4 hrs

Open Dates	Open Days	Open Time	Open Duration
April 9 - April 10	Thursday-Friday (night)	8:30 pm-12:30 am	4 hrs
April 13 - April 14	Tuesday (night)	11:30 am-3:30 am	4 hrs
April-17	Friday (morning)	3:30 am-7:30 am	4 hrs

(d) Area: The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed. Prior to May 2, the downstream (western) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(e) Gear: Gillnets.

Winter season (immediately through April 14, 2020): 7-inch minimum mesh size restriction.

Spring and Summer seasons (April 16 through July 3, 2020): 9 3/4-inch maximum mesh size restriction.

The maximum net length is 600 feet (100 fathoms).

There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(f) Miscellaneous: Permanent transportation rules in effect. In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) Allowable Sales: Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(4) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315)). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

(5) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

(6) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000L Columbia River seasons below Bonneville. (20-43)

WSR 20-09-016

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed April 3, 2020, 2:31 p.m., effective April 3, 2020, 2:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending WAC 182-543-0500 and 182-551-2040 to allow ordering of home health services, including medical supplies, by nonphysician practitioners.

Citation of Rules Affected by this Order: Amending WAC 182-543-0500 and 182-551-2040.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Not applicable.

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: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), along with the governor of Washington's emergency proclamations related to COVID-19, this rule making is necessary to immediately allow nonphysician practitioners the ability to order home health services, includ-

ing medical supplies. This flexibility is necessary to ensure that when products and services are determined to have evidence of efficacy in treating COVID-19 or its symptoms, they are made available to clients as a covered benefit as quickly as possible.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: April 3, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-0500 General. (1) The federal government considers medical equipment, supplies, and appliances, which the medicaid agency refers to throughout this chapter as medical equipment, services under the medicaid program.

(2) The agency pays for medical equipment, including modifications, accessories, and repairs, according to agency rules and subject to the limitations and requirements in this chapter when the medical equipment is:

(a) Medically necessary, as defined in WAC 182-500-0070;

(b) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; and

(c) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices.

(3) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

(4) The face-to-face encounter must be conducted by the ordering physician, a nonphysician practitioner as described in WAC 182-500-0075, or the attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

(5) ~~((If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician.))~~ Physi-

icians, advanced registered nurse practitioners (ARNPs), and physician assistants (PAs) may complete the face-to-face encounter. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.

(6) The agency requires prior authorization for covered medical equipment when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The agency evaluates requests requiring prior authorization on a case-by-case basis to determine medical necessity as defined in WAC 182-500-0070, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-543-7000, 182-543-7100, 182-543-7200, and 182-543-7300 for specific details regarding authorization.

(7) The agency bases its determination about which medical equipment requires prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 182-543-7100 for PA and WAC 182-543-7300 for EPA). The agency considers all of the following when establishing utilization criteria:

(a) Cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(8) The agency evaluates a request for equipment that does not meet the definition of medical equipment or that is determined not medically necessary under the provisions of WAC 182-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 182-543-0100 for EPSDT rules).

(9) The agency may terminate a provider's participation with the agency according to WAC 182-502-0030 and 182-502-0040.

(10) The agency evaluates a request for a service that meets the definition of medical equipment but has been determined to be experimental or investigational, under the provisions of WAC 182-501-0165.

(11) If the agency denies a requested service, the agency notifies the client in writing that the client may request an administrative hearing under chapter 182-526 WAC. (For MCO enrollees, see WAC 182-538-110.)

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

WAC 182-551-2040 Face-to-face encounter requirements. (1) During the current COVID-19 public health emergency, the face-to-face requirements of this section may be met using telemedicine or telehealth services. See WAC 182-551-2125.

(2) The medicaid agency pays for home health services provided under this chapter only when the face-to-face encounter requirements in this section are met.

~~((2))~~ (3) For initiation of home health services, with the exception of medical equipment under WAC 182-551-2122,

the face-to-face encounter must be related to the primary reason the client requires home health services and must occur within ninety days before or within the thirty days after the start of the services.

~~((3))~~ (4) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

~~((4))~~ (5) The face-to-face encounter may be conducted by the ordering physician, a nonphysician practitioner as described in WAC 182-500-0075, or the attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

~~((5) If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician.))~~

(6) Physicians, advanced registered nurse practitioners (ARNPs), and physician assistants (PAs) may complete the face-to-face encounter. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.

~~((6))~~ (7) For all home health services except medical equipment under WAC 182-551-2122, the physician, ARNP, or PA responsible for ordering the services must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((2))~~ (3) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((7))~~ (8) For medical equipment under WAC 182-551-2122, except as provided in (b) of this subsection, an ordering physician, a nonphysician practitioner as described in WAC 182-500-0075, except for certified nurse midwives, or the attending physician when a client is discharged from an acute hospital stay, must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((3))~~ (4) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((8) The face-to-face encounter may occur through telemedicine. See WAC 182-551-2125.))~~

Purpose: Chapter 314-12 WAC, General—Applicable to all licensees. The Washington state liquor and cannabis board (board/WSLCB) has adopted emergency rules that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of any violation of any governor's proclamation issued as a result of the COVID-19 outbreak.

Citation of Rules Affected by this Order: New WAC 314-12-250 and 314-12-275.

Statutory Authority for Adoption: RCW 66.08.0501.

Other Authority: RCW 66.44.010, 70.155.150, 70.345.-020.

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 immediate adoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of governor's proclamations issued as a result of the COVID-19 outbreak. WSLCB has the authority and responsibility to adopt rules for the preservation of public health.

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington state, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-13 was based on both guidance from the United States Center for Disease Control and Prevention to reduce the size of gatherings from two hundred fifty persons to fifty persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

On March 23, 2020, Governor Inslee issued Proclamation 20-25, entitled "Stay Home, Stay Safe," that among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and nonessential businesses in Washington state. Nonessential businesses were prohibited from operation except for performing basic minimum operations. Essential businesses were encouraged to remain open and maintain operations.

Establishments licensed by the board are subject to the restrictions of Governor's Proclamations 20-05, 20-13, and 20-25. Although some establishments licensed by the board are considered essential, others are not or are subject to specific limitations.

These emergency rules serve a two-pronged purpose:

- Allow the board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has

WSR 20-09-026

EMERGENCY RULES

LIQUOR AND CANNABIS

BOARD

[Filed April 6, 2020, 1:19 p.m., effective April 6, 2020, 1:19 p.m.]

Effective Date of Rule: Immediately upon filing.

violated any governor's proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the presentation of public health and welfare; and

- Provide a framework and process for an affected WSLCB licensee to petition the board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

These rules may be extended, rescinded or considered for inclusion in adopted rules at a later date as appropriate.

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

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

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

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

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

Date Adopted: April 6, 2020.

Jane Rushford
Chair

NEW SECTION

WAC 314-12-250 Summary license suspension. (1)

The board may serve an order of summary suspension of any license under this Title 314 WAC after the board's enforcement division has:

- Completed a preliminary staff investigation of a violation of a governor's proclamation; and
- Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this section is effective twenty-four hours after personal service of the summary suspension order on the licensee or employee thereof, unless the licensee becomes compliant as provided in the order before the expiration of the twenty-four hour period.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing will be held within ninety calendar days of the effective date of the summary suspension ordered by the board. The ninety day period may be extended for good cause.

NEW SECTION

WAC 314-12-275 Petition for stay. (1) When the board summarily suspends a license under WAC 314-12-250, an

affected licensee may petition the board for a stay of suspension. A petition for a stay of suspension must be received by the board within ten calendar days of service of the summary suspension order on the licensee. The petition for stay must clearly describe the basis for the stay.

(2) A hearing will be held before an administrative law judge within fourteen calendar days of receipt of a timely petition for stay. The hearing is limited to consideration of whether a stay should be granted, or whether the terms of the suspension will be modified to allow the conduct of limited activities under current licenses.

(3) Any hearing conducted under subsection (2) of this section will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing must consist of the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief adjudicative proceeding. The licensee must demonstrate by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, income alone from licensed activities is not deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay is effective immediately upon service unless another date is specified in the order.

WSR 20-09-042

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-56—Filed April 8, 2020, 8:40 a.m., effective April 8, 2020, 8:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington department of fish and wildlife (WDFW) is delaying turkey hunts that start on April 15, 2020, until further notice. We will reassess to determine when the turkey season can open.

Citation of Rules Affected by this Order: Amending WAC 220-416-010 2018-2019, 2019-2020, 2020-2021 Small game and other wildlife seasons and regulations.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Other Authority: None.

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: WDFW is delaying turkey hunts that start on April 15 as part of an effort to help slow the spread of the CORVID-19 [COVID-19] coronavirus. This delay is necessary to comply with Governor Inslee's recent statewide proclamation to extend "Stay Home, Stay Healthy" for all Washingtonians through May 4.

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 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: April 8, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-416-01000B 2018-2019, 2019-2020, 2020-2021 Small game and other wildlife seasons and regulations. Notwithstanding the provisions of WAC 220-416-010, effective immediately, the changes are as follows:

- (10) WILD TURKEY:
- (b) SPRING SEASON
- (ii) SEASON DATES: Delayed until further notice.

**WSR 20-09-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-56—Filed April 8, 2020, 8:41 a.m., effective April 8, 2020, 8:41 a.m.]

Effective Date of Rule: Immediately upon filing.

NEW SECTION

WAC 220-415-08000B 2020 Spring black bear special permits. Notwithstanding the provisions of WAC 220-415-080, effective immediately, until further notice, the hunt areas, permit levels, and season dates for each license year shall be as follows:

Hunt Areas, Permit Levels, and Season Dates for Each License Year:

Hunt Name	Hunt Area	Permits	Season Dates
Sherman	GMU 101 Note: Mandatory bear identification test required.	50	
Kelly Hill	GMU 105 Note: Mandatory bear identification test required.	50	

Purpose: The Washington department of fish and wild-life (WDFW) is delaying the opening of the spring bear hunts scheduled to open on April 15, 2020, until further notice. We will reassess to determine when the spring bear hunt can open.

Citation of Rules Affected by this Order: Amending WAC 220-415-080.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Other Authority: None.

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: WDFW is delaying the spring bear hunt as part of an effort to help slow the spread of the COVID-19 coronavirus. This decision is necessary to comply with Governor Inslee's recent statewide proclamation to extend "Stay Home, Stay Healthy" for all Washingtonians through May 4, 2020.

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 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: April 8, 2020.

Kelly Susewind
Director

Hunt Name	Hunt Area	Permits	Season Dates
Douglas	GMU 108 Note: Mandatory bear identification test required.	40	Delayed until further notice
Aladdin	GMU 111 Note: Mandatory bear identification test required.	50	
49 Degrees North	GMU 117 Note: Mandatory bear identification test required.	100	
Huckleberry	GMU 121	100	
Blue Creek	GMU 154	18	
Dayton	GMU 162	18	
Tucannon	GMU 166	5	
Wenaha	GMU 169	60	
Mt. View	GMU 172	24	
Lick Creek	GMU 175	18	
Peola	GMU 178	5	
Couse	GMU 181	5	
Grande Ronde	GMU 186	5	
Kitsap	GMU 627	5	
Mason	GMU 633	5	
Bear River	GMU 681	20	
Long Beach	GMU 684	12	
North Skagit	That portion of GMU 418 that is designated as the hunt area by DNR, Sierra Pacific, Weyerhaeuser-Columbia Timber Lands, and Grandy Lake Timber company. Note: Mandatory bear identification test required.	30	
Copalis	GMU 642, 648, and 638 (excluding U.S. Forest Service lands).	50	

WSR 20-09-046
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
 [Filed April 8, 2020, 9:36 a.m.]

The department of children, youth, and families rescinds WSR 20-08-026, emergency WAC 110-15-0034.

April 8, 2020
 Brenda Villarreal
 Rules Coordinator

WSR 20-09-047
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
 [Filed April 8, 2020, 9:41 a.m., effective April 8, 2020, 9:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: **For Working Connections and Seasonal Child Care:** Eliminate consumers' copay for the months of April, May, and June 2020 and allow an eligible provider to claim working connections child care payment based on

enrollment, rather than attendance, for the period March 16 through April 30, 2020.

Citation of Rules Affected by this Order: Amending WAC 110-15-030 and 110-15-034.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. These emergency amendments to WAC

110-15-0030 and 110-15-0034 address these challenges by removing subsidy consumers' copays for three months to provide better access to quality early learning services and child care across the state and establish a more stable subsidy provider payment practice through the end of April 2020.

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: April 8, 200 [2020].

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0030 Consumer's responsibilities.

When a person applies for or receives WCCC benefits, as a condition of receiving those benefits, the applicant or consumer must:

(1) Give ((~~DSHS~~)) DCYF correct and current information so ((~~DSHS~~)) DCYF can determine eligibility and authorize child care payments correctly;

(2) Choose a provider who meets the requirements of WAC 110-15-0125;

(3) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider, except:

(a) The copayment is not required for the months of April, May, and June 2020;

(4) If the consumer or a third-party acting on behalf of the consumer fails to make a copayment when due, the consumer must do one or more of the following:

(a) Pay the child care provider the past due copayments;

(b) Provide ((~~DSHS~~)) DCYF with a signed copy of a payment agreement between the consumer and child care provider that includes, but is not limited to, the following information:

(i) A description of the agreed payment plan;

(ii) If applicable, a description of any collection agency action that may be taken by the provider if the consumer fails to comply with the agreed payment plan;

(iii) If applicable, a description of in-kind services in lieu of paying the copayment; and

(iv) If applicable, payment forgiveness from the provider.

(c) Provide ((~~DSHS~~)) DCYF proof that the consumer attempted to make a copayment to the provider, but the

licensed provider is no longer in business or the license-exempt in-home/relative provider no longer provides child care. "Proof" includes, but is not limited to, a return receipt associated with a payment that was mailed to the provider that indicates the mailed payment was signed for but not picked up, or a returned, previously mailed payment that was not signed for or accepted.

(5) Pay the provider for child care services when the consumer requests additional child care beyond the current authorization;

(6) Pay the provider for optional child care programs that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

(7) Pay the provider the same late fees that are charged to other families, if the consumer makes a late copayment or picks up the child late;

(8) Cooperate (provide the information requested) with the child care subsidy audit process. If the consumer does not provide the information requested:

(a) A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation;

(b) The consumer remains ineligible until he or she meets child care subsidy audit requirements;

(c) The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter and cooperates;

(d) Care can begin on or after the date the consumer cooperated and meets WCCC requirements in part II of this chapter.

(9) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it may affect the consumer's benefits;

(10) Document the child's attendance in child care, or have a person authorized by the consumer to document the child's attendance, by:

(a) Signing the child in on arrival and out at departure, using a full signature and writing the time of arrival and departure, if the provider uses a paper attendance record; or

(b) Electronically recording the child's attendance as instructed, if an electronic system is used by the provider.

(11) Ensure that the consumer's children who receive child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(a) A department of health (DOH) medical exemption form signed by a health care professional; or

(b) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization.

(12) Ensure that care is provided in the correct home as required by WAC 110-16-0015(3) if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;

(13) Provide the in-home/relative provider with the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care; and

(14) Provide other information and resources as necessary for the consumer's in-home/relative provider to be in compliance with the requirements of chapter 110-16 WAC including, but not limited to, WAC 110-16-0030 and 110-16-0035.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 19-12-058, filed 10/11/19 [5/31/19], effective 7/1/19)

WAC 110-15-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Licensed or certified child care providers who accept child care subsidies must comply with all child care licensing or certification requirements contained in this chapter, chapter 43.216 RCW and chapters 110-06, 110-300, (~~110-300A, 110-300B, and~~) 110-305, and 110-310 WAC.

(2) In-home/relative child care providers must comply with the requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(3) In-home/relative child care providers must not submit an invoice for more than six children for the same hours of care.

