

WSR 20-20-068**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed October 1, 2020, 4:17 p.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: The developmental disabilities administration is enacting these changes to align chapter 388-845 WAC with home and community based services waiver amendments approved by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: New WAC 388-845-0920, 388-845-0930, 388-845-0940, 388-845-1101, 388-845-1161, 388-845-1162, 388-845-1163, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2145, 388-845-2150 and 388-845-2155; repealing WAC 388-845-0300, 388-845-0305, 388-845-0310, 388-845-0400, 388-845-0405, 388-845-0410, 388-845-0700, 388-845-0705, 388-845-0710, 388-845-1300, 388-845-1305, 388-845-1310, 388-845-1400, 388-845-1405, 388-845-1410, 388-845-1900, 388-845-1905, 388-845-1910, 388-845-2160, 388-845-2165 and 388-845-2170; and amending WAC 388-845-0001, 388-845-0055, 388-845-0060, 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0510, 388-845-0515, 388-845-0520, 388-845-0525, 388-845-0650, 388-845-0800, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0905, 388-845-0910, 388-845-1100, 388-845-1105, 388-845-1110, 388-845-1150, 388-845-1155, 388-845-1160, 388-845-1505, 388-845-1607, 388-845-1700, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-2000, 388-845-2005, 388-845-2010, and 388-845-3070.

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

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

Reasons for this Finding: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.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 13, Amended 38, Repealed 21.

Date Adopted: September 25, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0001 Definitions. "Aggregate services" means a combination of services subject to the dollar limits in the basic plus waiver.

"Allocation" means the amount of individual and family services (IFS) waiver funding available to a client for a maximum of twelve months.

"CARE" means comprehensive assessment and reporting evaluation.

"Client" means a person who has a developmental disability under RCW 71A.10.020(5) and has been determined eligible to receive services from the administration under chapter 71A.16 RCW.

"Community crisis stabilization services" or "CCSS" means a state-operated program that provides short-term supports to clients who are in crisis, or who are at risk of hospitalization or institutional placement.

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool under chapter 388-828 WAC, used by DDA to measure the support needs of people with developmental disabilities.

"Department" means the department of social and health services (DSHS).

"Evidence-based treatment" means the use of physical, mental, and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your family live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waiver" is a DDA 1915(c) home and community based services waiver program.

"Home" means present (~~or intended~~) place of residence.

"ICF/IID" means an intermediate care facility for individuals with intellectual disabilities.

"Integrated business settings" means a setting that enables participants to either work alongside or interact with individuals who do not have disabilities, or both.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the

scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his or her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community based services waiver program.

"Person-centered service plan" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the basic plus, children's intensive in-home behavioral support, or core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State-funded services" means services that are funded entirely with state dollars.

"You" means the client or participant.

"Waiver year" means the twelve-month period starting from the initial or annual plan effective date in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0055 How do I remain eligible for the waiver? (1) Once you are enrolled in a DDA 1915(c) HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(a) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements;

(b) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320(3), or your health and welfare needs require monthly monitoring, which will be documented in your client record;

(c) You complete an in-person DDA assessment/reassessment interview per WAC 388-828-1520.

(2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and you must:

(a) Be under age twenty-one;

(b) Live with your family; ~~((and))~~

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s); and

(d) Continue to participate in the program as outlined in the annual participation agreement.

(3) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and live in your family home.

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

WAC 388-845-0060 Can your waiver enrollment be terminated? DDA may terminate your waiver enrollment if DDA determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual person-centered service ~~((plan/individual support))~~ plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program;

(e) You choose to unenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) You refuse to participate with DDA in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your person-centered service plan ~~((individual support plan))~~ as necessary to meet your health and welfare needs;

(i) You are ~~((residing))~~ in a hospital, jail, prison, nursing facility, ICF/IID, or other institution ~~((and remain in residence))~~ for at least one full calendar month, and ((are still in residence)) are under the care of that setting:

(i) At the end of that full calendar month ~~((;))~~ and there is no immediate plan for you to return to the community;

(ii) At the end of the twelfth month following the effective date of your current person-centered service (~~plan/individual support~~)) plan, as described in WAC 388-845-3060; or

(iii) At the end of the waiver fiscal year, whichever date occurs first;

(j) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080; or

(k) Your needs exceed what can be provided under WAC 388-845-3085.

(2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0110 What are the limits to the waiver services you may receive? The following limits apply to the waiver services you may receive:

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

(2) Behavioral health stabilization services may be added to your person-centered service plan after the services have been provided.

(3) Waiver services are limited to services required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

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

(5) Waiver services must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first request and be denied all applicable services through private insurance, medicare, the medicaid state plan, and other resources.

(6) Waiver funding must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.

(7) For the individual and family services (IFS) (~~and~~) waiver, basic plus (~~waivers~~) waiver, and children's intensive in-home behavior support waiver, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

(8) Your choice of qualified providers and services is limited to the most cost-effective option that meets your unmet need identified in your person-centered service plan.

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

(10) You may receive services in a recognized out-of-state bordering city under WAC 182-501-0175.

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

(12) Waiver services do not cover:

- (a) Copays;
- (b) Deductibles;

(c) Dues;

(d) Membership fees; or

(e) Subscriptions.

(13) Waiver services do not cover a product unless the product is:

(a) Necessary to meet a basic health and safety need; ~~and~~

(b) The least restrictive means for meeting that need; and

(c) Requested by the waiver participant.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0210 What services are available under the basic plus waiver? The following services are available under the basic plus waiver:

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES: ((Chemical)) Extermination of cimex lectularius (bed-bugs) Community ((guide)) <u>engagement</u> Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Skilled nursing Specialized ((medical)) equipment and supplies Specialized ((psychiatric services)) <u>habilitation</u> Speech, hearing, and language services Staff and family consultation ((and training)) Transportation Wellness education	Total costs must not exceed six thousand one hundred ninety-two dollars per year per participant
<u>Therapeutic adaptations</u>	<u>Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding</u>
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))

SERVICE	YEARLY LIMIT
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services <u>Positive behavior support and consultation</u>) <u>Specialized habilitation</u> <u>Staff and family consultation</u>	Limits determined by a ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
((Specialized psychiatric services))	
((Personal care))	((Limits determined by the CARE tool used as part of the DDA assessment))
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA
((Emergency assistance is only for basic plus waiver aggregate services)) <u>Positive behavior support</u> <u>Community engagement</u> <u>Occupational therapy</u> <u>Physical therapy</u> <u>Specialized equipment and supplies</u> <u>Speech, hearing, and language services</u> <u>Skilled nursing</u> <u>Staff and family consultation</u> <u>Transportation</u>	<u>Six thousand dollars per year</u> ((; preauthorization required)) <u>for emergency assistance funding</u>

SERVICE	YEARLY LIMIT
((Chemical)) <u>Extermination of cimex lectularius (bed-bugs)</u> <u>Community</u> ((guide)) <u>engagement</u> <u>Community transition</u> <u>Environmental</u> ((adaptions)) <u>adaptations</u> <u>Occupational therapy</u> <u>Physical therapy</u> <u>Positive behavior support and consultation</u> <u>Residential habilitation</u> <u>Risk assessment</u> <u>Skilled nursing</u> <u>Specialized</u> ((medical)) <u>equipment and supplies</u> <u>Specialized</u> ((psychiatric services)) <u>habilitation</u> <u>Speech, hearing, and language services</u> <u>Staff and family consultation</u> ((and training)) <u>Transportation</u> <u>Wellness education</u>	Determined by the person-centered service plan
EMPLOYMENT SERVICES: <u>Individualized technical assistance</u> ((Prevocational services)) <u>Supported employment</u>	
<u>Community inclusion</u>	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>

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 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0215 What services are available under the core waiver? (1) The following services are available under the core waiver:

SERVICE	YEARLY LIMIT
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) habilitation Staff and family consultation	Limits determined by ((a behavioral health professional or DDA)) the person-centered service plan
Respite care	Limits determined by DDA assessment

(2) A participant's core waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's core waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0220 What services are available under the community protection waiver? (1) The following services are available under the community protection waiver:

SERVICE	YEARLY LIMIT
((Chemical)) Extermination of cimex lectularius (bedbugs) Community transition Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing Specialized ((medical)) equipment and supplies ((Specialized psychiatric services)) Speech, hearing, and language services Staff and family consultation ((and training))	Determined by the person-centered service plan

SERVICE	YEARLY LIMIT
Transportation	
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) habilitation Staff and family consultation	Limits determined by ((a behavioral health professional or DDA)) the person-centered service plan

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0225 What services are available under the children's intensive in-home behavioral support (CIIBS) waiver? (1) The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Nurse delegation ((Positive behavior support and consultation)) Specialized clothing Specialized ((medical)) equipment and supplies <u>Specialized habilitation</u> Staff and family consultation ((and training)) ((Therapeutic equipment and supplies)) Transportation Vehicle modifications	((Determined by the person-centered service plan. Total cost of waiver services must not exceed the average cost of four thousand dollars per month per participant.)) <u>Fifteen thousand dollars per year for any combination of services</u>
Respite care	Limits determined by the DDA assessment. Costs are included in the total average cost of four thousand dollars per month per participant for all waiver services.
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion ((bed services and consultation)) <u>Specialized habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
Risk assessment <u>Positive behavior support</u>	Limits determined by DDA
<u>Environmental adaptations (Accessibility and repairs)</u> <u>Specialized habilitation</u> <u>Staff and family consultation</u> <u>Vehicle modifications</u>	<u>Six thousand dollars per year for emergency assistance funding</u>
<u>Music therapy</u> <u>Equine therapy</u>	<u>Five thousand dollars per year for combination of services</u>

SERVICE	YEARLY LIMIT
<u>Therapeutic adaptations</u>	<u>Limited to a single, one-time authorization not to exceed fifteen thousand dollars every five waiver years</u>

(2) A participant's CIIBS waiver services are subject to additional limits under this chapter.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver? (1)
The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Community engagement Environmental ((adaptions)) <u>adaptations</u> Occupational therapy Peer mentoring Person-centered plan facilitation Physical therapy Positive behavior support and consultation Respite care Skilled nursing Specialized clothing Specialized ((medical)) equipment and supplies Specialized ((psychiatric services)) <u>habilitation</u> Speech, hearing, and language services Staff and family consultation ((and training)) Supported parenting services Transportation Vehicle modifications Wellness education	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan

SERVICE	YEARLY LIMIT
<u>Therapeutic adaptations</u>	<u>Limited to a one-time authorization every five years and limited to funds available in the client's aggregate and emergency services</u>
Risk assessment	Limits determined by ((DDA- <u>Costs are excluded from the annual allocation-))</u> <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH STABILIZATION SERVICES:)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((behavioral health professional or DDA)) <u>the person-centered service plan</u> . Costs are excluded from the annual allocation.

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

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

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

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

- (1) Assistive technology is limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.
- (2) Clinical and support needs for assistive technology must be identified in your DDA assessment and documented in the person-centered service plan.
- (3) DDA requires ~~((your))~~ a treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:
 - (a) The treating professional has personal knowledge of and experience with the requested assistive technology; and
 - (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.
- (4) Assistive technology requires prior approval by the DDA regional administrator or designee.

(5) DDA may require a written second opinion from a DDA-selected professional.

(6) The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0500 What is positive behavior support and consultation? (1) Positive behavior support and consultation ~~((may be provided to persons on any))~~ is available on all of the DDA HCBS waivers ~~((and))~~. A participant is eligible for positive behavior support and consultation if the participant is:

- (a) Under age 21 and currently authorized to receive positive behavior support and consultation for the support of behavioral health or autism treatment when unable to access through the medicaid state plan; or
- (b) On the community protection waiver and require behavior support to address sexual aggression, arson, or assaultive behaviors which make the client eligible for the community protection waiver.

(2) Positive behavior support and consultation includes the development and implementation of programs designed to support waiver participants using:

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

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0510 Are there limits to the positive behavior support and consultation you may receive? (1) Clinical and support needs for positive behavior support and consultation must be identified in your DDA assessment and documented in the person-centered service plan.

- (2) DDA determines the amount of positive behavior support and consultation you may receive based on your needs and information from your treating professional.
- (3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services (IFS) waiver limit the amount of service unless provided as a behavioral health stabilization service.
- (4) DDA may require a second opinion from a DDA-selected provider.

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

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

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

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

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

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

~~(1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and~~

~~(2))~~ contracted with DDA to provide ~~((chemical))~~ extermination of bedbugs.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

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

- (a) The assessment or inspection by the qualified provider;
 - (b) Application of chemical-based pesticide; and
 - (c) One follow-up visit.
- (2) ~~((Chemical))~~ Extermination of bedbugs is limited to two treatments per plan year.
- (3) ~~((Chemical))~~ Extermination of bedbugs excludes:
- (a) Lodging during the ~~((chemical))~~ extermination process; and
 - (b) Preparatory housework associated with the extermination process.
- (4) DDA does not cover ~~((chemical))~~ extermination of bedbugs for a participant who lives:
- (a) With their family; or

(b) In an adult family home, assisted living, group home, group training home, licensed staffed residential home, or other facility contractually obligated to provide housing.

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

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

WAC 388-845-0650 What are community engagement services? (1) Community engagement ~~((services are services))~~ is designed to increase a waiver participant's connection to and engagement in formal and informal community supports by connecting the participant to community resources.

(2) Services are designed to develop creative, flexible, and supportive community resources and relationships for individuals with developmental disabilities.

(3) Waiver participants are introduced to the community resources and supports that are available in their area.

(4) Participants are supported to develop identified skills that will facilitate integration into their community as described in the person-centered service plan.

~~(5) ((Outcomes for this service include skill development, opportunities for socialization, valued community roles, and involvement in community activities, organizations, groups, projects, and other resources.~~

~~(6))~~ This service is available ~~((in))~~ on the:

(a) IFS waiver;

(b) Basic plus waiver; and

(c) Core waiver when the participant is not receiving residential habilitation services.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0800 What is emergency assistance funding? Emergency assistance funding is a temporary increase, ninety days or less, to the yearly basic plus or CIIBS waiver aggregate dollar limit when additional waiver aggregate services are required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

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

WAC 388-845-0810 How do I qualify for emergency assistance funding? You qualify for emergency assistance only if you have used all of your waiver aggregate funding and your current situation meets one of the following criteria:

(1) You involuntarily lose your present residence for any reason either temporary or permanent;

(2) You lose your present caregiver for any reason, including death;

(3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0820 Are there limits to your use of emergency assistance funding? All of the following limits apply to the emergency assistance you may receive((±)).

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

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

(3) Emergency assistance ~~((services are))~~ funding is limited to the following ((basic plus waiver)) aggregate services when on the basic plus waivers:

- (a) Community guide;
 - (b) Environmental adaptations;
 - (c) Occupational therapy;
 - (d) Physical therapy;
 - (e) Positive behavior support and consultation;
 - (f) Skilled nursing;
 - (g) Specialized medical equipment and supplies;
 - (h) Specialized psychiatric services;
 - (i) Speech, hearing, and language services;
 - (j) Staff and family consultation and training, which excludes individual and family counseling;
 - (k) Transportation; and
 - (l) Therapeutic adaptations.
- (4) Emergency assistance funding is limited to the following services when on the CIIBS waiver:

- (a) Environmental adaptations;
 - (b) Specialized habilitation;
 - (c) Staff and family consultation; and
 - (d) Vehicle modifications.
- (5) Emergency assistance funding may be used for interim services until:
- (a) The emergency situation has been resolved;
 - (b) You are transferred to alternative supports that meet your assessed needs; or
 - (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0900 What are environmental adaptations? (1) Environmental adaptations provide basic physical adaptations to the ~~((dwelling))~~ existing home and existing rooms within the home required by the individual's person-centered service plan needed to:

- (a) Ensure the health, welfare, and safety of the individual;
- (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the dwelling; and

(c) Increase the individual's independence inside ~~((the dwelling))~~ or outside the dwelling to ~~((provide access to the dwelling))~~ allow the individual to physically enter and move within the home.

(2) Examples of environmental ~~((adaptions))~~ adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental ~~((adaptions))~~ adaptations are available in all of the DDA HCBS waivers.