(4) All child care providers must use DCYF's electronic attendance recordkeeping system or a DCYF-approved electronic attendance recordkeeping system as required by WAC 110-15-0126. Providers must limit attendance system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(a) Providers using DCYF's electronic recordkeeping system must submit monthly attendance records prior to claiming payment. Providers using a DCYF-approved electronic recordkeeping system must finalize attendance records prior to claiming payment.

(b) Providers must not edit attendance records after making a claim for payment.

(5) All child care providers must complete and maintain accurate daily attendance records. If requested by DCYF or DSHS, the provider must provide to the requesting agency the following records:

(a) Attendance records must be provided to DCYF or DSHS within twenty-eight calendar days of the date of a written request from either department.

(b) Pursuant to WAC 110-15-0268, the attendance records delivered to DCYF or DSHS may be used to determine whether a provider overpayment has been made and may result in the establishment of an overpayment and in an immediate suspension of the provider's subsidy payment.

(6) All child care providers must maintain and provide receipts for billed field trip/quality enhancement fees as follows. If requested by DCYF or DSHS, the provider must provide the following receipts for billed field trip/quality enhancement fees:

(a) Receipts from the previous twelve months must be available immediately for review upon request by DCYF;

(b) Receipts from one to five years old must be provided within twenty-eight days of the date of a written request from either department.

(7) All child care providers must collect copayments directly from the consumer or the consumer's third-party (~~payer~~) payer, and report to DCYF if the consumer has not paid a copayment to the provider within the previous sixty days, except:

(a) For the months of April, May, and June 2020.

(8) All child care providers must follow the billing procedures required by DCYF.

(9) Child care providers who accept child care subsidies must not:

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month (~~(; however,)~~) (i) A provider eligible for payment under WAC 110-15-0106 may submit a claim for payment based on enrollment for the period March 16 through April 30, 2020; and

(ii) In the event a ten-day notice terminating a provider's authorization extends into the following month, the provider may claim a payment for any remaining days of the ten calendar day notice in that following month;

(b) Claim an invoice for payment later than six months after the month of service, or the date of the invoice, whichever is later; or

(c) Charge consumers the difference between the provider's customary rate and the maximum allowed state rate.

(10) Licensed and certified providers must not charge consumers for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Days for which the child is scheduled and authorized for care but absent;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

(11) Providers who care for children in states bordering Washington state must verify they are in compliance with their state's licensing regulations and notify DCYF within ten days of any suspension, revocation, or changes to their license.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 20-09-049

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 8, 2020, 2:21 p.m., effective April 8, 2020, 2:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The rule making is proposed in order to provide support to employees and employers impacted by the

COVID-19 virus across the state. The emergency rule treats certain job separations for people who cannot telework and who meet other criteria related to COVID-19 as a lack of work.

Citation of Rules Affected by this Order: New WAC 192-150-101.

Statutory Authority for Adoption: RCW 50.12.040, 50.20.180.

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: In Proclamation 20-05, Governor Inslee proclaimed a State of Emergency in Washington regarding COVID-19. The proclamation directs agencies and departments to support the department of health and local officials in alleviating the impacts to people, property, and infrastructure across the state.

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: April 8, 2020.

Dan Zeitlin
Employment Security Policy Director

NEW SECTION

WAC 192-150-101 Job separations related to COVID-19. For individuals who became unemployed on or after March 23, 2020, the individual will be considered to have been laid off due to a lack of work when:

(1)(a) The individual was prohibited by a government official to remain at home or place of residence as a result of COVID-19; and

(b) The individual does not have the ability to telework with pay; or

(2)(a) The individual was not prohibited by a government official to remain at home or place of residence as a result of COVID-19; and

(b) The individual is either:

(i) A person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19;

(ii) In the same household as a person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19;

(iii) Providing direct care to a person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19; or

(iv) Working at a worksite outside of the individual's home or place of residence that does not follow rules or guidelines published by the United States Department of Labor, the Washington department of labor and industries, or the Washington department of health for protecting workers from COVID-19 exposure; and

(c) The individual does not have the ability to telework with pay.

WSR 20-09-051
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed April 8, 2020, 3:02 p.m.]

The department of children, youth, and families rescinds WSR 20-02-048, WAC 110-15-0190, filed December 23, 2019.

April 8, 2020
Brenda Villarreal
Rules Coordinator

WSR 20-09-052
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed April 8, 2020, 3:09 p.m., effective April 8, 2020, 3:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: For working connections and seasonal child care: Extend certification periods for twelve months for families whose certification periods end in March, April, or May 2020, and whose approved activity was lost due to the COVID-19 pandemic and Proclamation of the Governor 20-05.

Citation of Rules Affected by this Order: Amending WAC 110-15-0020, 110-15-0109, and 110-15-0190.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state signifi-

cantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. These emergency amendments to WAC 110-15-0020, 110-15-0109, and 110-15-0190 address these challenges by removing subsidy eligibility barriers.

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 3, Repealed 0.

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

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

Date Adopted: April 8, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0020 Eligibility—Special circumstances. (1) A legal guardian or individual acting in loco parentis may be eligible for WCCC benefits based on participation in approved activities without consideration of the legal guardian's or individual's acting in loco parentis spouse or live-in partner's availability to provide care if the spouse or live-in partner is not named on the permanent custody order.

(a) Eligibility will be determined under this subsection based on the following:

- (i) The consumer's work or approved activities schedule;
- (ii) The child's need for care;
- (iii) The child's income; and
- (iv) Family size based on the number of children under guardianship and needing care.

(b) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(2) At application and reapplication:

(a) A consumer may be eligible for WCCC benefits if the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 110-15-0003 to provide care for the children while the other parent is working or participating in approved activities.

(b) If a consumer claims one parent is not able to care for the children due to a medical condition, the consumer must provide written documentation from an acceptable medical source, as defined in WAC 388-449-0010, that states the:

- (i) Reason the parent is not able to care for the children;
- (ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and

(ii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.

(3) A consumer may be eligible for WCCC if the consumer is participating in an approved activity needed to remove a sanction penalty or to reopen the consumer's Work-First case.

(4) A consumer whose application for TANF has not yet been approved, may be authorized for WCCC benefits for fourteen days pending establishment of an individual responsibility plan (IRP) with an approved activity. The fourteen days counts as part of the twelve-month eligibility period.

(5) A consumer who has an established IRP under WAC 110-15-0040 may be approved for WCCC benefits fourteen days before the start date of the activity. The fourteen days counts as part of the twelve-month eligibility period.

(6) A consumer who is waiting to enter into an approved activity under WAC 110-15-0045 may be approved for WCCC benefits fourteen days before the start date of the activity. The fourteen days counts as part of the twelve-month eligibility period.

(7) Consumers who apply for an eligibility redetermination whose current certification period ends in March, April, or May 2020 may be considered to have an approved activity if their previously approved activity is no longer available because of the COVID-19 pandemic and the State of Emergency declared by the Governor in Proclamation 20-05, currently in effect as of the date of the filing of this emergency rule.

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0109 Reapplication. (1) To request WCCC benefits be continued uninterrupted beyond the consumer's current eligibility period, the consumer must reapply for WCCC benefits with ((~~DSHS~~)) DCYF on or before the end of the current eligibility period.

(2) Determination of the consumer's eligibility to receive uninterrupted WCCC benefits beyond the consumer's current eligibility period will be made pursuant to the eligibility rules contained in this chapter.

(3) A consumer who reapplies on or before the end date of the current WCCC eligibility period may receive continued uninterrupted benefits through second tier eligibility if the consumer's household has countable income greater than two hundred percent but less than two hundred twenty percent of the federal poverty guidelines (FPG).

(a) If the countable income is equal to or greater than two hundred twenty percent FPG, the reapplication will be denied.

(b) The copayment for a second tier eligible consumer will be determined at two hundred percent of the FPG of countable household income.

(4) If a consumer submits a reapplication after the last day of the current eligibility period and meets all WCCC eligibility requirements, the consumer's benefits will begin as

described in subsection (4)(a) or subsection (4)(b)k whichever date is earlier:

(a) On the date the consumer's reapplication is entered into ((~~DSHS's~~) DCYF's) automated system or the date the consumer's reapplication is date-stamped as received by ((~~DSHS~~) DCYF, whichever date is earlier;

(b) ((~~When~~) the consumer is ((~~working or~~) participating in an approved activity; and

(c) The date the consumer's child is receiving care from an approved provider.

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 20-08-077, filed 3/26/20, effective 4/26/20)

WAC 110-15-0190 WCCC benefit calculations. (1)

The amount of care a consumer may receive is determined by ((~~DSHS~~) DCYF) at application or reapplication. Once the care is authorized, the amount will not be reduced during the eligibility period unless:

(a) The consumer requests the reduction;

(b) The care is for a school-aged child as described in subsection (3) of this section; or

(c) Incorrect information was given at application or reapplication.

(2) To determine the amount of weekly hours of care needed, ((~~DSHS~~) DCYF) reviews:

(a) The consumer's participation in approved activities and the number of hours the child attends school, including home school, which will reduce the amount of care needed.

(b) In a two parent household, the days and times approved activities overlap, and only authorize care during those overlapping times. The consumer is eligible for full-time care if overlapping care totals one hundred ten hours in one month.

(c) ((~~DSHS~~) DCYF) will not consider the schedule of a parent in a two parent household who is not able to care for the child.

(3) Full-time care for a family using licensed providers is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Twenty-three full-day units per month will be authorized when the child ((~~needs~~) is in care five or more hours per day.

(b) Thirty half-day units per month will be authorized when the child ((~~needs~~) is in care less than five hours per day.

(c) Forty-six half-day units per month will be authorized during the months of June, July, and August for a school-aged child who ((~~needs~~) is in care for five or more hours ((~~of care;~~) per day.

(4) Partial-day monthly unit. A single partial-day monthly unit per month will be authorized for a school-age child attending a licensed family home child care when the child is:

(a) Authorized for care with only one provider;

(b) Eligible for full-time authorization, but is in care less than five hours on a typical school day; and

(c) Expected to need care before and after school.

(d) Only one monthly unit may be authorized per child per month.

((~~(4)~~) (5) Supervisor approval is required for additional days of care that exceeds twenty-three full days ((~~or~~), thirty half days, or one partial-day monthly unit per month; ((~~and~~ (e) Care cannot exceed sixteen hours per day, per child. (4))

(6) Full-time care for a family using in-home/relative providers (family, friends and neighbors) is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Two hundred thirty hours of care will be authorized when the child ((~~needs~~) is in care five or more hours per day;

(b) One hundred fifteen hours of care will be authorized when the child ((~~needs~~) is in care less than five hours per day;

(c) One hundred fifteen hours of care will be authorized during the school year for a school-aged child who ((~~needs~~) is in care less than five hours per day and the provider will be authorized for contingency hours each month, up to a maximum of two hundred thirty hours;

(d) Two hundred thirty hours of care will be authorized during the school year for a school-aged child who ((~~needs~~) is in care five or more hours in a day; and

(e) Supervisor approval is required for hours of care that exceed two hundred thirty hours per month((~~;~~ and (f))

(7) Care cannot exceed sixteen hours per day, per child.

((~~(5)~~) (8) When determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month:

(a) A full-day unit will be authorized for each day of care that exceeds five hours;

(b) A half-day unit will be authorized for each day of care that is less than five hours; and

(c) A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.

((~~(6)~~) (9) When determining part-time care for a family using in-home/relative providers:

(a) Under the provisions of subsection (2) of this section, ((~~DSHS~~) DCYF) will authorize the number of hours of care needed per month when the activity is less than one hundred ten hours per month; and

(b) The total number of authorized hours and contingency hours claimed cannot exceed two hundred thirty hours per month.

((~~(7)~~ DSHS) (10) DCYF determines the allocation of hours or units for families with multiple providers based upon the information received from the parent.

((~~(8)~~ DSHS) (11) DCYF may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC 110-15-0125, or an approved in-home/relative provider under WAC 110-16-0010. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

~~((9))~~ (12) Other fees (~~(DSHS)~~) DCYF may authorize to a provider are:

- (a) Registration fees;
- (b) Field trip fees;
- (c) Nonstandard hours bonus;
- (d) Overtime care to a licensed provider when care is expected to exceed ten hours in a day; and
- (e) Special needs rates for a child.

(13) Subject to the conditions described in WAC 110-15-0020(7), a consumer with a certification period ending in March, April, or May 2020, who reapplies and is approved, may be authorized care at the same level as the prior authorization.

WSR 20-09-053

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 8, 2020, 4:28 p.m., effective April 8, 2020, 4:28 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: **For working connections (WCCC) and seasonal child care (SCC):** Child care providers must electronically submit to the department of children, youth, and families children's attendance records using the department's electronic filing system or a department preapproved electronic recordkeeping system in order to receive WCC [WCCC] or SCC payment. Electronic recordkeeping must begin prior to the final day of the third month following a provider's approval to participate in WCC [WCCC] or SCC. The amendment allows electronic recordkeeping to begin prior to the end of an extension issued by the department.

Citation of Rules Affected by this Order: Amending WAC 110-15-0126.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. Training on the electronic recordkeeping system will not be available under [until] the State of Emergency ends. Believing that electronic recordkeeping may be a barrier to participation in subsidy programs, especially with-

out available training, the department is issuing automatic electronic recordkeeping extensions with each new approval. These emergency amendments accommodate those extensions.

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

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

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

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

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

Date Adopted: April 8, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0126 Electronic attendance records. (1) ~~((Within ninety days of initial approval to receive WCCC or SCC benefits, providers must adopt the department's electronic attendance recordkeeping system or a department-approved electronic attendance recordkeeping system to record a child's attendance. Ninety days following approval, providers not using an approved electronic attendance system will no longer receive WCCC or SCC payments.))~~ For a provider to be eligible to receive a WCCC or SCC payment, the provider must use the department's electronic attendance recordkeeping system, or a department preapproved electronic attendance system capable of performing the functions described in subsection (3) of this section.

(a) For purposes of this subsection only, a provider is eligible to receive a WCCC or SCC payment before the provider's use of the department's electronic attendance recordkeeping system, or a department preapproved electronic attendance system, if the provider's use of the system begins on or before:

(i) The final calendar day of the third month that follows the initial approval to receive WCCC or SCC subsidy payments; or

(ii) The expiration date of an extension issued by the department.

(b) Subject to the requirements described in subsection (1)(a), providers must record each child's attendance using either:

(i) The department's electronic attendance recordkeeping system; or

(ii) A department preapproved electronic attendance recordkeeping system.

(2) For a provider to be eligible to receive a WCCC or SCC payment under subsection (1) of this section without the

use of the department's electronic attendance recordkeeping system or a department preapproved electronic attendance recordkeeping system, the provider must be in possession of a valid waiver of such use issued by the department.

(3) The electronic attendance recordkeeping system must:

(a) Record an electronic signature, swipe card, personal identification number (PIN), biometric reader, or similar authentication by the parent or designee when signing the child in and out of the provider's care;

(b) Ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against alterations of the electronic records;

(c) Produce an authentic, verifiable record for each transaction that complies with all legal and other requirements regarding the record's structure, content, and time of creation or receipt;

(d) Prove the identity of the sender of the record;

(e) Uniquely identify each record;

(f) Capture an electronic record for each transaction conducted;

(g) Maintain the integrity of electronic records as captured or created so that they can be accessed, displayed and managed as a unit;

(h) Retain electronic records in an accessible form for their legal minimum retention period;

(i) Search and retrieve electronic records in the normal course of business throughout their entire legal minimum retention period;

(j) Produce authentic copies of electronic records and supply them in usable formats for business purposes and all public access purposes;

(k) Contain all of the information necessary to reproduce the entire electronic record and associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

(i) The contents of the electronic record;

(ii) The method used to sign the electronic record, if applicable;

(iii) The person signing the electronic record; and

(iv) The date when the signature was executed

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 20-09-057

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 9, 2020, 4:56 p.m., effective April 9, 2020, 4:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The rule making is proposed in order to provide support to employees and employers impacted by the COVID-19 virus across the state. The emergency rule treats certain job separations for people who cannot telework and who meet other criteria related to COVID-19 as a lack of

work. This rule corrects a drafting error in a prior emergency rule filed under WSR 20-09-049.