(4) Only the children's intensive in-home behavioral support (CIIBS) and individual and family services (IFS) waivers may include adaptations to the dwelling necessary to prevent or repair ~~((property destruction))~~ damage to the structure of the home caused by the participant's behavior, as addressed in the participant's ~~((positive))~~ behavior support plan.

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

WAC 388-845-0905 Who is a qualified provider for environmental adaptations? ~~((1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.~~

~~((2) For adaptations requiring installation,))~~ A qualified ~~((providers))~~ provider must be a registered contractor per chapter 18.27 RCW and contracted with DDA. The contractor ~~((or subcontractor))~~ must be licensed and bonded to perform the specific type of work ~~((they are providing))~~ being provided.

~~((3) For debris removal, qualified providers must be contracted with DDA.))~~

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

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

(1) Clinical and support needs for an environmental adaptation must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

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

(a) One thousand five hundred dollars or less, one bid is required;

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

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

(3) All bids must include:

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

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

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

(5) Environmental adaptations to the home are excluded if they are of general utility without direct benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to the dwelling, or general home improvements, such as carpeting, roof repair, or central air conditioning.

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

~~((The condition of the dwelling or other projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA))~~ Environmental adaptations must not be performed while other adaptations or remodeling projects are in process.

(8) Environmental adaptations must not be approved if the existing residence condition is impacted by mold, asbestos, or dwelling dilapidation.

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

~~((9))~~ (10) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

~~((10))~~ (11) Environmental adaptations must not add to the total square footage of the dwelling, convert nonliving space to living space, or create a new room.

~~((11))~~ (12) The dollar amounts for aggregate services in your basic plus, CIIBS waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

~~((12))~~ (13) For core, community protection, ~~((and CIIBS waivers,))~~ annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

~~((13))~~ (14) Damage prevention and repairs under the CIIBS and IFS waivers are subject to the following restrictions:

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

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

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

(d) Repairs to personal property such as furniture and appliances are excluded; and

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

~~((14))~~ (15) The following adaptations are not covered as an environmental adaptation:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

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

(d) Roof repair or siding;

(e) Deck construction or repair; and

(f) Jetted tubs or saunas.

~~((15))~~ (16) Environmental ~~((adaptions))~~ adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

NEW SECTION

WAC 388-845-0920 What is equine therapy?

Equine therapy is the use of horses to provide experiences that support mental health and emotional well-being.

(2) Services may include horsemanship as part of a therapeutic team and participation in other activities associated with preparing a horse for a client's riding lesson.

(3) Equine therapy is available in the CIIBS waiver.

NEW SECTION

WAC 388-845-0930 Who are qualified providers of equine therapy?

(1) The provider of equine therapy must be a certified therapeutic horseback riding instructor and contracted with DDA to provide this service.

(2) The provider of equine therapy must have one year of experience working with individuals with developmental disabilities.

NEW SECTION

WAC 388-845-0940 Are there limits to the equine therapy I may receive? The following limits apply to your receipt of equine therapy:

(1) Support needs for equine therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

(3) Equine therapy requires prior approval by the DDA regional administrator or designee.

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

(5) Equine therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per plan year.

(6) Equine therapy services must not be used to provide hippotherapy, which is an occupational therapy service.

(7) The department reserves the right to terminate the authorization for service if there is not a demonstrable improvement in behavior as documented by the contracted equine therapist or other treatment provider.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1100 What are ((behavioral health)) stabilization services - crisis diversion ((bed services))? ((Behavioral health)) (1) Crisis diversion ((bed services)) beds are ((short-term emergent residential services that may be provided in a client's home, licensed or certified setting, or state operated setting. These services are available to eligible clients whose current living situation is disrupted and the client is at risk of institutionalization. These services are)) available in all five HCBS waivers administered by DDA as a behavioral health stabilization ((services)) service in accordance with WAC 388-845-1150 through 388-845-1160.

(2) Crisis diversion beds are short-term residential habilitative supports provided by trained specialists and include direct care, supervision or monitoring, habilitative supports, referrals, and consultation. Crisis diversion beds are available to individuals determined by DDA to be at risk of institutionalization.

NEW SECTION

WAC 388-845-1101 Where may stabilization services - crisis diversion be provided? Stabilization services - crisis diversion beds may be provided in a client's home or a licensed or certified setting.

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

WAC 388-845-1105 Who is a qualified provider of ((behavioral health)) stabilization services - crisis diversion ((bed services))? Providers of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds must be:

- (1) DDA certified residential agencies per chapter 388-101 WAC;
- (2) Other department licensed or certified agencies; or
- (3) State-operated ((agency)) agencies.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1110 What are the limits of ((behavioral health)) stabilization services - crisis diversion ((bed services))? (1) Clinical and support needs for ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) ((Behavioral health)) Stabilization services - crisis diversion ((bed services)) beds are intermittent and temporary. A behavioral health professional may make a recommendation about your need for ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds. DDA determines the duration and amount of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds you will receive.

(3) The costs of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds do not count

toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the individual and family services waiver.

(4) Stabilization services - crisis diversion beds are limited to additional services not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1150 What are ((behavioral health)) stabilization services? (1) ((Behavioral health)) Stabilization services assist persons who are experiencing a behavioral health crisis.

(2) ((Behavioral health)) Stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for ((behavioral health)) stabilization services if:

(a) A behavioral health professional ((or)) and DDA has determined the participant is at risk of institutionalization or hospitalization; and

(b) The participant needs:

(i) ((Positive behavior support and consultation)) Specialized habilitation;

(ii) ((Specialized psychiatric services for people age twenty-one and older)) Staff and family consultation; or

(iii) ((Behavioral health)) Crisis diversion ((bed services available to participants on the individual and family services, basic plus, core, CIIBS, and community protection waivers)) beds.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1155 Who are qualified providers of ((behavioral health)) stabilization services? Providers of these ((behavioral health)) stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

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

WAC 388-845-1160 Are there ((limitations)) limits to the ((behavioral health)) stabilization services that you can receive? (1) ((Clinical and support needs for behavioral health)) Stabilization services are limited to those identified in your DDA assessment and documented in the person-centered service ((plan/individual support)) plan.

(2) ((Behavioral health)) Stabilization services are intermittent and ((temporary)) ninety days or less. ((The duration and amount of services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.))

(3) The costs of ((behavioral health)) stabilization services do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the IFS waiver.

~~((4) Behavioral health stabilization services require prior approval by DDA or its designee.))~~

NEW SECTION

WAC 388-845-1161 What is music therapy?

(1) Music therapy is the use of musical interventions to promote the accomplishment of individualized goals within a therapeutic relationship.

(2) Services may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, or other expressive musical forms.

(3) Music therapy is available in the CIIBS waiver.

NEW SECTION

WAC 388-845-1162 Who are qualified providers of music therapy? (1) Qualified providers of music therapy are agencies or individuals who are or employ board certified music therapists (MT-BC) as defined by the certification board for music therapists;

(2) Are contracted with DDA to provide this service; and

(3) Have one year of experience working with individuals with developmental disabilities.

NEW SECTION

WAC 388-845-1163 Are there limits to the music therapy I may receive? The following limits apply to your receipt of music therapy:

(1) Support needs for music therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

(3) Music therapy requires prior approval by the DDA regional administrator or designee.

(4) DDA may require a second opinion by a department-selected provider.

(5) Music therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per year.

(6) The department reserves the right to terminate the authorization for service if there is not a demonstrable improvement in behavior as documented by the certified music therapist or other treatment provider.

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

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver? Providers of residential habilitation services for participants in the core waiver must be one of the following:

(1) Individuals contracted with DDA to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDA to provide training as an "alternative living provider";

(3) Agencies contracted with DDA and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, foster homes, child ~~((placing))~~ placement agencies or staffed residential homes per chapter ~~((388-148))~~ 110-148 WAC.

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

WAC 388-845-1607 Can someone who lives with you be your respite provider? ~~((Someone))~~ A person who lives with you may be your respite care provider as long as ~~((he or she))~~ that person is not your primary care provider and is not ~~((contracted to provide))~~ providing any other DSHS paid service to you in the month that person provides respite care to you. The ~~((limitations))~~ limits listed in WAC 388-845-0111 also apply.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1700 What is waiver skilled nursing?

(1) Waiver skilled nursing means long-term, intermittent, and hourly skilled nursing services consistent with waiver objectives of avoiding institutionalization.

(2) Waiver skilled nursing services are available in the basic plus, community protection (CP), core, and individual and family services (IFS) waivers, and are limited to participants age twenty-one and older unless skilled nursing is authorized as nurse delegation.

(3) Waiver skilled nursing services include nurse delegation services provided by a registered nurse under WAC 388-845-1170.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1800 What are specialized ~~((medical))~~ equipment and supplies?

(1) Specialized ~~((medical))~~ equipment and supplies are durable and nondurable medical equipment, or equipment necessary to prevent institutionalization, not available through the medicaid state plan or are in excess of what is available through the medicaid state plan benefit which enables individuals:

(a) To increase their abilities to perform their activities of daily living;

(b) To perceive, control, or communicate with the environment in which they live; or

(c) On the IFS and CIIBS waiver only, to improve daily functioning through sensory integration when prescribed in a written therapeutic plan by the current treating professional.

(2) Specialized equipment and supplies are available in all DDA HCBS waivers.

(3) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500 respectively.

~~((3))~~ (4) Also included are items necessary for life support and ancillary supplies and equipment necessary to the

proper functioning of the equipment and supplies described in subsection (1) of this section.

~~((4))~~ (5) Specialized ~~((medical))~~ equipment and supplies include the maintenance and repair of specialized medical equipment not covered through the medicaid state plan.

~~((5) Specialized medical equipment and supplies are available in all DDA HCBS waivers.)~~

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies? (1) The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with DDA or ~~((have))~~ having a state contract as a Title XIX vendor~~((:))~~;

(2) ~~((For IFS only,))~~ A provider contracted with DDA as a goods and services shopper; or

(3) The provider of specialized medical equipment and supplies under WAC 388-845-1800 (1)(c) ~~((must))~~ may be contracted with DDA as a provider of specialized goods and services or specialized equipment and supplies for IFS and CIIBS waiver clients only.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1810 Are there limits to the specialized ~~((medical))~~ equipment and supplies you may receive? The following limits apply to the specialized ~~((medical))~~ equipment and supplies you may receive:

(1) Habilitative support needs for specialized ~~((medical))~~ equipment and supplies are limited to those identified in your DDA person-centered assessment and documented in your person-centered service plan.

(2) Specialized medical equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

(3) DDA may require a second opinion by a DDA-selected provider.

(4) Items must be of direct medical or remedial benefit to you and necessary as a result of your disability.

(5) Medications, personal hygiene products, supplements, and vitamins are excluded.

(6) The dollar amounts for aggregate services in your basic plus waiver limit the amount of service you may receive.

(7) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

(8) Items excluded from specialized equipment and supplies include nonspecialized recreational or exercise equipment, ~~((such as))~~ including but not limited to trampolines, treadmills, swing sets, and hot tubs.

(9) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(10) For a participant on the IFS or CIIBS waiver, specialized equipment and supplies are limited to those items needed to improve daily functioning through sensory integra-

tion. The item must be in a written therapeutic plan by the participant's current treating professional.

NEW SECTION

WAC 388-845-1870 What are specialized habilitation services? (1) Specialized habilitation services provide community-based and individualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in the category of self-empowerment, safety awareness, self-advocacy, interpersonal effectiveness, effective social communication, appropriate, coping strategies for everyday life changes, managing daily tasks, or adaptive skills.

(3) Specialized habilitation must promote inclusion in the community

(4) Specialized habilitation services are available on the basic plus, IFS, core and CIIBS waivers.

(5) Specialized habilitation, when authorized as a stabilization service, is available on all five HCBS waivers.

NEW SECTION

WAC 388-845-1880 Who are qualified providers of specialized habilitation services? To provide specialized habilitation services, a provider must be contracted with DDA for this service, have one year of experience working with people with a developmental or intellectual disability, and be one of the following licensed, registered, or certified professionals:

(1) Certified life skills coach;

(2) Individuals with bachelor's, master's, or doctoral degrees in social work, sociology, psychology, education; child development, gerontology, nursing or other related field; or

(3) In a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, gerontology, or nursing.

NEW SECTION

WAC 388-845-1890 Are there limits to the specialized habilitation services I may receive? The following limits apply to your receipt of specialized habilitation services:

(1) Specialized habilitation services are limited to address a maximum of three goals at a time.

(2) Support needs for specialized habilitation, and must be identified in your DDA assessment and documented in the person-centered service plan.

(3) Specialized habilitation services must not exceed:

(a) Four-thousand dollars of your basic plus aggregate funding;

(b) Your IFS annual allocation in combination with other waiver services;

(c) Fifteen thousand dollars within your total CIIBS aggregate budget and six thousand dollars emergency funding when eligible per WAC 388-845-0800 and 388-845-0820.

(4) Specialized habilitation services do not cover education, vocational, skills acquisition training through community first choice, behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medicaid state plan, including early and periodic screening, diagnosis, and treatment and part B special education services.

(5) Habilitation plans must be documented as formal plans as outlined in the provider's contract.

(6) Specialized habilitation services, not provided as a behavioral health stabilization service, require prior approval by the DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2000 What is staff and family consultation ((and training))? (1) Staff and family consultation ((and training)) is ((professional)) assistance, not covered by the medicaid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation ((and training)) is available in all DDA HCBS waivers.

(3) Staff and family consultation ((and training)) is consultation and guidance to a staff member or family member about one or more of the following:

(a) Health and medication monitoring to track and report to healthcare provider;

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) ((Positive behavior support)) Consultation with potential referral resources;

(e) Augmentative communication systems;

(f) Diet and ((nutrition)) nutritional guidance;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental ((safety)) consultation;

(j) Assistive technology safety; ((and))

(k) Consultation to an existing plan of care; and

(l) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2005 Who is a qualified provider of staff and family consultation ((and training))? To provide staff and family consultation and training, a provider must be contracted with DDA and be one of the following licensed, registered, or certified professionals:

(1) Audiologist;

(2) Licensed practical nurse;

(3) Marriage and family therapist;

(4) Mental health counselor;

(5) Occupational therapist;

(6) Physical therapist;

(7) Registered nurse;

(8) Sex offender treatment provider;

(9) Speech-language pathologist;

(10) Social worker;

(11) Psychologist;

(12) Certified American sign language instructor;

(13) Nutritionist;

(14) Counselors registered or certified in accordance with chapter 18.19 RCW;

(15) Certified dietician;

(16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;

(17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;

(18) Certified music therapist (for CIIBS only);

(19) Psychiatrist;

(20) Professional advocacy organization; or

(21) Teacher certified under chapter 181-79A WAC.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2010 Are there limits to the staff and family consultation ((and training)) you may receive? (1) Staff and family consultation and training are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

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

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

(4) Under the basic plus waiver, individual and family counseling is limited to family members who:

(a) Live with the participant; and

(b) Have been assaulted by the participant and the assaultive behavior was:

(i) Documented in the participant's person-centered service plan; and

(ii) Addressed in the participant's positive behavior support plan or therapeutic plan.

(5) Staff and family consultation and training does not provide training or consultation necessary to meet a provider's or staff's contractual licensing or certification requirements or to complete the necessary functions of their job.

NEW SECTION

WAC 388-845-2145 What are therapeutic adaptations? (1) Therapeutic adaptations are modifications to an existing room in the waiver participant's current home and are necessary to reduce or eliminate environmental sensory stressors, enable effective social support, or give a sense of control to the waiver participant in order for a therapeutic plan to be implemented.

(2) Therapeutic adaptations include on-time room modifications not related to physical accessibility such as:

- (a) Noise reduction or enhancement;
- (b) Lighting adjustment;
- (c) Wall softening;
- (d) Anchored and nonremovable tactile accents; or
- (e) Anchored and nonremovable visual accents.