Citation of Rules Affected by this Order: New WAC 192-150-101.

Statutory Authority for Adoption: RCW 50.12.040, 50.20.180.

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: In Proclamation 20-05, Governor Inslee proclaimed a State of Emergency in Washington regarding COVID-19. The proclamation directs agencies and departments to support the department of health and local officials in alleviating the impacts to people, property, and infrastructure across the state.

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: April 9, 2020.

Dan Zeitlin

Employment Security Policy Director

NEW SECTION

WAC 192-150-101 Job separations related to COVID-19. For individuals who became unemployed on or after March 23, 2020, the individual will be considered to have been laid off due to a lack of work when:

(1)(a) The individual was prohibited by a government official from working outside their home or place of residence as a result of COVID-19; and

(b) The individual does not have the ability to telework with pay; or

(2)(a) The individual was not prohibited by a government official from working outside their home or place of residence as a result of COVID-19; and

(b) The individual is either:

(i) A person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19;

(ii) In the same household as a person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19;

(iii) Providing direct care to a person identified by the centers for disease control as someone at high-risk for severe illness from COVID-19; or

(iv) Working at a worksite outside of the individual's home or place of residence that does not follow rules or guidelines published by the United States Department of Labor, the Washington department of labor and industries, or the Washington department of health for protecting workers from COVID-19 exposure; and

(c) The individual does not have the ability to telework with pay.

WSR 20-09-063

EMERGENCY RULES

STATE BOARD OF EDUCATION

[Filed April 10, 2020, 4:32 p.m., effective April 10, 2020, 4:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making on chapter 180-90 and 180-111 WAC is to establish an emergency waiver program to grant local education agencies and private schools flexibility in credit graduation requirements for the graduating class of 2020 in response to the novel coronavirus (COVID-19). The rule making would also allow flexibility from instructional hour or school day requirements for private schools for the 2019-2020 school year.

This rule shall expire July 31, 2020. The rule making also includes a change to WAC 180-90-114 to allow private schools to operate online programs without use of physical buildings if the emergency situation continues into the 2020-2021 school year.

The purpose may include changes as necessary to align rule to current policy or practice, correct references to law, implement recently passed legislation, improve readability of the rule, or make other changes identified during the review.

Citation of Rules Affected by this Order: New WAC 180-111-010, 180-111-020, 180-111-030, 180-111-040 and 180-111-050; and amending WAC 180-90-141 and 180-90-160.

Statutory Authority for Adoption: Sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965), RCW 28A.195.-010.

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

Reasons for this Finding: Sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965) authorizes the state board of education to engage in rule making to provide flexibility in response to the novel coronavirus (COVID-19) emergency. Immediate adoption and amendment of 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.

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 5, 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 5, 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: April 8, 2020.

Randy Spaulding
Executive Director

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-141 Loss of private school approval.

The state board of education may rescind approval of a private school for one or more of the following reasons:

(1)(a) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

(b) For the 2020-21 school year, schools that implement an online education program consistent with the provisions of RCW 28A.195.090 for one hundred percent of their students will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities provided that:

(i) The school was operating with nonprovisional state board approval as of February 29, 2020; and

(ii) The school maintains a physical address in Washington and plans to resume classroom instruction when it is safe to do so based on lifting state and local emergency declarations restricting the delivery of educational services.

(2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

(3) Failure to provide verification that the physical facilities of the school meet the health and fire safety standards.

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-160 Minimum standards and certificate form. (1) The annual certificate required by WAC 180-90-130 shall be in substantial compliance with the form and substance of the following:

CERTIFICATE OF COMPLIANCE
WITH STATE STANDARDS

ESD/County/Public
School District
Private School/
District Address

I,, do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades through with a projected enrollment of; and that said school is scheduled to meet throughout the school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance

or

I,, do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:

(a) Except as provided in chapter 180-111 WAC for the 2019-20 school year, the minimum school year for instructional purposes consists of no less than one hundred eighty school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided an annual total instructional hour offering, as prescribed in RCW 28A.195.010, of at least:

- (i) 450 Hours for students in kindergarten.
- (ii) 1000 Hours for students in grades one through twelve.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements, except as provided in chapter 180-111 WAC; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to

teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (c) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than thirty students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities of the school are adequate to meet the program offered, and all school facilities and practices are in substantial compliance with reasonable health and fire safety standards, as substantiated by current inspection reports of appropriate health and fire safety officials which are on file in the chief administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC and may waive requirements as provided in chapter 180-111 WAC;

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. I have reported all such deviations herewith.

Dated this day of, 20 . . .

.....
(signed)

.....
(title)

.....
(phone number)

(2) Approval by the state board of education is contingent upon on-going compliance with the standards certified herein. The school shall notify the state board of education of any deviation from these standards which occurs after the action taken by the state board of education. Such notification shall be filed within thirty days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the revocation of the approval of the private school and shall be considered in subsequent application for approval as a private school.

(4) Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.

Chapter 180-111 WAC

EMERGENCY WAIVER OF CERTAIN REQUIREMENTS IN RESPONSE TO NOVEL CORONAVIRUS

NEW SECTION

WAC 180-111-010 Authority and purpose. (1) The authority for this chapter is sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965) which authorizes the state board of education to administer an emergency waiver program.

(2) The purpose of this chapter is:

(a) To establish an emergency waiver program to grant local education agencies and private schools flexibility so that students in the graduating class of 2020 or earlier who were on track to graduate before the gubernatorial declaration of emergency of February 29, 2020, the proclamation of statewide school closures on March 13, 2020, and any subsequent amendments to these proclamations, are not negatively impacted by measures taken by the local education agency or private school in response to the novel coronavirus (COVID-19); and

(b) To allow flexibility from instructional hour or school day requirements for the 2019-20 school year for private schools that close due to the novel coronavirus.

(3) This chapter expires July 31, 2020.

NEW SECTION

WAC 180-111-020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Good faith effort" means the local education agency or private school considered and implemented options, determined appropriate by the local education agency or private school, to support individual students in meeting credit requirements. Options for helping students meet credit requirements or waive credit requirements include, but are not limited to:

(a) Recommendations provided by the office of the superintendent of public instruction in its published guidance on supporting seniors during long-term school closures, as outlined in Bulletin Number 022-20 issued on March 20, 2020, and Bulletin Number 024-20 issued on March 23, 2020, and any related subsequent bulletins.

(b) Awarding or waiving of credits through existing authority of local education agencies and private schools:

(i) Local graduation requirements under WAC 180-51-020 may be waived at local discretion without approval of the state board of education.

(ii) Local education agencies and private schools that have implemented state credit requirements under WAC 180-51-068 (the twenty-four-credit graduation requirement framework) have the authority to award a two-credit waiver of flexible credits for individual student circumstances.

(iii) Students may be excused from physical education, provided they demonstrate competency/mastery in the knowledge portion of the required one and one-half credits, as articulated in WAC 180-51-056 (1)(e), 180-51-067(6), and 180-51-068(6).

(iv) Per WAC 180-51-056 (1)(c)(ii), 180-51-067 (4)(b), and 180-51-068 (4)(b)(i) and (ii), the noncredit requirement of Washington state history can be waived for students who either have completed a state history course in another state, or for eleventh or twelfth grade students who have not completed the course because of previous residence in another state.

(v) Credits may be awarded based on the student's demonstrated proficiency/competency of the state's learning standards under WAC 180-51-050.

(2) "Local education agency" means a school district, charter school established under chapter 28A.710 RCW, or tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW. References within this chapter to local education agency shall also apply to community and technical college colleges per WAC 180-51-015.

(3) "On track to graduate" means the individual student's earned credits and current or planned enrollment as of the gubernatorial declaration of emergency of February 29, 2020, would have been sufficient, as determined by the student's local education agency or private school, for the student to meet the applicable state minimum graduation requirements (as defined in WAC 180-51-056, 180-51-067, and 180-51-068) by the end of the 2019-20 school year as defined by RCW 28A.150.203.

NEW SECTION

WAC 180-111-030 Application and approval process. (1) Beginning no later than April 15, 2020, the state board of education shall make an application available to local education agencies seeking this waiver. A local education agency may apply to the state board of education for the authority to waive credit-based graduation requirements for individual students. The state board of education will accept applications through a deadline to be determined by the state board of education.

(2) In order to be granted the waiver authority, the local education agency must certify the following:

(a) The local education agency has considered equity in applying for the waiver and will consider equity in administering the waiver. This may include, but is not limited to, an equity analysis, community outreach, or other means to assess and mitigate potential disparate impacts of this waiver.

(b) The local education agency will grant waivers on an individual student basis to eligible students in accordance with WAC 180-111-040.

(c) Prior to granting a waiver, the local education agency will make a good faith effort, as defined in WAC 180-111-020, to help individual students address credit deficiencies and meet core course requirements.

(d) The local education agency will administer the waiver in accordance with program rules as outlined in this chapter.

(3) The application must be certified by the district superintendent or equivalent personnel with authority to sign on behalf of the local education agency.

(4) The state board of education may approve applications that meet the criteria outlined in subsections (2) and (3) of this section. The board may delegate this authority to its executive director for efficiency per RCW 28A.305.130(7).

(5) The state board of education shall promptly post on its public website the information collected on the application, a list of all applications received, and the decision to approve or deny each application.

NEW SECTION

WAC 180-111-040 Emergency waiver of credit-based graduation requirements. (1) Beginning from the date of approval of its waiver, in accordance with WAC 180-111-030, through July 31, 2020, in accordance with the establishing legislation, a local education agency may waive subject area credit graduation requirements outlined in subsection (2) of this section for individual students after completing all of the following requirements:

(a) The local education agency shall review the individual student's completed and planned coursework and determine that the student was on track to graduate, as defined in WAC 180-111-020.

(b) The local education agency shall demonstrate a good faith effort, as defined in WAC 180-111-020, to help the individual student meet credit-based graduation requirements through other options.

(c) The local education agency shall consult with the individual student, and make a reasonable effort to consult with a parent or guardian of the student, and shall make a reasonable effort to provide information about this waiver in the preferred languages of the student, and of the parent or guardian of the student if applicable. The information shall include, but is not limited to:

(i) What is being waived for the individual student;

(ii) Potential benefits and limitations that could result from receiving the waiver including impacts on high school graduation and postsecondary plans;

(iii) The option for the individual student to decline the waiver and for the student to be provided with the opportunity to earn the credits needed to complete graduation requirements through continued enrollment beyond the planned graduation date.

(2) Waived credit graduation requirements:

(a) Waived credit graduation requirements are limited to credits a student would have had the opportunity to earn by the end of the 2019-20 school year including:

(i) Courses and other credit-earning opportunities the student was enrolled in as of February 29, 2020; and

(ii) Credits that the student planned to complete by the end of the 2019-20 school year as defined in RCW 28A.150.-203 for terms not yet started as of February 29, 2020, that were scheduled to occur during the period of school closure due to the novel coronavirus. These planned credits must be indicated on the student's high school and beyond plan, in course registration records, or in the student's credit attainment or recovery plan.

(b) Waived graduation requirement credits may include both core credit graduation requirements and flexible credit graduation requirements, as defined in WAC 180-51-210.

(3) This waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.

(4) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.

(5) Each local education agency shall maintain a record of courses and requirements waived as part of the individual student record and shall report to the state board of education in a manner determined by the state board of education.

(6) The local education agency shall consider equity in administering the emergency waiver under this section. This consideration should be designed to identify and mitigate potential disparate impacts of the emergency waiver and to determine if any changes to the local education agency's approach in administering the emergency waiver are needed before the conclusion of the 2019-20 school year.

NEW SECTION

WAC 180-111-050 Emergency waiver for private schools. (1) This section applies to private schools approved to operate in Washington for the 2019-20 school year under chapter 180-90 WAC.

(2) Private schools may waive credit-based graduation requirements for individual students who were on track to graduate, as defined in WAC 180-111-020, in a manner consistent with the provisions of WAC 180-111-040.

(3) Private schools that have implemented an online education program consistent with the provisions of RCW 28A.195.090 that provide the remaining curriculum will be considered to have the instructional hour requirements met. Private schools have discretion to determine whether the curriculum has been adequately satisfied.

(4) The state board of education waives the instructional hours and days requirement under RCW 28A.195.010 for the 2019-20 school year. The number of hours or days offered after February 29, 2020, will not be considered for continued approval of private schools.

(5) Each private school shall notify the state board of education in a format provided by the board whether the private school is waiving requirements under this section.

WSR 20-09-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-58—Filed April 13, 2020, 10:18 a.m., effective April 13, 2020, 10:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial crabbing rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500H; and amending WAC 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: This emergency rule is needed to close Puget Sound commercial crab Region 3-3 on April 15, 2020. It is necessary to conform to closure dates previously agreed to with comanagers in the harvest management plan. Region 3-3 will remain closed to state commercial harvest until October 1, 2020, when the next management plan harvest period begins for state commercial harvesters. 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: April 13, 2020.

Kelly Susewind
 Director

NEW SECTION

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

1) Effective immediately until further notice, all of Crab Management Regions 1, 2-East, 2-West, 3-1, and 3-2 are closed. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B. Region 2-East includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East. Region 2-West includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D, and

26A West. Region 3-1 includes Marine Fish-Shellfish Catch Reporting Areas 23A and 23B. Region 3-2 includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A, and 25E.

2) Effective immediately until 7:59 p.m. April 15, 2020, it is permissible to fish for Dungeness crab for commercial purposes in Crab Management Region 3-3. Region 3-3 includes Catch Reporting Areas 23C and 29.

3) Effective immediately, until further notice, it is unlawful for any license holder or alternate operator to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-3.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-45500H Commercial crab fishery—Seasons and areas—Puget Sound. (20-29)

WSR 20-09-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-57—Filed April 13, 2020, 10:19 a.m., effective April 13, 2020, 10:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial shrimp rules for Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-340-520 and 220-340-030.

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 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule: (1) Opens the Region 1 and Region 3 trawl fishery season; (2) opens the pot fishery season for nonspot shrimp with weekly harvest limits; and (3) reflects changes to the shrimp catch reporting and purchase reporting requirements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 13, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000K Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective 6:00 a.m. May 1, 2020, until further notice, or until they expire pursuant to RCW 34.05.-350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W and 3 are open to the harvest of all non-spot shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

(ii) In Catch Area 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 6:00 a.m. June 16, 2020.

(b) Effective 12:01 a.m. May 1, 2020, until further notice, the shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective 6:00 am on May 1, 2020 until 11:59 p.m. May 12, 2020, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 400 pounds per catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

(d) Effective 12:01 a.m. May 13, 2020, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

(e) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) The remaining portion of Catch Area 22A within SMA 1B will open effective 6:00 a.m. May 16, 2020, until further notice.

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

NEW SECTION

WAC 220-340-03000F Shellfish harvest logs. Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimp.report@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

WSR 20-09-074

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 13, 2020, 4:38 p.m., effective April 13, 2020, 4:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending the rules listed below to assure nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to remove the timelines for completing and transmitting resident assessments, and to delay the requirement by thirty days for a preadmission screening and resident review (PASRR) screening prior to admission to a nursing home. Federal rules also amended care-planning timelines, discharge and transfer notice requirements, and requirements that ensure residents can meet in groups. The rules identified below currently require a PASRR screen prior to admission, have timelines for completion of the comprehensive resident assessment and care plan, and have timelines for the transmission of the resident assessment. These rules also establish the right of residents to participate in resident groups and require specific notice and time requirements before a resident discharge or transfer can occur.