NEW SECTION

WAC 388-845-2150 Who is a qualified provider of therapeutic adaptations? (1) A qualified provider of therapeutic adaptations is a person who is contracted with DDA and:

- (a) A registered contractor per chapter 18.27 RCW and licensed and bonded to perform the specific type of work they are providing; or
 - (b) A medical equipment supplier with a state contract as a Title XIX vendor.
- (2) A qualified provider of therapeutic adaptations may also be someone who is contracted with DDA as:
- (a) A purchasing goods and services contractor; or
 - (b) A CIIBS goods and services contractor.

NEW SECTION

WAC 388-845-2155 Are there limits to the therapeutic adaptations I may receive? The following limits apply to your receipt of therapeutic adaptations:

- (1) Therapeutic adaptations are limited to one adaptation request every five waiver years.
- (2) Funding is limited to the aggregate budget in the basic plus and IFS waiver or fifteen thousand dollars on the CIIBS waiver.
- (3) Modifications may not add square footage to the home or convert nonliving space into living space.
- (4) The department requires a written recommendation by a behavioral health provider, occupational therapist, or physical therapist within the waiver participant's current therapeutic plan.
- (5) Therapeutic adaptations are limited to items not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.
- (6) Therapeutic adaptations require prior approval by the DDA regional administrator or designee.
- (7) Therapeutic adaptations are limited to those identified in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-3070 What happens if you do not sign your person-centered service plan? (1) If you do not sign your initial person-centered service plan (PCSP), DDA must not provide waiver services to you until you sign the PCSP.

- (2) If you do not sign your PCSP and it is a reassessment or review, DDA will:
 - (a) Continue providing services identified in your current PCSP until the end of the notice period under WAC 388-825-105; and
 - (b) Return your PCSP to you for your signature.

(3) If you do not return your signed PCSP within two months of your reassessment or review, DDA (~~must~~) may terminate your services.

(4) Your appeal rights are under:

- (a) WAC 388-845-4000; and
- (b) WAC 388-825-120 through 388-825-165.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-845-0300 What are adult family home (AFH) services?
- WAC 388-845-0305 Who is a qualified provider of AFH services?
- WAC 388-845-0310 Are there limits to the AFH services I can receive?
- WAC 388-845-0400 What are adult residential care (ARC) services?
- WAC 388-845-0405 Who is a qualified provider of ARC services?
- WAC 388-845-0410 Are there limits to the ARC services I can receive?
- WAC 388-845-0700 What are community guide services?
- WAC 388-845-0705 Who may be a qualified provider of community guide services?
- WAC 388-845-0710 Are there limits to the community guide services I may receive?
- WAC 388-845-1300 What are personal care services?
- WAC 388-845-1305 Who are the qualified providers of personal care services?
- WAC 388-845-1310 Are there limits to the personal care services you can receive?
- WAC 388-845-1400 What are prevocational services?
- WAC 388-845-1405 Who are the qualified providers of prevocational services?
- WAC 388-845-1410 Are there limits to the prevocational services you may receive?
- WAC 388-845-1900 What are specialized psychiatric services?
- WAC 388-845-1905 Who are qualified providers of specialized psychiatric services?
- WAC 388-845-1910 Are there limitations to the specialized psychiatric services you can receive?
- WAC 388-845-2160 What is therapeutic equipment and supplies?
- WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?
- WAC 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies?

WSR 20-21-004
EMERGENCY RULES
DEPARTMENT OF LICENSING

[Filed October 8, 2020, 11:18 a.m., effective October 20, 2020]

Effective Date of Rule: October 20, 2020.

Purpose: The department of licensing (DOL) is refiling this emergency rule allowing employees of collection agencies the option to work remotely, and does not alter any requirements of the Collection Agency Act in regards to collection activity while permanent rule making is currently being done. DOL will file the CR-102 to propose the permanent adoption of these rules after final language has been drafted. Anticipated date is November 16, 2020. Once the CR-102 is filed, the comment period will begin. The department originally filed notice of permanent rule making within the emergency rule-making order under WSR 20-14-020.

Citation of Rules Affected by this Order: New WAC 308-29-085 Remote work requirements; and amending WAC 308-29-010 Definitions.

Statutory Authority for Adoption: RCW 19.16.351.

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: As per the governor's proclamations to keep Washington residents safe and healthy during the COVID-19 pandemic and consistent with other business and professions in this state that are able to perform work from home, this emergency rule is proposed with the intent to offer licensees the ability to take precautions deemed necessary to avoid the risk of exposure and support the return of commerce in all business sectors.

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 1, Amended 1, Repealed 0.

Date Adopted: October 8, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

WAC 308-29-010 Definitions. (1) Words and terms used in these rules have the same meaning as each has under

chapter 19.16 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(2) "Remote work" is the practice of working from home or other alternative location through the use of technology which allows the employee to access normal work material (email, telephone, electronic documents, etc.). Remote work may be scheduled or on an ad hoc basis.

(3) "Branch office" is any location physically separated from the principal place of business of a licensee where the licensee conducts any activity meeting the criteria of a collection agency or out-of-state collection agency as defined in RCW 19.16.100.

~~((3))~~ An employee of a licensee shall not be deemed a "collection agency" or a "branch office" as defined in RCW 19.16.100 (5)(a) and the employee need not have a license to perform collection activities on behalf of the collection agency, whether working in the collection agency office, or working remotely.

(4) "Repossession services" conducted by any person shall not be deemed a collection agency as defined in RCW 19.16.100, unless such person is repossessing or is attempting to repossess property for a third party and is authorized to accept cash or any other thing of value from the debtor in lieu of actual repossession.

~~((4))~~ (5) "Managing employee" is an individual who has the general power to exercise judgment and discretion in acting on behalf of the licensee on an overall or partial basis and who does not act in an inferior capacity under close supervision or direction of a superior authority (as distinguished from a nonmanaging employee who is told what to do and has no discretion about what he or she can and cannot do and who is responsible to an immediate superior).

NEW SECTION

WAC 308-29-085 Remote work requirements. Collection agencies that allow remote working must ensure that the following requirements are met:

(1) If the collection agency allows remote working, a record of which employees have been assigned to working remotely must be maintained and kept current.

(2) Remote working employees must comply with all applicable laws and regulations as outlined in chapters 19.16 and 18.235 RCW and chapter 308-29 WAC.

(3) Collection agencies and their employees must have a written IT security policy that outlines the security protocols in place safeguarding the company and customer data, information and electronic and physical records, to protect them against unauthorized or accidental access, use, modification, duplication, destruction or disclosure. Physical records must be stored and maintained at the business location and may not be stored at the remote working location.

(4) The IT security policy requirements must include provisions for the remote working employee to access the collection agency's secure system from any out-of-office device the employee uses through the use of a virtual private network "VPN" or other system that requires passwords, frequent password changes, identification authentication authorization, multifactor authentication, data encryption, and/or

account lockout implementation. The collection agency is responsible to maintain any updates or other requirements in order to keep information and devices secure.

(5) Collection agencies must record and monitor all calls initiated or received by their employees while employees are working remotely and must maintain copies of these recordings and make them available for inspection upon request.

(6) All calls must comply with RCW 19.16.250 (13)(c), (18), and (19).

(7) Neither the employee nor the collection agency shall conduct any activity that would indicate or tend to indicate the employee is performing collection agency business from an unlicensed location. Such acts include, but are not limited to:

(a) Advertising in any form, including business cards and social media, an unlicensed address or personal telephone or facsimile number associated to the unlicensed location;

(b) Meeting consumers at, or having consumers come, to an unlicensed location;

(c) Holding out in any manner, directly or indirectly, by the employee or collection agency, an address that would suggest or convey to a consumer that the location is a licensed collection agency or branch, including receiving official mail directly, or permanently storing books or records at the remote location.

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The reasons for this finding are to correct sturgeon retention in select areas, which was inadvertently left open in the filing WSR 20-20-131. Thus far, commercial fisheries have retained ninety-eight percent of the commercial sturgeon guideline and retention must be closed to remain within the allowable take. 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 actions of July 30, September 10, September 23, and October 6, 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, the 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.

WSR 20-21-005

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-224—Filed October 8, 2020, 1:46 p.m., effective October 8, 2020, 1:46 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 220-358-03000U; 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

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: October 8, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000V 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) Mainstem:

Open Dates	Open Days	Open Time	Open Duration
October 12	Monday (night)	7:00 p.m. - 7:00 a.m.	12 hrs
October 14	Wednesday (night)	7:00 p.m. - 7:00 a.m.	12 hrs
October 19	Monday (night)	7:00 p.m. - 7:00 a.m.	12 hrs
October 21	Wednesday (night)	7:00 p.m. - 7:00 a.m.	12 hrs

(i) **Area:** SMCRA 1D and 1E. The deadline at the lower end of SMRCA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy Rivers.

(ii) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. Multiple net rule in effect, which means nets not specifically authorized for the fishery may be onboard the 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. Lighted buoys required.

(iii) **Allowable Sales:** Salmon (except chum) and shad. Sturgeon may not be possessed or sold.

Open Dates	Open Days	Open Time	Open Duration
October 9	Friday	5:00 a.m. - 6:00 p.m.	13 hrs
October 12	Monday	5:00 a.m. - 6:00 p.m.	13 hrs
October 14	Wednesday	5:00 a.m. - 6:00 p.m.	13 hrs
October 16	Friday	5:00 a.m. - 6:00 p.m.	13 hrs
October 19	Monday	5:00 a.m. - 6:00 p.m.	13 hrs

Open Dates	Open Days	Open Time	Open Duration
October 21	Wednesday	5:00 a.m. - 6:00 p.m.	13 hrs
October 23	Friday	5:00 a.m. - 6:00 p.m.	13 hrs

(i) **Area:** SMCRA 1A, 1B, and 1C. Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries include Elokomin-A, Cowlitz River, Kalama-A and Lewis-A.

(ii) **Gear:** Drift gillnets only. Maximum mesh size is 3.75 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(iii) **Allowable Sales:** Salmon (except chum) and shad; all coho must be adipose fin-clipped. Sturgeon may not be possessed or sold.

(c) **Regulations:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(d) **Soak times,** defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 30 minutes.

(e) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(f) **Measuring mesh size:** Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the outside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

(g) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(h) **Multiple net rule in effect:** Nets not specifically authorized for use in this fishery may be onboard the 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.

(i) **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

(j) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(2) Tongue Point/South Channel Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 30	Monday, Tuesday, Wednesday, Thursday (night)	4:00 p.m. - 10:00 a.m.	18 hrs

(a) Area:

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island north-easterly 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:

(A) 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.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting 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 projecting easterly to a regulatory marker on Lois Island.

(ii) The South Channel 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.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not

exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

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. Nets not specifically authorized for use 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. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum), shad. Sturgeon may not be possessed or sold.

(3) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 30	Monday, Tuesday, Wednesday, Thursday (night)	6:00 p.m. - 10:00 a.m.	18 hrs

(a) **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.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

Nets not specifically authorized for use 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. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **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 appropri-

ate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad. Sturgeon may not be possessed or sold.

(4) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 29	Monday, Wednesday (night)	6:00 p.m. - 9:00 a.m.	15 hrs
November 2 - December 3	Monday, Wednesday (night)	5:00 p.m. - 8:00 a.m.	15 hrs

(a) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the 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. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **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.

(d) **Allowable Sales:** Salmon (except Chum), shad. Sturgeon may not be possessed or sold.

(5) **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.

(6) **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)).

(7) **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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000U Columbia River seasons below Bonneville Dam. (20-222)

**WSR 20-21-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-226—Filed October 9, 2020, 11:55 a.m., effective October 9, 2020, 11:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open coho retention in the Palix River, from the mouth to the confluence of the Middle Fork.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000D and 220-312-02000E; and amending WAC 220-312-020.

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

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

Reasons for this Finding: This emergency rule is needed to open the retention of coho in the Palix River. Other freshwater recreational fisheries within Willapa Bay opened for coho retention October 3, 2020. The department inadvertently left the Palix River out of that filing (WSR 20-20-084) but intended to open it for coho retention.

The marine fisheries are currently still within the pre-season predicted number of unmarked Chinook salmon impacts to attain the conservation objective of a fourteen percent

impact rate cap to natural origin Willapa River and Naselle River Chinook salmon. The harvest of coho, both hatchery and natural origin, in the commercial fishery has far exceeded preseason predictions. The department utilizes a modeling tool to evaluate the runsize of coho in-season that is based on the catch per unit effort of the commercial fisheries. This in-season update model (ISU) has been applied in the last few years and it becomes statistically significant in statistical week thirty-eight (mid-September). The significance improves as more data are added through time. Currently, we are in statistical week forty (Sept. 27-Oct. 3, 2020) and the ISU model is predicting a natural origin coho runsize between 47,731 to 56,265 fish. This prediction is much higher than the preseason forecasted runsize of 16,074 natural origin coho. The department also utilizes a model to plan fisheries preseason, the Willapa Bay Terminal Area Management Model (TAMM). This model will estimate catch, impacts, escapements, and harvest rates for each fishery by species. Adding the predicted coho natural origin runsize from the ISU to the TAMM finalized from our 2020 North of Falcon process, the TAMM model predicts a natural origin coho escapement of 39,487 fish. This is 25,887 fish above the escapement goal of 13,600 for natural origin coho.

Early indications from the ISU and TAMM models suggests the preseason management objectives would still be attained for all three species; Chinook salmon (fourteen percent impact rate cap), coho (13,600 natural origin spawners), and chum (ten percent impact rate cap).

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 9, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000E Freshwater exceptions to statewide rules—Coast. Effective immediately through January 31, 2020 the following provisions of WAC 220-312-020, regarding salmon seasons for Willapa Bay tributaries shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, remain in effect:

(1) Bear River - from mouth (Hwy 101 Bridge) to Lime Quarry Road (approx. 2 river miles) - Open for salmon

immediately through January 31, 2021. Min. size 12". Daily limit 1. Release wild Chinook.

(2) Fork Creek - from Forks Creek Hatchery rack upstream 500' at fishing boundary sign - Open for salmon immediately through January 31, 2021. Min. size. 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

(3) Naselle River - from the Hwy 101 Bridge to the Hwy 4 Bridge - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

(4) Naselle River - from the Hwy 4 Bridge to the Crown Mainline (Salme) Bridge - Open to salmon immediately through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

(5) Nemah River, Middle - from mouth upstream to the Department of Natural Resources decommissioned bridge on Middle Nemah A-Line Rd. - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 1. Release Chinook.

(6) Nemah River, North - from Hwy 101 Bridge upstream to bridge on Nemah Valley Road - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 1. Release Chinook.

(7) Nemah River, North - from Nemah Hatchery barrier dam to N700 Rd (46°28.58N, 123°48.54W) - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 1. Release Chinook.

(8) Nemah River, South - from mouth (Lynn Point 117° true to opposite shore) upstream - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 1. Release Chinook. 9. North River - from the Hwy 105 Bridge to Fall River - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 1. Release wild Chinook.

(9) Palix River - from Hwy. 101 Bridge to the mouth of the Middle Fork - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 1. Release wild Chinook. Single point barbless hooks required. Night closure.

(10) Smith Creek - from mouth to Hwy 101 Bridge - Open for salmon immediately through December 31, 2020. Min. size 12". Daily limit 1. Release wild Chinook.

(11) Willapa River - from mouth (City of South Bend boat launch) to Hwy 6 Bridge (near the town of Lebam) - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

(12) Willapa River, South Fork - from mouth to 400' downstream of falls/fish ladder in Sec. 6 T13N R8W - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

(13) Willapa River, South Fork - from falls/fish ladder in Sec. 6 T13N R8W to Pehl Rd. Bridge - Open for salmon immediately through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

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

REPEALER

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

WAC 220-312-02000D Freshwater exceptions to statewide rules—Coast.

The following section of the Washington Administrative Code is repealed, effective February 1, 2021:

WAC 220-312-02000E Freshwater exceptions to statewide rules—Coast. (20-217)

WSR 20-21-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-227—Filed October 9, 2020, 1:53 p.m., effective October 10, 2020]

Effective Date of Rule: October 10, 2020.

Purpose: The purpose of this emergency rule is to open recreational crab seasons in Marine Areas 8-1 and 8-2.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000R and 220-330-04000S; and amending WAC 220-330-040.