Citation of Rules Affected by this Order: Repealing WAC 388-97-0920; and amending WAC 388-97-0120, 388-97-1000, 388-97-1020, 388-97-1915, and 388-97-1975.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities.

PASRR, resident assessment, and care planning: Current nursing home rules require a PASRR screen, typically performed by hospital staff prior to admission to a nursing home, followed by further evaluation from state agency staff or contractors under certain circumstances. Hospital staff are experiencing an extremely high workload during the pandemic due to the increased number of admissions, coupled with a reduced number of available staff. Additionally, the Governor Proclamation 20-25.1, Stay Home, Stay Healthy, impedes or delays the state agency from a face-to-face evaluation of the transferring resident. The PASRR, care-planning and comprehensive assessment amendments will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 outbreak by shortening the transfer time from hospital to nursing home, and increasing the flexibility for nursing home staff to be able to prioritize immediate or emergency care needs of incoming residents.

Resident groups: Current rules establish resident rights to participate in resident groups and require the facility to assist with the organization of a group. Amending these rules will permit facilities to restrict resident groups, and meets the state and federal recommendations for social distancing and limited gatherings. The amendment also aligns state rules with federal rules that were suspended to accomplish social distancing recommendations.

Transfer and discharge notice: Current nursing home rules regarding discharge and transfer from a nursing home have specific criteria around when transfer or discharge can occur, and specific notice and time period requirements that must be met before a discharge or transfer can occur. The COVID-19 pandemic is necessitating that transfer and discharge decisions be made and implemented more quickly than the nursing home rules permit. This amendment would decrease the notice requirements for transfer or discharge, and help expedite infection control processes and maximize the availability of nursing home beds. It would also align state nursing home rules with federal rules that were suspended or amended so facilities could more easily cohort residents to meet infection control goals.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, 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 0, Amended 5, Repealed 1.

Date Adopted: April 9, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0120 Individual transfer and discharge rights and procedures. (1) The skilled nursing facility and nursing facility must comply with all of the requirements of 42 C.F.R. § 483.10 and § 483.12, and RCW 74.42.450, or successor laws, and the nursing home must comply with all of the requirements of RCW 74.42.450 (1) through (4) and (7), or successor laws, including the following provisions and must not transfer or discharge any resident unless:

- (a) At the resident's request;
- (b) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (c) The transfer or discharge is appropriate because the resident's health has improved enough so the resident no longer needs the services provided by the facility;
- (d) The safety of individuals in the facility is endangered;
- (e) The health of individuals in the facility would otherwise be endangered; or
- (f) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

(2) The following notice requirements apply if a nursing home/facility initiates the transfer or discharge of a resident. The notice must:

- (a) Include all information required by 42 C.F.R. § 483.12 when given in a nursing facility;
- (b) Be in writing, in language the resident understands;
- (c) Be given to the resident, the resident's surrogate decision maker, if any, the resident's family and to the department;
- (d) Be provided thirty days in advance of a transfer or discharge initiated by the nursing facility, except that the notice may be given as soon as practicable when the facility cannot meet the resident's urgent medical needs, or under the conditions described in (1)(c), (d), and (e) of this section; and
- (e) Be provided fifteen days in advance of a transfer or discharge initiated by the nursing home, unless the transfer is an emergency.

(3) The nursing home must:

- (a) Provide sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the nursing home;

(b) Attempt to avoid the transfer or discharge of a resident from the nursing home through the use of reasonable accommodations unless agreed to by the resident and the requirements of WAC 388-97-0080 are met; and

(c) Develop and implement a bed-hold policy. This policy must be consistent with any bed-hold policy that the department develops.

(4) The nursing home (~~(must provide the)~~) bed-hold policy (~~(, in written format, to the resident, and a family member, before the resident is transferred or goes on therapeutic leave. At a minimum the policy)~~) must state, at a minimum:

(a) The number of days, if any, the nursing home will hold a resident's bed pending return from hospitalization or social/therapeutic leave;

(b) That a medicaid eligible resident, whose hospitalization or social/therapeutic leave exceeds the maximum number of bed-hold days will be readmitted to the first available semi-private bed, provided the resident needs nursing facility services. Social/therapeutic leave is defined under WAC 388-97-0001. The number of days of social/therapeutic leave allowed for medicaid residents and the authorization process is found under WAC 388-97-0160; and

(c) That a medicaid eligible resident may be charged if he or she requests that a specific bed be held, but may not be charged a bed-hold fee for the right to return to the first available bed in a semi-private room.

(5) The nursing facility must send a copy of the federally required transfer or discharge notice to:

(a) The department's home and community services when the nursing home has determined under WAC 388-97-0100, that the medicaid resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; and

(b) The department's designated local office when the transfer or discharge is for any of the following reasons:

(i) The resident's needs cannot be met in the facility;

(ii) The health or safety of individuals in the facility is endangered; or

(iii) The resident has failed to pay for, or to have paid under medicare or medicaid, a stay at the facility.

AMENDATORY SECTION (Amending WSR 18-11-001, filed 5/2/18, effective 6/2/18)

WAC 388-97-1000 Resident assessment. (1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) (~~(At the time)~~) As soon as practicable after each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

(g) Psychosocial well-being;

(h) Physical functioning and structural problems;

(i) Continence;

(j) Disease diagnosis and health conditions;

(k) Dental and nutritional status;

(l) Skin conditions;

(m) Activity pursuit;

(n) Medications;

(o) Special treatments and procedures;

(p) Discharge potential;

(q) Documentation of summary information regarding the assessment performed; and

(r) Documentation of participation in assessment.

(3) (~~The nursing home must conduct comprehensive assessments:~~

~~(a) No later than fourteen days after the date of admission;~~

~~(b) Promptly after a significant change in the resident's physical or mental condition; and~~

~~(c) In no case less often than once every twelve months.~~

~~(4))~~ The nursing home must ensure that:

(a) (~~Each resident is assessed no less than once every three months, and~~) As appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and

(b) The results of the assessment are used to develop, review and revise the resident's comprehensive plan of care under WAC 388-97-1020.

~~((5))~~ (4) The skilled nursing facility and nursing facility must:

(a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;

(b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for fifteen months; this information must be maintained in a centralized location and be easily and readily accessible;

(c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;

~~(d) (Assess each resident not less than every three months, using the state approved assessment instrument; and~~

~~(e))~~ Transmit all state and federally required RAI information for each resident to the department(~~(~~

~~(+))~~ in a manner and time period approved by the department(~~(~~

~~(ii) Within fourteen days of completion of any RAI assessment required under this subsection; and~~

~~(iii) Within fourteen days of discharging or admitting a resident for a tracking record)).~~

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1020 Comprehensive plan of care. (1)

The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental and psychosocial needs that are identified in the comprehensive assessment.

(2) The comprehensive plan of care must:

(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;

(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);

~~(c) ((Be developed within seven days after completion of the comprehensive assessment;~~

~~(d))~~ Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the residents needs;

~~((e))~~ (d) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

~~((f))~~ (e) Include the ongoing participation of the resident to the fullest extent possible, the resident's family or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are

unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1915 PASRR requirements ((prior to admission of) for new residents. ((Prior to every)) Within thirty days of admission ((of a new resident)), the nursing facility must:

(1) Complete a PASRR level I screening, or verify that a PASRR level I screening has been completed~~((, and deny admission until that screening has been completed)).~~

(2) Require a PASRR level II evaluation, or verify that a PASRR level II evaluation has been ((completed)) requested when the individual's PASRR level I screening indicates that the individual may have serious mental illness and/or intellectual disability or related condition~~((, and deny admission until that evaluation has been completed, unless all three of the following criteria apply and are documented in the PASRR level I screening:~~

~~(a) The individual is admitted directly from a hospital after receiving acute inpatient care;~~

~~(b) The individual requires nursing facility services for the condition for which he or she received care in the hospital; and~~

~~(c) The individual's attending physician has certified that the individual is likely to require fewer than thirty days of nursing facility services)).~~

(3) ~~((Decline to admit any individual whose PASRR level II evaluation determines that he or she does not require nursing facility services or that a nursing facility placement is otherwise inappropriate.~~

(4)) Coordinate with PASRR evaluators to the maximum extent practicable in order to avoid duplicative assessments and effort, and to ensure continuity of care for nursing facility residents with a serious mental illness and/or an intellectual disability or related condition.

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1975 PASRR requirements after admission of a resident. ((Following)) After the thirtieth day of a resident's admission, the nursing facility must:

(1) Review all level I screening forms for accuracy. If at any time the facility finds that the previous level I screening was incomplete, erroneous or is no longer accurate, the facility must immediately complete a new screening using the department's standardized level I form, following the directions provided by the department's PASRR program. If the corrected level I screening identifies a possible serious mental illness or intellectual disability or related condition, the

facility must notify DDA and/or the mental health PASRR evaluator so a level II evaluation can be conducted.

(2) Record the evidence of the level I screening and level II determinations (and any subsequent changes) in the resident assessment in accordance with the schedule required under WAC 388-97-1000.

(3) Maintain the level I form and the level II evaluation report in the resident's active clinical record.

(4) Immediately complete a level I screening using the department's standardized form if the facility discovers that a resident does not have a level I screening in his or her clinical record, following directions provided by the department's PASRR program. If the level I screening identifies a possible serious mental illness or intellectual disability or related condition, notify the DDA and/or mental health PASRR evaluator so a level II evaluation can be conducted.

~~(5) ((Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted on an exempted hospital discharge appears likely to need nursing facility services for more than thirty days, so a level II evaluation can be performed. This notification must occur as soon as the nursing facility anticipates that the resident may require more than 30 days of nursing facility services, and no later than the twenty-fifth day after admission unless good cause is documented for later notification.~~

~~(6))~~ Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted with an advance categorical determination appears likely to need nursing facility services for longer than the period specified by DDA and/or the mental health PASRR evaluator, so that a full assessment of the individual's need for specialized services can be performed. This notification must occur as soon as the nursing facility anticipates that the resident will require more than the number of days of nursing facility services authorized for the specific advance categorical determination and no later than five days before expiration of the period (three days for protective services) unless good cause is documented for later notification.

~~((7))~~ (6) Immediately notify the DDA and/or mental health PASRR evaluator for a possible resident review when there has been a significant change in the physical or mental condition, as defined in WAC 388-97-1910, of any resident who has been determined to have a serious mental illness or intellectual disability or related condition. Complete a new level I screening for the significant change.

~~((8))~~ (7) Provide or arrange for the provision of any services recommended by a PASRR level II evaluator that are within the scope of nursing facility services. If the facility believes that the recommended service either cannot or should not be provided, the facility must document the reason(s) for not providing the service and communicate the reason(s) to the level II evaluator.

~~((9))~~ (8) Immediately complete a new level I screening using the department's standardized form if the facility finds that a resident, not previously determined to have a serious mental illness, develops symptoms of a serious mental illness, and refer the resident to the mental health PASRR evaluator for further evaluation.

~~((10))~~ (9) Provide services and interventions that complement, reinforce and are consistent with any specialized

services recommended by the level II evaluator. The resident's plan of care must specify how the facility will integrate relevant activities to achieve this consistency and the enhancement of the PASRR goals.

~~((11))~~ (10) Discharge, in accordance with WAC 388-97-0120, any resident with a serious mental illness or intellectual disability or related condition who does not meet nursing facility level of care, unless the resident has continuously resided in the facility for at least thirty months and requires specialized services. The nursing facility must cooperate with DDA and/or mental health PASRR evaluator as it prepares the resident for a safe and orderly discharge.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-97-0920 Participation in resident and family groups.

WSR 20-09-081
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 14, 2020, 3:06 p.m., effective April 14, 2020, 3:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Due to the ongoing national and state emergency relating to COVID-19, the United States Postal Service (USPS) has made temporary changes to its certified mail signature gathering procedures to limit direct contact with recipients. This emergency WAC will clarify that these temporary procedures employed by USPS are acceptable for purposes of certified mail service.

Citation of Rules Affected by this Order: New WAC 388-14A-2210.

Statutory Authority for Adoption: RCW 26.23.110, 34.05.220, 74.08.090, 74.20A.055.

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: USPS certified mail delivery procedures have already been changed. This has had an immediate effect on the department's ability to serve notices by certified mail. This emergency rule will ensure child support enforcement actions can continue, providing crucial financial resources to clients.

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

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

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

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

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

Date Adopted: April 14, 2020.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-14A-2210 What is the procedure for service by certified mail during the COVID-19 emergency?

(1) Due to the ongoing national and state emergency relating to COVID-19, the united states postal service has made temporary changes to its certified mail signature gathering procedures to limit direct contact with recipients. As long as these special signature gathering procedures remain in effect, the division of child support (DCS) will consider service by certified mail, return receipt requested when required under chapter 388-14A WAC to be successful ten days after the following requirements are satisfied:

(a) The notice is sent by certified mail, return receipt requested, with restricted delivery to the noncustodial or custodial parent DCS is serving; and

(b) The postal service employee signs the receipt on behalf of the individual taking delivery as required by current postal service restricted delivery procedures.

(2) The individual taking delivery under section (1)(b) of this section is presumed to be the subject of service or the authorized agent of the subject.

WSR 20-09-082

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 14, 2020, 5:00 p.m., effective April 14, 2020, 5:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The rule making is proposed in order to provide support to employees and employers impacted by the COVID-19 virus across the state. These emergency rules relate to applications for standby (WAC 192-110-015) and allows the requirement to register for and search for work to be met by staying in contact with the employer; requires the claimant to be available for suitable work; allows for standby for up to twelve weeks; allows the commissioner to grant more than twelve weeks of standby in cases related to COVID-19 or the governor's emergency proclamation; expands standby eligibility to full-time, part-time, and less than full-time workers; and automatically places claimants on standby during the governor's "Stay Home, Stay Healthy" order.

Citation of Rules Affected by this Order: Amending WAC 192-110-015.

Statutory Authority for Adoption: RCW 50.12.040.

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: In Proclamation 20-05, Governor Inslee proclaimed a State of Emergency in Washington regarding COVID-19. The proclamation directs agencies and departments to support the department of health and local officials in alleviating the impacts to people, property, and infrastructure across the state.

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

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

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

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

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

Date Adopted: April 14, 2020.

Dan Zeitlin
Employment Security Policy Director

AMENDATORY SECTION (Amending WSR 20-03-073, filed 1/10/20, effective 2/10/20)

WAC 192-110-015 Applications by standby workers—RCW 50.20.010. (1) What is "standby?"

(a) "Standby" means you are temporarily unemployed because of a lack of work but:

(i) You expect to return to work with your regular employer within ~~((four))~~ twelve weeks; or

(ii) You expect to begin full-time work with a new employer within ~~((two))~~ twelve weeks; or

(iii) You are temporarily unemployed due to natural disaster.

(b) ~~((You do not have to register for work or look for other work while you are on standby.))~~ The requirement to register for work and search for work is fulfilled so long as you are on standby and take reasonable measures to maintain contact with the employer.

(c) You must be available for all hours of suitable work offered by your regular employer.

(2) How long can I be on standby?

(a) You can ask to be on standby for up to ~~((four))~~ twelve weeks.

(b) We will ask your employer to verify that you are on standby, including your expected return to work date:

(i) If your employer does not reply, you can be on standby for up to ~~((four))~~ twelve weeks;

(ii) If your employer confirms you are on standby, you can be on standby until the return to work date given by your employer, subject to the limitations of (c) of this subsection;

(iii) If your employer replies that you are not on standby or do not have a return to work date within ~~((eight))~~ twelve weeks, we will require you to immediately register for work ~~((and to look for work))~~.