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

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

Reasons for this Finding: This rule will open Marine Areas 8-1 and 8-2 to recreational crabbing based on the updated recreational crab summer estimates generated on October 5, 2020. Sufficient numbers of crab exist in these areas to allow for a recreational harvest season. The other areas listed in the regulation have been open for recreational crabbing since October 1, 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 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 9, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000S Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective on October 10, 2020 through December 31, 2020, Puget Sound recreational crab seasons are as listed below. All other provisions of WAC 220-330-040 not addressed herein remain in effect unless otherwise amended by emergency rule:

It is permissible to crab for personal use in the following Marine Areas: 4 East of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, and 12 north of a line projected due east from Ayock point.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 10, 2020:

WAC 220-330-04000R Crab—Areas and seasons—Personal use.

The following section of the Washington Administrative Code is repealed effective January 1, 2021:

WAC 220-330-04000S Crab—Areas and seasons—Personal use.

WSR 20-21-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-225—Filed October 9, 2020, 2:39 p.m., effective October 13, 2020]

Effective Date of Rule: October 13, 2020.

Purpose: The purpose of this emergency rule is close commercial gillnet and purse seine fisheries in Salmon Management and Catch Reporting Areas 10, 11, 12, and 12B for opening scheduled between October 13 and 15, 2020. This rule also corrects a preseason scheduling mistake by closing fisheries in 7 and 7A on October 10, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-354-16000F and 220-354-12000W; and amending WAC 220-354-160 and 220-354-120.

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 adjust commercial gillnet and purse seine salmon fisheries

in Puget Sound Salmon Management and Catch Reporting Areas 10, 11, 12, 12B.

This rule also closes commercial gillnet and purse seine fisheries scheduled for October 10, 2020, in Areas 7 and 7A to correct a scheduling mistake in the preseason plan.

2020 Preseason forecasts for chum salmon returning to Puget Sound are lower than in the recent past. The 2019 return of fall chum salmon was much lower than forecast and many places did not reach spawning escapement goals. Fishery openings planned in Area 10 and 11 are contingent on a test fishery based run-size update that predicts sufficient harvestable surplus, and in-season agreement from tribal comanagers as agreed to in the 2020-21 list of agreed-to fisheries. The Areas 12 and 12B chum fishery was scheduled to open on October 13 for gillnet fishing and October 15 for purse seine fishing. After meeting with fisherman and commercial fishing representatives, Washington department of fish and wildlife made the decision to not open planned fisheries on the scheduled dates to focus fishing opportunities on the historical peak of the fall chum return in later weeks. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 9, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000F Puget Sound salmon—Gillnet—Open periods. Effective October 13 through October 14, 2020 the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Salmon Management and Catch Reporting Areas 10, 11, 12, and 12B shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/ Closed	Time	Date	Mesh Size
7,7A:	Closed	7AM - Midnight	10/10	
10, 11:	Closed	5PM - 9AM	Nightly 10/13	
12, 12B:	Closed	7AM - 8PM	10/13	

NEW SECTION

WAC 220-354-12000W Puget Sound salmon—Purse seine—Open periods. Effective the day of October 15, 2020 the following provisions of WAC 220-354-120 regarding commercial purse seine open periods for Salmon Management and Catch Reporting Areas 10, 11, 12, and 12B shall be as described below. All other provisions of WAC 220-354-120 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/ Closed	Time	Date
7, 7A:	Closed	7AM - 6PM	10/10
10, 11 12 12B:	Closed	7AM - 6PM	10/15

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

REPEALER

The following section of the Washington Administrative Code is repealed effective October 15, 2020:

WAC 220-354-16000F Puget Sound salmon—Gillnet—Open periods.

The following section of the Washington Administrative Code is repealed effective October 16, 2020:

WAC 220-354-12000W Puget Sound salmon—Purse seine—Open periods.

WSR 20-21-035

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Board of Nursing Home Administrators)

[Filed October 12, 2020, 11:48 a.m., effective October 12, 2020, 11:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-843-130 Continuing education requirements for nursing home administrators, the board of nursing home administrators (board) is adopting an emergency rule to allow continuing education credit for pandemic related training and experience. While this change includes training and experience related to coronavirus disease 2019 (COVID-19) it also allows for other pandemic related trainings. This change will also, for a limited time, allow nursing home administrators to attest to such trainings acquired under self-study methods if proof of course completion isn't otherwise provided.

The board is adopting this rule to allow licensees to continue to perform their job of protecting residents and focus on the immediate patient needs during the COVID-19 response, which continues to be overwhelming for many nursing homes and long term care facilities. The rules need to be put into effect now to allow administrators who are currently affected by the COVID-19 pandemic to encourage more training for licensees in the subject and to assist in avoiding a lapse in licensing, which would adversely affect residents.

Citation of Rules Affected by this Order: Amending WAC 246-843-130.

Statutory Authority for Adoption: RCW 18.52.061.

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 the existing rule is necessary for the preservation of public health, safety, and general welfare. It is essential that nursing home administrators be able to continue to perform vital work within the nursing home setting, both during the initial COVID-19 response and during the ongoing pandemic. Nursing home administrators are already working overtime to learn and implement new additional state and federal regulatory requirements. They must write and adopt new policies, and adopt new treatment measures to help residents and health care personnel assure [ensure] the safety and well-being of nursing home residents. Allowing nursing home administrators to apply towards continuing education the training and learning acquired in responding to the pandemic in the long-term care environment will allow them to continue to be licensed through these earned credits and to continue to protect residents.

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: October 12, 2020.

Ann Zell, Chair
Board of Nursing Home Administrators

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

WAC 246-843-130 Continuing education requirements. (1) A licensed nursing home administrator shall demonstrate completion of thirty-six hours of continuing education every two years and comply with chapter 246-12 WAC, Part 7.

(2) Continuing education approved by the National Continuing Education Review Service (NCERS) is acceptable for continuing education credit.

(3) Continuing education that is not approved by NCERS must meet the following requirements:

(a) The basic methods of continuing education learning are:

- (i) Seminars;
- (ii) Teleconferencing;
- (iii) Webinars; and
- (iv) Self-study programs.

(b) Continuing education courses shall consist of a minimum of one hour of instruction. Hours are based upon clock hours and are calculated in half hour increments. College courses are rated at fifteen hours per each semester unit and ten hours per each quarter credit.

(c) Continuing education must relate to nursing home administration, be designed to promote continued knowledge and skills with nursing home administration standards, and improve and enhance professional competencies. Continuing education must fit within the following subjects:

- (i) Resident centered care;
- (ii) Human resources;
- (iii) Finance;
- (iv) Environment;
- (v) Leadership and management;
- (vi) Suicide prevention;
- (vii) Cultural competency training;
- (viii) Laws relating to Washington state nursing homes;
- (ix) Pandemic response and compliance measures.

Examples include, but are not limited to, infections control measures, resident engagement, personal protective equipment procurement and training, emergency staffing, writing and updating policies and procedures pertaining to pandemic management, and other pandemic-related training.

(d) The licensee shall retain proof of course completion. To receive full credit, attendees shall attend the full program. The maximum number of hours allowed for continuing education is twelve hours per day.

(e) Until December 31, 2022, licensees due to demonstrate completion of continuing education may accrue up to thirty-six of those hours in pandemic response and compliance measure subjects described in (c)(ix) of this subsection. During this time, if proof of course completion is not provided for pandemic response and compliance measure courses earned under self-study programs as allowed under (a)(iv) of this subsection, the licensee may sign an attestation on a form provided by the department.

(4) Continuing education credit of two hours per month may be granted to a preceptor of an administrator-in-training program.

(5) Continuing education credit of a maximum of two hours per month may be granted for serving as a board member for the board of nursing home administrators.

(6) Within one hundred eighty days after becoming licensed, a nursing home administrator shall attend a board approved course on laws relating to nursing homes in Washington. The board will grant retroactive credit to those licensees who obtain the required training as administrators-in-training under WAC 246-843-090. The state law training course consists of a minimum of a six-hour program, with formal training objectives, that covers the requirements of chapter 18.52 RCW and essential areas of laws that apply to nursing homes regulated by the department of social and health services under chapter 388-97 WAC to include:

- (a) Resident services, medical and social;
- (b) Resident rights, including resident decision making, informed consent, advance directives and notices to residents;
- (c) Enforcement;
- (d) Criminal history inquiries;
- (e) Differences between federal and state law.