(c) Your regular employer may ask that you be placed on standby for a maximum of ~~((eight))~~ twelve weeks (except as provided in (2)(d) below). This request must be approved by the department. We will consider the following before deciding whether to approve standby for more than ~~((four))~~ twelve weeks:

- (i) How long you have been out of work;
- (ii) Whether other suitable work is available;
- (iii) The impact on you and your employer if you accept other work; and
- (iv) Other factors that apply to your situation.

(d) At his or her discretion, the commissioner may grant standby for more than ~~((eight))~~ twelve weeks in a benefit year. Exceptions can be made due to natural disaster. Exceptions can also be made in other extraordinary circumstances when the employer applies in writing and shows there are conditions that apply to the business that are so unique or unusual compared to similar businesses that having their employees on standby for more than ~~((eight))~~ twelve weeks is necessary. Exceptions can also be made due to a COVID-19 infection at the employer's place of business or an emergency proclamation by the governor that causes the employer to close or severely curtail operations.

(e) We can approve standby if you have obtained a definite offer of bona fide full-time work that has a probable start date within ~~((two))~~ twelve weeks, which includes the week of the job offer and up to ~~((two))~~ twelve additional weeks. The job, however, must be:

- (i) With a new employer or with a former employer to whom you are no longer attached as provided in subsection (3)(f) of this section; and
- (ii) Covered by Title 50 RCW or the comparable laws of another state or the federal government.

(3) Are there conditions that apply to a request for standby?

(a) You must have a probable date when you will return to work for your regular employer;

(b) We will not approve standby if you only have prospects of future work with your regular employer or a promise of more work at some unspecified date;

(c) We will not approve standby with your regular employer unless the employment is covered by Title 50 RCW or the comparable laws of another state or the federal government;

(d) ~~((Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, we will not approve standby if you regularly work less than full-time. For purposes of this section, "full-time" means forty hours each week or the number of hours that are full-time for your occupation and labor market area;))~~ For claims filed on or after March 8, 2020, standby is available to all full-time, part-time, and other less than full-time employees;

(e) Any week(s) that you do not qualify for benefits will not be considered as part of the maximum ~~((eight))~~ twelve weeks of standby; ~~((and))~~

(f) After ~~((eight))~~ twelve consecutive weeks of unemployment, we will no longer consider you attached to that employer. You must meet the job search requirements specified by RCW 50.20.010 (1)(c) and 50.20.240; and

(g) You are automatically deemed to be on standby for any week that contains at least one day wherein the governor has waived or suspended any statute or statutes requiring individuals to be actively seeking work as a condition of being eligible to receive unemployment benefits. Such weeks will not count towards the twelve weeks of standby you may request pursuant to subsection (2)(a) of this section.

(4) When does standby begin?

(a) Standby begins the day of your request unless your request is backdated pursuant to (b) of this subsection.

(b)(i) You may backdate your request for standby up to one week for any reason.

(ii) Your request for standby may also be backdated for the convenience of the department. "For the convenience of the department" means for the purpose of program administration; or those situations where it is difficult or impossible to accept a timely request including, but not limited to, equipment breakdowns, lack of available staff, or special handling requirements.

WSR 20-09-094

**EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed April 15, 2020, 1:20 p.m., effective April 15, 2020, 1:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to provide funding parameters to school districts that choose to be early adopters of the early screening of dyslexia (E2SSB 6162) starting in school year 2019-20.

Citation of Rules Affected by this Order: New WAC 392-162-120.

Statutory Authority for Adoption: RCW 28A.300.730.

Other Authority: RCW 28A.165.035.

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: Immediate adoption of this rule is necessary to provide direction and guidance to school districts before the 2019-2020 school year regarding the allowable expenditure of learning assistance program funds for early screening of dyslexia. The rule is necessary to ensure that school districts maintain support for other academic initiatives for the betterment of all students in the district. The office of superintendent of public instruction (OSPI) filed a preproposal statement of inquiry on March 3, 2020, WSR 20-

06-068, indicating the agency's intent to initiate rule making to adopt this section 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 1, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 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: April 15, 2020.

Chris Reykdal
State Superintendent
of Public Instruction

NEW SECTION

WAC 392-162-120 Early implementation of K-2 literacy screening requirements—Use of funds. (1) Definitions. As used in this section the terms:

(a) "Literacy interventions" means services and activities under RCW 28A.165.035(1) and 28A.320.260(3) to support students in kindergarten through second grade who show indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia.

(b) "Literacy screening tool" means one of the literacy screening tools identified and approved by the dyslexia advisory council and the office of superintendent of public instruction in accordance with RCW 28A.300.700.

(2) **Early implementation.** A school district that chooses to implement the screening and intervention requirements under RCW 28A.320.260 prior to the beginning of the 2021-22 school year may use the district's learning assistance program base allocation under WAC 392-122-605 (2)(a) to fund:

(a) The purchase of a literacy screening tool as defined under this section; and

(b) Literacy interventions as defined under this section.

(3) **Reporting.** A school district that chooses to expend learning assistance program funds as permitted under this section must submit data according to specifications established by the office of the superintendent of public instruction in accordance with RCW 28A.165.100.

WSR 20-09-100

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 16, 2020, 9:13 a.m., effective April 16, 2020, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend chapters 110-04 and 110-06 WAC to allow the department of children, youth, and families (DCYF) to issue background check clearance authorizations before completing fingerprint-based background checks. Amend WAC 110-06-120 to remove certain crimes that disqualify a subject individual from authorization.

Citation of Rules Affected by this Order: Amending WAC 110-04-0040, 110-04-0080, 110-06-0040, 110-06-0046, and 110-06-120.

Statutory Authority for Adoption: RCW 43.216.065.

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: Proclamation of the Governor 20-05 declared a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-31 amends Proclamation 20-05 and waives and suspends fingerprint-based background checks before a person may be approved to have unsupervised access to children during the COVID-19 pandemic due to the potential risk of exposure to COVID-19 resulting from face to face contact in submitting fingerprints, limited access to fingerprinting as entities that receive and process fingerprints limit or suspend operations in order to limit exposure to COVID-19, and the unavailability of law enforcement agencies to process fingerprints during the pandemic. The ability to issue background check clearance authorizations before completing fingerprint-based background checks better enables DCYF to ensure the availability of child welfare service providers as well as stable and quality child care during the COVID-19 pandemic.

The amendment to WAC 110-06-120 temporarily removes crimes that account for thirty-three percent of family, friends, and neighbors being disqualified from participation in working connections child care. The amendment is in accord with the federal disqualifying crimes list, significantly increases the number of individuals who may provide care, and will not pose a safety risk for children in care.

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 5, Repealed 0.

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

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

Date Adopted: April 16, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, (~~(prior to authorizing unsupervised access to children,)~~) the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.-020.

(2) Under RCW 74.15.030, (~~(prior to authorizing unsupervised access to children,)~~) the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home, including the parents.

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) and (2) of this section, background checks conducted by DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(4) Except as required in subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

(5) Applicants may be approved before the fingerprint-based background check is conducted.

AMENDATORY SECTION (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

WAC 110-06-0040 Background clearance requirements. This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals associated with early learning services applying for a first-time background check must complete the DCYF background check application process including, but not limited to:

(a) Submitting a completed background check application;

(b) Completing the required fingerprint process; and

(c) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals qualified by the department to have unsupervised access to children in care who are renewing their applications must:

(a) Submit the new background check application through DCYF;

(b) Submit payment of all required fees as provided in WAC 110-06-0044; (~~and~~)

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section.

(3) Each subject individual completing the DCYF background check process must disclose whether they have:

- (a) Been convicted of any crime;
- (b) Any pending criminal charges; and
- (c) Been subject to any negative action, as defined by WAC 110-06-0020.

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

(6) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0046 Requirements for license-exempt in-home/relative providers. (1) The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(3) The background check process for license-exempt in-home/relative providers requires:

(a) Submitting a completed background check application; and

(b) Completing the required fingerprint process.

(4) Each subject individual completing the DCYF background check process must disclose:

- (a) Whether he or she has been convicted of any crime;
- (b) Whether he or she has any pending criminal charges; and

(c) Whether he or she has been subject to any negative actions, as defined by WAC 110-06-0020.

(5) A subject individual must not have unsupervised access to children in care unless he or she has obtained DCYF background check clearance authorization under this chapter.

(6) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

(7) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

~~((7))~~ (8) DCYF pays for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee.

[AMENDATORY SECTION] (Amending WSR 19-01-011 [19-01-111], filed 12/18/18, effective 1/18/19)

WAC 110-06-0120 Secretary's list (1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify ~~((him or her))~~ the individual from authorization to care for or have unsupervised access to children receiving early learning services.

(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify ~~((him or her))~~ the individual from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
((Bail jumping))	Custodial sexual misconduct
	Extortion 2
Child buying or selling	((Forgery))
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	((Identity theft))
Controlled substance homicide	Leading organized crime
Criminal mistreatment	((Malicious explosion 3))
Custodial interference	((Malicious mischief))
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	((Patronizing a prostitute))
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	((Prostitution))
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	((Theft))
Malicious explosion 2	((Theft-welfare))
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

WSR 20-09-102
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed April 16, 2020, 11:15 a.m., effective April 17, 2020]

Effective Date of Rule: April 17, 2020.

Purpose: The department is amending WAC 388-436-0040 Excluded income and resources for CEAP, 388-436-0050 Determining financial need and benefit amount for CEAP, and 388-436-0055 What is the disaster cash assistance program (DCAP)?

These amendments are necessary to expand consolidated emergency assistance (CEAP) and related DCAP during the statewide public health crisis created by the COVID-19 virus (commonly referred to as the "coronavirus").

Citation of Rules Affected by this Order: Amending WAC 388-436-0040, 388-436-0050, and 388-436-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.660, 74.08.090, 74.08A.230.

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: In order to protect public health, safety, and welfare there is an emergent need to expand CEAP and related DCAP, in accordance with Governor Inslee's "Proclamation by the Governor 20-18," due to the public health crisis created by the COVID-19 virus (commonly referred to as the "coronavirus") and associated state of emergency in all Washington counties.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 3, Repealed 0.

Date Adopted: April 13, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-436-0040 Excluded income and resources for CEAP. Resources and income listed below will not be considered in determining need or payment for CEAP:

(1) A home as defined under WAC 388-470-0045;

(2) Liquid resources as defined in WAC 388-470-0045 valued at six thousand dollars or less;

(3) One vehicle, running and used regularly by the assistance unit, with an equity value not to exceed ~~((one))~~ ten thousand ((five hundred)) dollars);

~~((3))~~ (4) Household furnishings being used by the assistance unit;

~~((4))~~ (5) Personal items being used by members of the assistance unit;

~~((5))~~ (6) Tools and equipment being used in the applicant's occupation;

~~((6))~~ (7) The value of the coupon allotment under the Food Stamp Act of 1977, as amended;

~~((7))~~ (8) Benefits received under the women, infants and children program (WIC) of the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

~~((8))~~ (9) Energy assistance payments;

~~((9))~~ (10) Grants, loans, or work study to a student under Title IV of the Higher Education Amendments or Bureau of Indian Affairs for attendance costs as identified by the institution;

~~((10))~~ (11) Income and resources of an SSI recipient;

~~((11))~~ (12) Livestock when the products are consumed by members of the assistance unit;

~~((12))~~ (13) All resources and income excluded for the TANF program under WAC 388-470-0045 and by federal law.

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than ~~((ninety percent of))~~ or equal to the temporary assistance for needy families (TANF) payment standard for households with shelter costs. The net income limit for CEAP assistance units is:

Assistance unit members	Net income limit
1	((327)) <u>\$363</u>
2	((413)) <u>459</u>
3	((512)) <u>569</u>
4	((603)) <u>670</u>
5	((695)) <u>772</u>
6	((789)) <u>877</u>
7	((912)) <u>1,103</u>
8 or more	((1,009)) <u>1,121</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, for households with shelter costs as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	\$220	\$280	\$345	\$408	\$469	\$532	\$608	\$672
Shelter	268	339	422	497	571	647	750	828
Clothing	31	39	49	57	66	77	85	97
Minor medical care	186	237	294	345	398	449	524	578
Utilities	91	115	142	166	191	220	254	280

	1	2	3	4	5	6	7	8 or more
Household maintenance	66	84	105	122	142	161	186	204
Job related transportation	363	459	569	670	772	877	1,013	1,121
Child related transportation	363	459	569	670	772	877	1,013	1,121

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

- (a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;
 - (b) Cash on hand, if not already counted as income; and
 - (c) The value of other nonexcluded resources available to the assistance unit.
- (4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

AMENDATORY SECTION (Amending WSR 08-18-008, filed 8/22/08, effective 9/22/08)

WAC 388-436-0055 What is the disaster cash assistance program (DCAP)? Disaster cash assistance program (DCAP) is paid through the consolidated emergency assistance program (CEAP) and is designed to provide cash assistance to individuals and families who face an emergency and do not have the money to meet their basic needs.

- (1) DCAP is available if you meet all of the following:
- (a) You suffered losses ~~((and))~~;
 - (b) You live in an area that has been declared a disaster for individuals or a state of emergency related to COVID-19 by the Governor((-));
 - ~~((b))~~ (c) In the event of a declared disaster, you are not able to live in your home or you cannot return to your home because of the disaster;
 - ~~((c))~~ (d) Your home in the disaster or emergency area is your primary residence (not a vacation home) and you were living there at the time of the disaster or emergency;
 - ~~((d))~~ (e) You are a resident of Washington state as defined in WAC 388-468-0005;
 - ~~((e))~~ (f) Your net income is under the limits in WAC 388-436-0050(1); and
 - ~~((f))~~ (g) You or your family is not eligible for any other program that could meet your need as stated in WAC 388-436-0030.

- (2) Applicants must demonstrate a financial need for emergency funds for one or more of the following basic requirements:
- (a) Food;
 - (b) Shelter;
 - (c) Clothing;
 - (d) Minor medical care;
 - (e) Utilities;
 - (f) Household maintenance supplies; or
 - (g) Necessary clothing or transportation costs to accept or retain a job.

(3) Payments under this program are limited to not more than thirty consecutive days within a period of twelve consecutive months.

WSR 20-09-113

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed April 17, 2020, 9:18 a.m., effective April 17, 2020, 9:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is amending WAC 182-538-060 and 182-538-067 on an emergency basis in response to the COVID-19 public health emergency.

The purpose of these amendments is to help ensure (1) the viability of apple health integrated managed care (IMC) plans; (2) adequate performance by the IMC plans; (3) sufficient access to care for medicaid clients in IMC; and (4) the continued availability of an adequate network of physical and behavioral health providers in IMC plans.

Because of COVID-19, the state is experiencing an unprecedented increase in unemployment and a commensurate increase in applications for enrollment in medicaid. As part of managing this situation, HCA is amending WAC 182-538-060 to limit the auto-assignments of medicaid clients to IMC plans. In particular, HCA will prevent auto-assignments of new clients to any plan that has a statewide market share of greater than forty percent in apple health IMC. This rule does not affect voluntary plan choices by clients, the family connect policy, or the plan reconnect policy.

In addition, HCA is amending WAC 182-538-067 to clarify when the agency will adjust the number of its IMC plans, either overall or on a region-to-region basis. In determining whether to make any such adjustment, HCA will consider statutory requirements as well as enrollment needs, the performance of the plans with respect to behavioral health integration, and the promotion of access to care for behavioral health services.

Citation of Rules Affected by this Order: Amending WAC 182-538-060 and 182-538-067.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: Medicaid caseloads are growing by the day with skyrocketing statewide unemployment rates and closed businesses. HCA is regard [required] to take all measures necessary to ensure client access to contracted providers through HCA-contracted managed care organizations.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: April 17, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-060 Managed care choice and assignment. (1) The medicaid agency requires a client to enroll in integrated managed care (IMC) when that client:

(a) Is eligible for one of the Washington apple health programs for which enrollment is mandatory;

(b) Resides in an area where enrollment is mandatory; and

(c) Is not exempt from IMC enrollment and the agency has not ended the client's managed care enrollment, consistent with WAC 182-538-130.

(2) American Indian and Alaska native (AI/AN) clients and their descendants may choose one of the following:

(a) Enrollment with a managed care organization (MCO) available in their regional service area;

(b) Enrollment with a PCCM provider through a tribal clinic or urban Indian center available in their area; or

(c) The agency's fee-for-service system for physical health or behavioral health or both.

(3) To enroll with an MCO or PCCM provider, a client may:

(a) Enroll online via the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>;

(b) Call the agency's toll-free enrollment line at 800-562-3022; or

(c) Go to the ProviderOne client portal at <https://www.waproviderone.org/client> and follow the instructions.

(4) An enrollee in IMC must enroll with an MCO available in the regional service area where the enrollee resides.

(5) All family members will be enrolled with the same MCO, except family members of an enrollee placed in the patient review and coordination (PRC) program under WAC 182-501-0135 need not enroll in the same MCO as the family member placed in the PRC program.

(6) An enrollee may be placed into the PRC program by the MCO or the agency. An enrollee placed in the PRC program must follow the enrollment requirements of the program as stated in WAC 182-501-0135.

(7) When a client requests enrollment with an MCO or PCCM provider, the agency enrolls a client effective the earliest possible date given the requirements of the agency's enrollment system.

(8) The agency assigns a client who does not choose an MCO or PCCM provider as follows:

(a) If the client was enrolled with an MCO or PCCM provider within the previous six months, the client is reenrolled with the same MCO or PCCM provider;

(b) If (a) of this subsection does not apply and the client has a family member enrolled with an MCO, the client is enrolled with that MCO;

(c) The client is reenrolled within the previous six months with their prior MCO plan if:

(i) The agency identifies the prior MCO and the program is available; and

(ii) The client does not have a family member enrolled with an agency-contracted MCO or PCCM provider.

(d) If the client has a break in eligibility of less than two months, the client will be automatically reenrolled with his or her previous MCO or PCCM provider and no notice will be sent; or

(e) If the client cannot be assigned according to (a), (b), (c), or (d) of this subsection, the agency (~~assigns the client according to agency policy~~):

(i) Assigns the client according to agency policy, or this rule, or both;

(ii) Will not assign clients to any MCO that has a total statewide market share of forty percent or more of clients who are enrolled in apple health IMC. On a quarterly basis, the agency will review enrollment data to determine each MCO's statewide market share in apple health IMC;

(iii) Will apply performance measures associated with increasing or reducing assignment consistent with this rule and agency policy or its contracts with MCOs.

(f) If the client cannot be assigned according to (a) or (b) of this subsection, the agency assigns the client as follows:

(i) If a client who is not AI/AN does not choose an MCO, the agency assigns the client to an MCO available in the area where the client resides. The MCO is responsible for primary care provider (PCP) choice and assignment.

(ii) For clients who are newly eligible or who have had a break in eligibility of more than six months, the agency sends a written notice to each household of one or more clients who are assigned to an MCO. The assigned client has ten calendar days to contact the agency to change the MCO assignment before enrollment is effective. The notice includes:

(A) The agency's toll-free number;

(B) The toll-free number and name of the MCO to which each client has been assigned;

(C) The effective date of enrollment; and

(D) The date by which the client must respond in order to change the assignment.

(9) An MCO enrollee's selection of a PCP or assignment to a PCP occurs as follows:

(a) An MCO enrollee may choose:

(i) A PCP or clinic that is in the enrollee's MCO and accepting new enrollees; or

(ii) A different PCP or clinic participating with the enrollee's MCO for different family members.

(b) The MCO assigns a PCP or clinic that meets the access standards set forth in the relevant managed care contract if the enrollee does not choose a PCP or clinic.

(c) An MCO enrollee may change PCPs or clinics in an MCO for any reason, with the change becoming effective no later than the beginning of the month following the enrollee's request.

(d) An MCO enrollee may file a grievance with the MCO if the MCO does not approve an enrollee's request to change PCPs or clinics.

(e) MCO enrollees required to participate in the agency's PRC program may be limited in their right to change PCPs (see WAC 182-501-0135).

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-067 Qualifications to become a managed care organization (MCO) in integrated managed care. (1) To provide physical or behavioral health services under the apple health IMC ((medicaid)) contract, a managed care organization (MCO) must:

(a) ~~((An MCO must))~~ Contract with the agency((-); and
 (b) ~~((MCO must also))~~ Contract with an agency-contracted behavioral health administrative service organization (BH-ASO) that maintains an adequate provider network to deliver services to clients in IMC regional service areas.

(2) ~~((A managed care organization (-))~~ An MCO((+)) must meet the following qualifications to be eligible to contract with the ((medicaid)) agency:

(a) Have a certificate of registration from the Washington state office of the insurance commissioner (OIC) that allows the MCO to provide health care services under a risk-based contract;

(b) Accept the terms and conditions of the agency's managed care contract;

(c) ~~((Be able to))~~ Meet the network and quality standards established by the agency; and

(d) Pass a readiness review, including an on-site visit conducted by the agency.

(3) ~~((At its discretion, the agency awards a contract to an MCO through a competitive process or an application process available to all qualified providers.))~~ (a) The agency may from time to time conduct a procurement for new apple health MCOs or to reduce or expand the use of existing apple health MCOs.

(b) The agency may conduct a procurement when the agency determines in its sole discretion there is a need to:

(i) Expand or reduce current MCO contracts;
 (ii) Enhance current MCO provider networks; or
 (iii) Establish new contracts for integrated managed care in one or more regional services areas; or

(iv) Adjust the program to ensure adherence to state and federal law.

(c) In accordance with RCW 74.09.522 and 74.09.871, the agency will give significant weight to the following factors in any procurement process:

(i) Demonstrated commitment to, and experience in, serving low-income populations;

(ii) Demonstrated commitment to, and experience in, serving persons who have mental illness, substance use disorders, or co-occurring disorders;

(iii) Demonstrated commitment to, and experience with, partnerships with county and municipal criminal justice systems, housing services, and other critical support services necessary to achieve the outcomes established in RCW 70.320.020, 71.24.435, and 71.36.025;

(iv) Recognition that meeting enrollees' physical and behavioral health care needs is a shared responsibility of contracted behavioral health administrative services organizations, MCOs, service providers, the state, and communities;

(v) Consideration of past and current performance and participation in other state or federal behavioral health programs as a contractor;

(vi) Quality of services provided to enrollees under previous contracts with the state of Washington or other states;

(vii) Accessibility, including appropriate utilization, of services offered to enrollees;

(viii) Demonstrated capability to perform contracted services, including the ability to supply an adequate provider network; and

(ix) The ability to meet any other requirements established by the agency.

(d) The agency may define and consider additional factors as part of any procurement including, but not limited to:

(i) Timely processing of, and payments to, providers in the MCO networks, including reconciliation of outstanding payments; and

(ii) The optimal number of MCOs per regional services area, based on population and in the manner that the agency determines most beneficial for the program, clients, and providers.

(4) The agency reserves the right not to contract with any otherwise qualified MCO.

**WSR 20-09-125
 EMERGENCY RULES
 DEPARTMENT OF
 FISH AND WILDLIFE**

[Order 20-59—Filed April 20, 2020, 3:03 p.m., effective April 21, 2020]

Effective Date of Rule: April 21, 2020.

Purpose: Amend Puget Sound commercial scallop rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-61000H; and amending WAC 220-340-610.

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

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

Reasons for this Finding: This emergency rule is needed because the department of health has closed the Lopez Island Southeast growing area due to high paralytic shellfish poisoning test results, a harvestable surplus of pink and spiny scallops exists in the areas specified, and small landings for the purpose of public health testing should be allowed in

approved and restricted growing areas. 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: April 20, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-61000I Commercial scallop fishery—Puget Sound Notwithstanding the provisions of WAC 220-340-610, effective immediately until further notice, it is unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) Pink or spiny scallop harvest is limited to 10 pounds per day for the sole purpose of submitting a sample to the Washington Department of Health for public health testing.

(2) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(3) Pink or spiny scallop harvest using shellfish diver gear, for the purposes of public health testing, is only allowed in Washington Department of Health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 25A and 25B, except as noted in (3) below.

(4) Pink or spiny scallop harvest using shellfish diver gear, for the purposes of public health testing, is also allowed within DOH Restricted Scallop Area 2 Rosario Strait, Restricted Scallop Area 3 Burrows Bay and Restricted Scallop Area 4 Lopez Island Southeast defined by the Washington Department of Health in Marine Fish/Shellfish Catch Reporting Areas 20B, 21A, 22A, 23A and 23B.

(5) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(6) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations and when pink or spiny scallops are onboard the harvest vessel.

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

REPEALER

The following section of the Washington Administrative Code is repealed April 21, 2020:

WAC 220-340-61000H Commercial scallop fishery—
Puget Sound. (19-320)

WSR 20-09-126 EMERGENCY RULES OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R-2020-02—Filed April 20, 2020, 3:05 p.m., effective April 20, 2020, 3:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency regulation is to facilitate producer licensing activities to address the impact of COVID-19 and the governor's Stay Home, Stay Healthy emergency proclamation. The rule ensures that individuals currently engaged in the licensing process can successfully complete the producer licensing process by extending deadlines in the producer licensing process, and enabling the ability for education courses to be efficiently converted to online courses by removing wait periods.

Citation of Rules Affected by this Order: New WAC 284-17-278, 284-17-510, 284-17-539, and 284-17-551.

Statutory Authority for Adoption: RCW 48.01.030, 48.02.060, 48.17.005, 48.17.090, 48.17.110, 48.17.150, and 48.17.563.

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: Given the extraordinary impact of the COVID-19 outbreak and its impact on Washington businesses, Governor Jay Inslee issued Emergency Proclamation 20-25 on March 23, 2020, prohibiting all people in Washington state from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants. On April 2, 2020, the governor extended the time frame for the proclamation by issuing Proclamation 20-25.1. During this time and possibly thereafter, it has become more difficult for individuals to complete the producer licensing process due to closure of testing sites and cancellation of classes. To ensure that these individuals will not be burdened further by having to restart the coursework and testing processes, it is necessary to provide for longer deadlines, removing barriers and enabling online coursework. Observing notice and comment rule making would not serve the public interest because it would deny relief to individuals whose courses expire in the interim, limiting the number of producers available to help consumers during a time of unprecedented interest in insurance procurement.

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 4, 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: April 20, 2020.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-12-034, filed 5/24/16, effective 6/24/16)

WAC 284-17-278 Approval of an insurance continuing education course. (1) An application for approval of a continuing insurance education course or a new instruction method of a previously approved course must be submitted electronically or via email to the commissioner's education mailbox no fewer than twenty days prior to the first date the course is offered for credit. An insurance education provider may request the expedited conversion of a previously approved classroom course to webinar delivery for a class scheduled to occur between March 23, 2020, and July 31, 2020, by submitting a written request and a description of how the course will comply with requirements applicable to a webinar course in subsection (2)(b)(iv) through (vi) of this section. The twenty day period for submission set forth above does not apply to converted webinar courses approved during this time period.

(a) If the continuing education provider does not know the first date the course will be offered at the time the provider submits the application, then if the commissioner approves the course, the provider cannot offer the course until twenty days after the commissioner receives the course application;

(b) The provider can advertise a course after the approval date, but cannot offer the course until the effective date;

(c) The commissioner will not process a new course application submitted by a provider until after the commissioner has sent the provider's continuing education course renewal notice. The provider must immediately submit the continuing education course renewal request for processing. After the commissioner processes the provider's course renewal request, the commissioner will continue reviewing the provider's new course application.

(2) The request must include all of the following, as applicable:

(a) **Classroom courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline, including a list of topics that the continuing education provider will cover and an estimate of the amount of time the provider will spend on each topic. The commissioner will not accept video presentation slides in lieu of the detailed course outline;

(iii) Biography or resume of instructor(s); and

(iv) Sample of the attendance register form that the provider will use.

(b) **Webinar courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline, including a list of topics that the provider will cover and an estimate of the amount of time the provider will spend on each topic. The commissioner will not accept video presentation slides in lieu of the detailed course outline;

(iii) Biography or resume of instructor(s);

(iv) Polling questions or verification codes, including two for each credit hour of the course;

(v) Description of the process for monitoring and verifying attendance; and

(vi) Sample of the document the provider will use to record each attendee's attendance and participation.

(c) **Self-study courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline with word count for each chapter, section or module;

(iii) If ethics content is included, a separate word count for the ethics content;

(iv) Samples of the course reading material to assist the commissioner in determining course difficulty level;

(v) Sample of video content, if included in the course. If the course includes video exceeding fifty minutes and the information is mandatory for completing the course, one additional credit hour will be added to the course credit total;

(vi) Description of the verification process the provider will use to confirm that the licensee has completed the course study material before accessing the exam;

(vii) Resume of the course content developer showing education and work experience related to the course subject matter; and

(viii) Copy of the examination. All examination questions must be multiple choice.

(A) The provider must include a minimum of ten exam questions for a one credit hour course, with an additional five exam questions for each subsequent credit hour;

(B) To pass the exam, licensees must achieve a score of seventy percent or higher;

(C) If the licensee does not pass the first exam, the licensee must take a second exam that contains no more than fifty percent of the same questions from the first exam. If the licensee does not pass on the second attempt, the provider must alternate the exams until the licensee passes the exam.

(3) To be eligible for approval, a course must have a direct and specific application to insurance. A course about

ethics or about laws and regulations specific to insurance is eligible. The subject matter should increase the producer's technical knowledge of insurance principles, insurance coverage, and insurance laws and regulations. The continuing education provider is responsible for the accuracy of facts and figures used in the course.

(4) The commissioner will not award credit for topics such as personal improvement, general education, sales, marketing, motivation, business management, time management, leadership, supportive office skills, internet use, social media use, automation, and other courses that are not directly and specifically related to insurance.

(5) Insurance preclicensing education courses are not eligible for approval for continuing insurance education credit.

AMENDATORY SECTION (Amending WSR 09-02-073, filed 1/6/09, effective 7/1/09)

WAC 284-17-510 Preclicensing insurance education requirement. (1) Unless waived by the commissioner under WAC 284-17-515, as a prerequisite to admission to the examination, an applicant for a resident insurance producer license for personal lines, life, disability, property or casualty line of authority must complete twenty hours of preclicensing insurance education for each major line of authority for which the applicant will be tested. Each course must include training on Washington insurance laws and rules applicable to that line of authority and general insurance laws and rules.

(2) The prescribed curriculum for each line of authority to be tested and the related insurance laws and rules, must be successfully completed within the twelve-month period immediately preceding the examination, unless an extension is granted under WAC 284-17-539(8).

AMENDATORY SECTION (Amending WSR 09-02-073, filed 1/6/09, effective 7/1/09)

WAC 284-17-539 Certificates of completion of a preclicensing insurance education course. (1) A certificate of completion in the standard form prescribed by the commissioner must be completed in its entirety, signed by the instructor, and issued by the approved preclicensing insurance education provider to each student in the student's legal name, who has satisfactorily completed an approved course.

(2) Both the student and the instructor(s) must certify that the course was conducted and completed according to the credit hours and curriculum required.

(3) The provider must include on the face of the certificate of completion the correct codes assigned by the commissioner to each approved preclicensing insurance education provider and to each approved course.

(4) The approved preclicensing insurance education provider must issue certificates of completion within two business days after the course is completed.

(5) No instructor may issue a certificate of completion to herself or himself.

(6) Completion of less than the full course curriculum, or of individual classes does not qualify a student to receive a certificate of completion.

(7) A valid certificate of completion (or a valid waiver) for the line of authority on which the student will be exam-

ined must be presented to the independent testing service as a prerequisite to taking any insurance license examination.

(8) The certificate of completion for the preclicensing insurance education course will be accepted for twelve months after the course completion date. Unless waived in accordance with RCW 48.17.175, a preclicensing insurance education course must be retaken if a student does not pass the required examination within twelve months after completion of preclicensing education. If the preclicensing education course completion certificate expires between March 23, 2020, and June 30, 2020, the certificate will be extended to expire on July 31, 2020.

(9) The certificate of completion and required signature may be in electronic form.

AMENDATORY SECTION (Amending WSR 17-01-142, filed 12/20/16, effective 1/20/17)

WAC 284-17-551 Preclicensing insurance education—Candidate information bulletin. The preclicensing insurance education curriculum is described in the candidate information bulletin. The candidate information bulletin is incorporated by reference and its entire contents will be enforced by the commissioner. A copy of the current candidate information bulletin is available through the commissioner's web site at www.insurance.wa.gov.

(1) Information in the current version of the candidate information bulletin must be provided to each license candidate at the time of enrollment.

(2) If changes are implemented in the prescribed preclicensing education curriculum, the preclicensing insurance education provider must submit a revised course outline at least fifteen calendar days before the implementation date.

(3) Exam results are valid for only one hundred eighty days from completion of an insurance examination. Exam results that expire between March 23, 2020, and June 30, 2020, will not expire until July 31, 2020.

WSR 20-09-133

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed April 21, 2020, 11:19 a.m., effective April 21, 2020, 11:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-887-020 Uniform Controlled Substances Act, the pharmacy quality assurance commission (commission) is adopting emergency rules to reduce burdens on practitioners prescribing Schedule II substances during the COVID-19 outbreak. The emergency rule amends WAC 246-887-020 and increases the duration of time a practitioner has to deliver a signed prescription when authorizing an emergency prescription of a Schedule II substance to the pharmacy from seven days to fifteen days. It also defines what a "signed prescription" means and allows for a practitioner to accomplish this requirement through paper, electronic transmission, facsimile, photograph, or scanned copy. These alternative methodologies support patients', practi-

tioners', and pharmacists' efforts to practice social distancing and to help mitigate communal spread.

Citation of Rules Affected by this Order: Amending WAC 246-887-020.

Statutory Authority for Adoption: RCW 18.64.005; chapter 69.50 RCW.

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

Reasons for this Finding: The immediate amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. Stakeholders and leaders from the pain community have highlighted this is [as] an immediate need for Washingtonians. This emergency rule will allow more time and more avenues for complying with the requirements during the COVID-19 pandemic, reducing burdens on practitioners and pharmacists during this difficult time and sustaining patient access. The emergency rules will help address this problem and reduce barriers for providers and patient populations requiring Schedule II prescriptions throughout this public health emergency. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: April 21, 2020.

Tim Lynch, Chair
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 19-06-068, filed 3/5/19, effective 4/5/19)

WAC 246-887-020 Uniform Controlled Substances Act. (1) The pharmacy quality assurance commission (commission) adopts Title 21 of the Code of Federal Regulations. The following sections do not apply: Section 1301.13, section 1301.33, section 1301.35-.46, section 1303, section 1308.41-.45, and section 1316.31-.67. Any inconsistencies between Title 21 of the Code of Federal Regulations sections 1300 through 1321 and chapter 246-887 WAC should be resolved in favor of chapter 246-887 WAC. Further, nothing in these rules applies to the production, processing, distribu-

tion, or possession of marijuana as authorized and regulated by the Washington state liquor and cannabis board.

(2) Registration. A separate registration is required for each place of business, as defined in 21 C.F.R. 1301.12 where controlled substances are manufactured, distributed or dispensed. Application for registration must be made on forms supplied by the commission, and all requested information must be supplied unless the information is not applicable, which must be indicated by the applicant. An applicant for registration must hold the appropriate wholesaler, manufacturer or pharmacy license provided for in chapter 18.64 RCW.

(3) Every registrant shall be required to keep inventory records required by 21 C.F.R. 1304.04 and must maintain said inventory records for a period of two years from the date of inventory. Such registrants are further required to keep a record of receipt and distribution of controlled substances. Such record shall include:

(a) Invoices, orders, receipts, etc. showing the date, supplier and quantity of drug received, and the name of the drug;

(b) Distribution records; i.e., invoices, etc. from wholesalers and manufacturers and prescriptions records for dispensers;

(c) In the event of a significant loss or theft, two copies of DEA 106 (report of theft or loss of controlled substances) must be transmitted to the federal authorities and a copy must be sent to the commission;

(d) For transfers of controlled substances from one dispenser to another, a record of the transfer must be made at the time of transfer indicating the drug, quantity, date of transfer, who it was transferred to and from whom. Said record must be retained by both the transferee and the transferor. These transfers can only be made in emergencies pursuant to 21 C.F.R. 1307.11.

(4) The records must be maintained separately for Schedule II drugs. The records for Schedule III, IV and V drugs may be maintained either separately or in a form that is readily retrievable from the business records of the registrant.

(5) A federal order form is required for each distribution of a Schedule I or II controlled substance, and said forms along with other records required to be kept must be made readily available to authorized employees of the commission.

(6) Schedule II drugs require that a dispenser have a signed prescription in his possession prior to dispensing said drugs. An exception is permitted in an "emergency." An emergency exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the physician to provide a written or electronic prescription for the drug at that time. If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within ~~((seven))~~ fifteen days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the ~~((seven))~~ fifteen-day period, and further the pharmacist must note on the prescription that it was filled on an emergency basis.

(7) For the purposes of subsection (6) of this section, a "signed prescription" shall be either:

(a) A paper prescription;

(b) An electronic prescription;

(c) A copy of the paper prescription sent via facsimile to the pharmacy; or

(d) A photograph or scanned copy of the paper prescription sent to the pharmacy.

(8) A prescription for a substance included in Schedule II may not be refilled.

~~((8))~~ (9) A prescription for a substance included in Schedule II may not be filled more than six months after the date the prescription was issued.

~~((9))~~ (10) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III, IV, or V, which is a prescription drug as determined under RCW 69.04.560, may not be dispensed without a written, oral, or electronically communicated prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription for a substance included in Schedule III, IV, or V may not be filled or refilled more than six months after the date issued by the practitioner or be refilled more than five times, unless the practitioner issues a new prescription.

WSR 20-09-135

RECISSION OF EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 21, 2020, 11:49 a.m.]

The department of children, youth, and families rescinds WSR 20-09-052, WAC 110-15-0190, filed April 8, 2020.

April 21, 2020
Brenda Villarreal
Rules Coordinator

WSR 20-09-136

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 21, 2020, 11:55 a.m., effective April 21, 2020, 11:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Comply with the agreement between the department and family home child cares' representative to establish a partial monthly working connections and seasonal child care rate for school-age children effective September 1, 2019.

Citation of Rules Affected by this Order: Amending WAC 110-15-0003, 110-15-0190, 110-15-0205, and 110-15-3770.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Other Authority: Sections 225 and 943, chapter 415, Laws of 2019.

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: On August 28, 2019, the department of children, youth, and families adopted rules to implement a partial day rate in accordance with chapter 415, Laws of 2019, and the interest arbitration award agreed to by the governor and the family home child cares' representative. These emergency rules are being extended while the department completes the permanent rule-making process.

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

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

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

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

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

Date Adopted: April 21, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"**Able**" means being physically and mentally capable of caring for a child in a responsible manner.

"**Administrative error**" means an error made by DCYF or DSHS through no fault of the consumer or provider.

"**Approved activity**" means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

"**Authorization**" means the transaction created by ~~((DSHS))~~ DCYF which allows the provider to claim payment during a certification period. The transaction may be adjusted based on the family need.

"**Available**" means being free to provide care when not participating in an approved activity under WAC 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

"**Benefit**" means a regular payment made by a government agency on behalf of a person eligible to receive it.

"**Calendar year**" means those dates between and including January 1st and December 31st.

"**Capacity**" means the maximum number of children the licensee is authorized to have in care at any given time.

"**Collective bargaining agreement**" or "**CBA**" means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative

for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person eligible to receive:

(a) WCCC benefits as described in part II of this chapter;

or

(b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay the child care provider each month toward the cost of child care, whether provided under a voucher or contract.

"Days" means calendar days unless otherwise specified.

"DCYF" means the department of children, youth, and families.

"DSHS" means the department of social and health services.

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

"Eligibility" means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. This includes unsubsidized employment, as verified by ((DSHS)) DCYF, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to himself or herself or another person. See RCW 74.04.004.

"Homeless" means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

"In-home/relative provider" or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing standards and is approved for working connections child care (WCCC) payment under WAC 110-15-0125.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-par-

ents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"Living in the household" means people who reside at the same physical address.

"Lump-sum payment" means a single payment that is not anticipated to continue.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Overpayment" means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

"Parental control" means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"Program violation" means a failure to adhere to program requirements, which results in an overpayment.

"Sanction" means deterrent action imposed by the department to address a program violation finding.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child who is between five years of age through twelve years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

"Second tier eligibility" means an increased income limit for eligible families who reapply before the end of their current eligibility period.

"Self-employment" means engaging in any legal income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S., as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

"Sign" means placing a name or legal mark on a document by physically writing or using an electronic signature.

"State median income" means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than

that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

"**TANF**" means temporary assistance for needy families, a cash assistance program administered by DSHS.

"**Technical assistance**" means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

"**To the extent of available funds**" means one or more of the following:

(a) Limited or closed enrollment;

(b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or

(c) Subject to a waiting list.

"**Typical school day**" means the attendance of children at school for a period of at least five hours per day on one or more of the following days: Monday, Tuesday, Wednesday, Thursday, or Friday.

"**Unintentional**" means not done willfully or on purpose.

"**Waiting list**" means a list of applicants or reapplicants eligible to receive subsidy benefits when funding becomes available.

"**WCCC**" means the working connections child care program, a child care subsidy program described in part II of this chapter that assists eligible families to pay for child care.

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0190 WCCC benefit calculations. (1)

The amount of care a consumer may receive is determined by ~~((DSHS))~~ DCYF at application or reapplication. Once the care is authorized, the amount will not be reduced during the eligibility period unless:

(a) The consumer requests the reduction;

(b) The care is for a school-aged child as described in subsection (3) of this section; or

(c) Incorrect information was given at application or reapplication.

(2) To determine the amount of weekly hours of care needed, ~~((DSHS))~~ DCYF reviews:

(a) The consumer's participation in approved activities and the number of hours the child attends school, including home school, which will reduce the amount of care needed.

(b) In a two parent household, the days and times approved activities overlap, and only authorize care during those overlapping times. The consumer is eligible for full-time care if overlapping care totals one hundred ten hours in one month.

(c) ~~((DSHS))~~ DCYF will not consider the schedule of a parent in a two parent household who is not able to care for the child.

(3) Full-time care for a family using licensed providers is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Twenty-three full-day units per month will be authorized when the child ~~((needs))~~ is in care five or more hours per day;

(b) Thirty half-day units per month will be authorized when the child ~~((needs))~~ is in care less than five hours per day;

(c) Forty-six half-day units per month will be authorized during the months of April, May, June, July, and August for a school-aged child who ~~((needs))~~ is in care for five or more hours ~~((of care;))~~ per day.

(4) Partial-day monthly unit. A single partial-day monthly unit per month will be authorized for a school-age child attending a licensed family home child care when the child is:

(a) Authorized for care with only one provider; and

(b) Eligible for full-time authorization, but is in care less than five hours on a typical school day; and

(c) Expected to need care before and after school.

(d) Only one monthly unit may be authorized per child per month.

~~((4))~~ (5) Supervisor approval is required for additional days of care that exceeds twenty-three full days ~~((or))~~, thirty half days, or one partial-day monthly unit per month; ~~((and~~

~~(e) Care cannot exceed sixteen hours per day, per child.~~

~~(4))~~.

(6) Full-time care for a family using in-home/relative providers (family, friends and neighbors) is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Two hundred thirty hours of care will be authorized when the child ~~((needs))~~ is in care five or more hours per day;

(b) One hundred fifteen hours of care will be authorized when the child ~~((needs))~~ is in care less than five hours per day;

(c) One hundred fifteen hours of care will be authorized during the school year for a school-aged child who ~~((needs))~~ is in care less than five hours per day and the provider will be authorized for contingency hours each month, up to a maximum of two hundred thirty hours;

(d) Two hundred thirty hours of care will be authorized during the school year for a school-aged child who ~~((needs))~~ is in care five or more hours in a day; and

(e) Supervisor approval is required for hours of care that exceed two hundred thirty hours per month~~((; and~~

~~(6))~~.

(7) Care cannot exceed sixteen hours per day, per child.

~~((5))~~ (8) When determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month:

(a) A full-day unit will be authorized for each day of care that exceeds five hours;

(b) A half-day unit will be authorized for each day of care that is less than five hours; and

(c) A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.

~~((6))~~ (9) When determining part-time care for a family using in-home/relative providers:

(a) Under the provisions of subsection (2) of this section, ~~((DSHS))~~ DCYF will authorize the number of hours of care needed per month when the activity is less than one hundred ten hours per month; and

(b) The total number of authorized hours and contingency hours claimed cannot exceed two hundred thirty hours per month.

~~((7) DSHS))~~ (10) DCYF determines the allocation of hours or units for families with multiple providers based upon the information received from the parent.

~~((8) DSHS))~~ (11) DCYF may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC 110-15-0125, or an approved in-home/relative provider under WAC 110-16-0010. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

~~((9))~~ (12) Other fees (~~DSHS~~) DCYF may authorize to a provider are:

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

(d) Overtime care to a licensed provider who has a written policy to charge all families, when care is expected to exceed ten hours in a day; and

(e) Special needs rates for a child.

(13) Subject to the conditions described in WAC 110-15-0020(7), a consumer with a certification period ending in March, April, or May 2020, who reapplies and is approved, may be authorized care at the same level as the prior authorization.

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 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0205 Daily child care rates—Licensed or certified family home child care providers. (1) Base rate. DCYF pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table effective July 1, 2019:

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$31.25	\$31.25	\$26.79	\$25.89	\$22.32
	Half-Day	\$15.63	\$15.63	\$13.39	\$12.95	\$11.16
Spokane County	Full-Day	\$32.59	\$32.59	\$27.68	\$26.79	\$26.79
	Half-Day	\$16.29	\$16.29	\$13.84	\$13.39	\$13.39
Region 2	Full-Day	\$32.14	\$32.14	\$29.46	\$26.79	\$25.00
	Half-Day	\$16.07	\$16.07	\$14.73	\$13.39	\$12.50
Region 3	Full-Day	\$42.86	\$42.86	\$37.50	\$36.25	\$29.38
	Half-Day	\$21.43	\$21.43	\$18.75	\$18.13	\$14.69
Region 4	Full-Day	\$54.37	\$54.37	\$48.70	\$41.07	\$32.31
	Half-Day	\$27.19	\$27.19	\$24.35	\$20.54	\$16.16
Region 5	Full-Day	\$37.07	\$37.07	\$34.90	\$31.25	\$26.79
	Half-Day	\$18.54	\$18.54	\$17.45	\$15.63	\$13.39
Region 6	Full-Day	\$33.93	\$33.93	\$31.25	\$28.41	\$25.89
	Half-Day	\$16.96	\$16.96	\$15.63	\$14.20	\$12.95

(c) The maximum child care subsidy daily rate for that child as listed in the following table beginning July 1, 2020:

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$33.13	\$33.13	\$28.39	\$27.45	\$23.66
	Half-Day	\$16.56	\$16.56	\$14.20	\$13.72	\$11.83
Spokane County	Full-Day	\$34.54	\$34.54	\$29.34	\$28.39	\$28.39
	Half-Day	\$17.27	\$17.27	\$14.67	\$14.20	\$14.20
Region 2	Full-Day	\$34.07	\$34.07	\$31.23	\$28.39	\$26.50
	Half-Day	\$17.04	\$17.04	\$15.62	\$14.20	\$13.25

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 3	Full-Day	\$45.43	\$45.43	\$39.75	\$38.43	\$31.14
	Half-Day	\$22.71	\$22.71	\$19.88	\$19.21	\$15.57
Region 4	Full-Day	\$57.63	\$57.63	\$51.62	\$43.54	\$34.25
	Half-Day	\$28.82	\$28.82	\$25.81	\$21.77	\$17.13
Region 5	Full-Day	\$39.29	\$39.29	\$37.00	\$33.13	\$28.39
	Half-Day	\$19.65	\$19.65	\$18.50	\$16.56	\$14.20
Region 6	Full-Day	\$35.96	\$35.96	\$33.13	\$30.11	\$27.45
	Half-Day	\$17.98	\$17.98	\$16.56	\$15.06	\$13.72

(2) Effective July 1, 2019, ~~((the half-day rate is increased for))~~ family home providers in all regions and for all ages ~~((t))~~ will receive a partial-day rate that is seventy-five percent of the full-day rate when:

(a) The family home provider provides child care services for the child during a morning session and an afternoon session. A morning session ~~((shall begin))~~ begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session ~~((shall begin))~~ begins at any time after 12:00 p.m. and ends before 12:00 a.m.;

(b) The child is absent from care in order to attend school or pre-school;

(c) The family home provider is not entitled to payment at the full-day rate; and

~~((e))~~ (d) In no event ~~((shall))~~ is a child care provider ~~((be))~~ entitled to two partial-day rates in a month totaling one hundred fifty percent of the daily rate.

(3) Partial day monthly unit.

(a) One monthly unit per month will be authorized for a school-age child attending a licensed family home child care when the child is:

(i) Authorized for care with only one provider;

(ii) Eligible for a full-time authorization and is in care less than five hours on a typical full-day school day; and

(iii) Expected to need care before and after school.

(b) The monthly unit is prorated for partial months of authorization.

(c) Only one monthly unit per month may be authorized for a child.

Partial-Day Monthly Rates					
	Jul 1, 2019-June 30, 2020			July 1, 2020-June 30, 2021	
	Sept-March	April-August		Sept-June	July-August
<u>Region 1</u>	<u>\$396.18</u>	<u>\$491.04</u>		<u>\$420.05</u>	<u>\$520.52</u>
<u>Spokane</u>	<u>\$475.48</u>	<u>\$589.38</u>		<u>\$503.88</u>	<u>\$624.58</u>
<u>Region 2</u>	<u>\$443.75</u>	<u>\$550.00</u>		<u>\$470.46</u>	<u>\$583.00</u>
<u>Region 3</u>	<u>\$521.58</u>	<u>\$646.36</u>		<u>\$552.82</u>	<u>\$685.08</u>
<u>Region 4</u>	<u>\$573.63</u>	<u>\$710.82</u>		<u>\$607.98</u>	<u>\$753.50</u>
<u>Region 5</u>	<u>\$475.48</u>	<u>\$589.38</u>		<u>\$503.88</u>	<u>\$624.58</u>
<u>Region 6</u>	<u>\$459.59</u>	<u>\$569.58</u>		<u>\$487.11</u>	<u>\$603.90</u>

~~((3))~~ (4) The family home child care WAC ~~((110-300B-0010 and 110-300B-5550))~~ 110-300-0005 and 110-300-0355 allow providers to care for children from birth up to and including the end of their eligibility period after their thirteenth birthday. ~~((WAC 110-300B-0010 and 110-300B-5550 are superseded by WAC 110-300-0005 and 110-300-0355, respectively, effective August 1, 2019.~~

(4)) (5) If the family home provider cares for a child who is thirteen years of age or older, the provider must follow WAC ~~((110-300B-0050 and 110-300B-5625))~~ 110-300-0030 and 110-300-0355. A child who is thirteen years of age or older at application must meet the special needs requirement according to WAC 110-15-0220. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section and the five through twelve year age range column is used for comparison. ~~((WAC 110-300B-0050 and 110-300B-5625 are superseded by WAC 110-300-0300 and 110-300-0355, respectively, effective August 1, 2019)).~~

~~((3))~~ (6) DCYF pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection ~~((6))~~ (7) of this section).

~~((6))~~ (7) DCYF cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

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 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3770 Authorized SCC payments. The SCC program may authorize payments to licensed or certified child care providers for:

(1) Basic child care either full-day or half-day, at rates listed in the chart in WAC ~~((170-290-0200 and 170-290-0205))~~ 110-15-0205:

(a) A full day of child care when a consumer's children need care for five to ten hours per day;

(b) A half day of child care when a consumer's children need care for less than five hours per day;

(c) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means twenty-three full day units if the child needs five or more hours of care per day or thirty half-day units if the child needs fewer than five hours of care per day;

(d) Beginning September 1, 2016, for school-aged children, ~~((DSHS))~~ DCYF will authorize and pay for child care as follows:

(i) ~~((DSHS))~~ DCYF will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and

(ii) ~~((DSHS))~~ DCYF will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year, until the following June. ~~((DSHS))~~ DCYF will send the consumer notification of the decrease as stated in WAC 170-290-0025. If the consumer's schedule has changed and the child continues to need full-day care during the school year, the consumer must request the increase and verify the need for full-day care.

(2) Effective July 1, 2019, family home providers in all regions and for all ages will receive a partial-day rate that is seventy-five percent of the full day rate when:

(a) Care is provided for the child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and end before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and end before 12:00 a.m.; and

(b) The provider is not entitled to payment at the full-day rate.

(3) A family home provider is not entitled to two partial-day rates totaling one hundred fifty percent of the daily rate.

(4) Partial day monthly unit.

(a) One monthly unit per month will be authorized for a school-age child attending a licensed family home child care when the child is:

(i) Authorized for care with only one provider;

(ii) Eligible for a full-time authorization and in care less than five hours of care on a typical school day; and

(iii) Expected to need care before and after school.

(b) The partial day monthly unit is prorated for partial months.

(c) Only one monthly unit per month may be authorized for a child.

(5) A registration fee, according to WAC ~~((170-290-0245))~~ 110-15-0245;

~~((3))~~ (6) Subsidy rates for five-year old children according to WAC ~~((170-290-0185))~~ 110-15-0247;

~~(4))~~ (7) The field trip/quality enhancement fees in WAC ~~((170-290-0247))~~ 110-15-0247;

~~((5))~~ (8) The nonstandard hours bonus in WAC ~~((170-290-0249))~~ 110-15-0249; and

~~((6))~~ (9) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC ~~((170-290-0220, 170-290-0225, and 170-290-0230))~~ 110-15-0020, 110-15-0025, and 110-15-0230.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

WSR 20-09-138

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 21, 2020, 2:26 p.m., effective April 21, 2020, 2:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: **For Working Connections and Seasonal Child Care:** Increase from thirty to forty-six half-day units of school-aged child care during April and May 2020 for families experiencing homelessness.

Citation of Rules Affected by this Order: Amending WAC 110-15-0023.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all

counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. These emergency amendments to WAC 110-15-0034 address these challenges by increasing the amount of care authorized for school-aged children for April and May 2020.

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

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

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

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

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

Date Adopted: April 21, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0023 Homeless grace period (HGP). (1) Families experiencing homelessness will be eligible for HGP and will have a certification period of twelve months:

(a) When homelessness is verified within thirty days of the date of application or reapplication;

(b) When the family has not received HGP in the twelve calendar months prior to the month of application or reapplication; and

(c) When the family meets all eligibility requirements under WAC ((~~170-290-0005~~)) 110-15-0005 and ((~~170-290-0030~~)) 110-15-0030, except:

(i) Verifying participation or participating in approved activities in WAC ((~~170-290-0040~~)) 110-15-0040, ((~~170-290-0045~~)) 110-15-0045, ((~~170-290-0050~~)) 110-15-0050, or ((~~170-290-0055~~)) 110-15-0055; or

(ii) Providing required third-party verification of employment within thirty days of receipt of an application or reapplication; or

(iii) Having an outstanding copayment or not having a payment plan for the outstanding copayment.

(2) Families eligible for HGP will have a period of four months to provide:

(a) Verification of participation in approved activities in WAC ((~~170-290-0040~~)) 110-15-0040, ((~~170-290-0045~~)) 110-15-0045, ((~~170-290-0050~~)) 110-15-0050, or ((~~170-290-0055~~)) 110-15-0055;

(b) Required third-party verification of employment; and

(c) Verification of payment or payment plan arrangements for an outstanding copayment.

(3) Families must report changes as required in WAC ((~~170-290-0034~~)) 110-15-0031 and will remain eligible for HGP through the end of the fourth month, if their homeless status changes.

(4) If received in months one through four, the verification required in subsection (3) of this section will not need reverification for care to continue during months five through twelve.

(5) The four-month period begins on the first date of eligibility, which is the date of application or reapplication and the first month may be a partial month. The four-month period ends on the last day of the fourth month.

(6) Termination of HGP will occur on the last day of the fourth month if the family does not:

(a) Verify they have entered an approved activity;

(b) Provide the required third-party verification of employment;

(c) Pay or make payment arrangements of an outstanding copayment.

(7) DSHS will approve HGP for families using WCCC for the fourteen-day wait period (WAC ((~~170-290-0055~~)) 110-15-0055). If the family has verified their homeless status but not entered the approved activity by the fourteenth day:

(a) HGP is approved the first day following the end of the fourteen-day wait period instead of terminating WCCC;

(b) The copayment is waived effective the first day of the month following the last day of the fourteen-day wait period; and

(c) The copayment is waived for the remainder of the four-month period, even if it is less than four months.

(8) When homelessness is verified and HGP approved, an overpayment will not be established for the fourteen-day wait period.

(8) ((~~DSHS~~)) DCYF will approve HGP for families using WCCC for the sixty days of self-attestation of new employment (WAC ((~~170-290-0012~~)) 110-15-0012). If the family has verified their homeless status but not provided the required employment verification by the sixtieth day:

(a) HGP is approved the first day following the end of the sixty days of self-attestation period instead of terminating WCCC;

(b) The copayment is waived effective the first day of the month following the last day of the sixty days of self-attestation period; and

(c) The copayment is waived for the remainder of the HGP, even if it is less than four months.

(d) An overpayment is not established for the sixty days of self-attestations if homelessness is verified and HGP is approved.

(9)(a) HGP copayments will be determined at initial eligibility determination and be waived for the first four months. A copayment is required for months five through month twelve.

(b) If the copayment exceeds fifteen dollars, the family will not be eligible for the fifteen dollars copayment during the first two months of paying a required copayment.

(10) Families will be approved for full-time care during the four months of HGP and the remainder of the eligibility period. Full-time care means:

(a) Twenty-three full day units when the child needs five or more hours of care per day;

(b) Thirty half day units when the child needs less than five hours of care per day;

(c) Thirty half day units during the months of September through June when the child is school-aged, except that forty-six units will be approved for April and May 2020; or

(d) Forty-six half day units during the months of July and August when the child is school-aged.

(11)(a) Only licensed, certified or ~~((DEL))~~ DCYF-contracted providers will ~~shall~~ be authorized to provide child care during the four months of HGP. Payment to the provider will be either the provider rate or state rate, whichever is less.

(b) In-home/relative providers will ~~shall~~ not be authorized to provide child care for families during the HGP, regardless of changes reported.

(c) Families may choose in-home/relative providers to provide care during months five through twelve, under WAC ~~((170-290-0125))~~ 110-15-0125, ~~((170-290-0130))~~ 110-15-0130, and ~~((170-290-0190))~~ 110-15-0190.

(d) The four months of HGP are nontransferable; families may not change the four months of HGP, even when care was not provided.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 20-09-139
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed April 21, 2020, 2:32 p.m.]

The department of children, youth, and families rescinds WSR 20-09-047, WAC 110-15-0034, filed April 8, 2020.

April 21, 2020
Brenda Villarreal
Rules Coordinator

WSR 20-09-140
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed April 21, 2020, 2:33 p.m., effective April 21, 2020, 2:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: **For Working Connections and Seasonal Child Care:** Relieve all child care providers from collecting consumers' copayments for the months of April, May, and

June 2020 and allow licensed child care providers to claim child care payment based on enrollment, rather than attendance, for the period March 16 through June 30, 2020.

Citation of Rules Affected by this Order: Amending WAC 110-15-0034.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. These emergency amendments to WAC 110-15-0034 address these challenges by removing subsidy consumers' copays for three months to provide better access to quality early learning services and child care across the state and establish a more stable subsidy provider payment practice through the end of June 2020.

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

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

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

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

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

Date Adopted: April 21, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-12-058, filed 10/11/19 [5/31/19], effective 7/1/19)

WAC 110-15-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Licensed or certified child care providers who accept child care subsidies must comply with all child care licensing or certification requirements contained in this chapter, chap-

ter 43.216 RCW and chapters 110-06, 110-300, (~~110-300A, 110-300B, and~~) 110-305, and 110-310 WAC.

(2) In-home/relative child care providers must comply with the requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(3) In-home/relative child care providers must not submit an invoice for more than six children for the same hours of care.

(4) All child care providers must use DCYF's electronic attendance recordkeeping system or a DCYF-approved electronic attendance recordkeeping system as required by WAC 110-15-0126. Providers must limit attendance system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(a) Providers using DCYF's electronic recordkeeping system must submit monthly attendance records prior to claiming payment. Providers using a DCYF-approved electronic recordkeeping system must finalize attendance records prior to claiming payment.

(b) Providers must not edit attendance records after making a claim for payment.

(5) All child care providers must complete and maintain accurate daily attendance records. If requested by DCYF or DSHS, the provider must provide to the requesting agency the following records:

(a) Attendance records must be provided to DCYF or DSHS within twenty-eight calendar days of the date of a written request from either department.

(b) Pursuant to WAC 110-15-0268, the attendance records delivered to DCYF or DSHS may be used to determine whether a provider overpayment has been made and may result in the establishment of an overpayment and in an immediate suspension of the provider's subsidy payment.

(6) All child care providers must maintain and provide receipts for billed field trip/quality enhancement fees as follows. If requested by DCYF or DSHS, the provider must provide the following receipts for billed field trip/quality enhancement fees:

(a) Receipts from the previous twelve months must be available immediately for review upon request by DCYF;

(b) Receipts from one to five years old must be provided within twenty-eight days of the date of a written request from either department.

(7) All child care providers must collect copayments directly from the consumer or the consumer's third-party (~~payer~~) payer, and report to DCYF if the consumer has not paid a copayment to the provider within the previous sixty days, except:

(a) For the months of April, May, and June 2020.

(8) All child care providers must follow the billing procedures required by DCYF.

(9) Child care providers who accept child care subsidies must not:

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month(~~;- however,)~~ except:

(i) A licensed provider eligible for payment under WAC 110-15-0106 may submit a claim for payment based on enrollment for the period March 16 through June 30, 2020; and

(ii) In the event a ten-day notice terminating a provider's authorization extends into the following month, the provider may claim a payment for any remaining days of the ten calendar day notice in that following month;

(b) Claim an invoice for payment later than six months after the month of service, or the date of the invoice, whichever is later; or

(c) Charge consumers the difference between the provider's customary rate and the maximum allowed state rate.

(10) Licensed and certified providers must not charge consumers for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Days for which the child is scheduled and authorized for care but absent;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

(11) Providers who care for children in states bordering Washington state must verify they are in compliance with their state's licensing regulations and notify DCYF within ten days of any suspension, revocation, or changes to their license.