WSR 20-21-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-229—Filed October 12, 2020, 2:45 p.m., effective October 12, 2020, 2:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes the commercial harvest of sea cucumbers in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000W.

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 necessary to close the Puget Sound sea cucumber fishery. The harvest quota has been reached in all sea cucumber districts. 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 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: October 12, 2020.

Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-73000W Commercial sea cucumber fishery.
(20-184)

WSR 20-21-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-230—Filed October 13, 2020, 4:10 p.m., effective October 13, 2020, 4:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule closes commercial crab harvest in Region 3-1 on October 16, 2020, at 8:00 p.m. due to the planned attainment of quota.

In addition, this regulation includes previous emergency regulation amendments:

1. Closes region 2E to commercial crab harvest;
2. Defines the Puget Sound Crab Management Areas and Regions open to commercial harvest;
3. Sets the harvest and gear limitations for the Puget Sound crab fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500J; 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: There is insufficient allocation remaining in Region 3-1 to accommodate sustained commercial harvest past October 16, 2020. There is insufficient allocation to accommodate state commercial harvest in Region 2E. There is sufficient allocation available in Regions 1, 2 West, 3-2, and 3-3 to accommodate continued state commercial harvest. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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: October 13, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500K Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-450:

(1) Effective immediately and until October 16, 2020 at 7:59 p.m., it is permissible to harvest Dungeness crab for commercial purposes in Crab Management Region 3-1.

(2) Effective October 16, 2020 at 8:00 p.m. and until further notice, it is illegal to harvest Dungeness crab for commercial purposes in Crab Management Region 3-1.

(3) Effective immediately and until further notice, it is illegal to harvest Dungeness crab for commercial purposes in Crab Management Region 2 East.

(4) Effective immediately and until further notice, it is permissible to harvest Dungeness crab for commercial purposes in Crab Management Regions 1, 2 West, 3-2, and 3-3.

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

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

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

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

(6) Effective immediately and until further notice, until further notice, it is permissible to harvest Dungeness crab for commercial purposes in the following areas in Region 2 West:

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

(7) Effective immediately and until further notice, it is illegal to harvest Dungeness crab for commercial purposes in the following areas in Region 2 East:

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

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends

true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

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

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

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

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

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(9) Effective immediately and until October 16, 2020 at 7:59 p.m., it is unlawful for any person to harvest crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-1.

(10) Effective October 16, 2020 at 8:00 p.m. and until further notice, it is illegal to deploy Dungeness crab pots for commercial purposes in Crab Management Area 3-1.

(11) Effective immediately and until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Region 1.

(12) Effective immediately and until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 2 West, 3-2, or 3-3.

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

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-45500J Commercial crab fishery—Seasons and areas—Puget Sound. (20-213)

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 20-21-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-228—Filed October 13, 2020, 4:16 p.m., effective October 16, 2020]

Effective Date of Rule: October 16, 2020.

Purpose: The purpose of this emergency rule is open razor clam seasons at Long Beach, Twin Harbor, Copalis, and Mocrocks beaches.

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

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

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

Reasons for this Finding: This emergency rule is needed to open recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5 for recreational harvest. Washington department of health (DOH) has certified clams from these beaches to be safe for human consumption. Washington department of fish and wildlife (WDFW) has coordinated with coastal city and county leaders, the Grays Harbor and Pacific county health departments and the Washington DOH regarding the possibility that a high number of harvesters traveling to coastal communities could exacerbate the COVID-19 pandemic in [the] area. These agency leaders have reached agreement to allow a reopening of coastal beaches to the recreational harvest of razor clams. WDFW surveys show that due to significant shoreline changes, the Twin Harbor Razor Clam Sanctuary is no longer adequate for experimental purposes and is removed from the list of sanctuaries closed to digging. 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: October 13, 2020.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. October 16, 2020 through 11:59 p.m. October 21, 2020, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. October 16, 2020 through 11:59 p.m. October 21, 2020, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. October 16, 2020 through 11:59 p.m. October 16, 2020, and effective 12:01 p.m. October 18, 2020 through 11:59 p.m. October 18, 2020, and effective 12:01 p.m. October 20, 2020 through 11:59 p.m. October 20, 2020, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. October 17, 2020 through 11:59 p.m. October 17, 2020, and effective 12:01 p.m. October 19, 2020 through 11:59 p.m. October 19, 2020, and effective 12:01 p.m. October 21, 2020 through 11:59 p.m. October 21, 2020, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

(6) Twin Harbors Beach razor clam sanctuary, as defined in WAC 220-320-130, is open to razor clam digging when it is permissible to dig razor clams in Razor Clam Area 3.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 22, 2020.

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

WSR 20-21-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-231—Filed October 14, 2020, 4:30 p.m., effective October 15, 2020]

Effective Date of Rule: October 15, 2020.

Purpose: The purpose of this emergency rule is to extend coho salmon seasons in the Skagit River through December 31, 2020. This rule will also close the Skagit River to recreational fishing from the Hwy. 9 Bridge to the Baker River, October 15 and 16, 2020.

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

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

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

Reasons for this Finding: This rule is necessary to allow retention of two hatchery coho in addition to the daily salmon limit of 2 fish through December 31, 2020, and to close a portion of the Skagit River to avoid gear conflicts with tribal fishers October 15 and 16, 2020. The coho return is sufficient to allow for this extension of the increased hatchery coho daily limit. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 14, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound. Effective October 15 through December 31, 2020 the following provisions of WAC 220-312-040 regarding salmon seasons for the Skagit River from the mouth to the Cascade River Road Bridge, shall be as described below, except from October 15 through October 16, 2020, all species from Highway 9 Bridge to the mouth of the Baker River will be closed. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Skagit River (Skagit Co.):

(1) From the mouth to Highway 9 Bridge: Salmon daily limit 2, plus 2 additional hatchery coho may be retained. Release Chinook and chum.

(2) From Highway 9 Bridge to the mouth of the Baker River:

(a) October 15 through October 16, 2020: All species: Closed.

(b) October 17 through December 31, 2020: Salmon daily limit 2, plus 2 additional hatchery coho may be retained. Release Chinook and chum.

(3) From the mouth of the Baker River to the Cascade River Road Bridge (Marblemount Bridge): Salmon daily limit 2, plus 2 additional hatchery coho may be retained. Release Chinook and chum.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 15, 2020:

WAC 220-312-04000V Freshwater exceptions to statewide rules—Puget Sound. (20-223)

The following section of the Washington Administrative Code is repealed effective January 1, 2021:

WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound. (20-231)

WSR 20-21-062 EMERGENCY RULES DEPARTMENT OF HEALTH

[Filed October 15, 2020, 10:09 a.m., effective October 15, 2020, 10:09 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-338-020 and 246-338-026, medical test site licensure and notification requirements, the department of health (department) is adopting an emergency rule to amend WAC 246-338-026 mandating reporting of test results intended to detect SARS-CoV-2 or diagnose a possible case of the coronavirus disease 2019 (COVID-19) in alignment with the federal changes published in 85 F.R. 54820. WAC 246-338-020 is amended to add language referencing the new subsection in WAC 246-338-026. These changes will allow the new reporting, inspection, and fining processes in compliance with the new federal requirements which will ensure the current Clinical Laboratory Improvement Amendments (CLIA) exempt status is not threatened and will respond to the current public health emergency created by the COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 246-338-020 and 246-338-026.

Statutory Authority for Adoption: RCW 70.42.060.

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: This emergency rule updates Washington rule to align with the recently updated federal requirements published in 85 F.R. 54820 which include new reporting and inspection requirements and fines for nonreporting. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and federal compliance requirements which could threaten the current CLIA exempt status. The department will begin a permanent rule-making process following these emergency rules as soon as the COVID-19 response allows.

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

Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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 2, Repealed 0.

Date Adopted: October 14, 2020.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 02-12-105, filed 6/5/02, effective 7/6/02)

WAC 246-338-020 Licensure—Types of medical test site licenses. After July 1, 1990, any person advertising, operating, managing, owning, conducting, opening, or maintaining a medical test site must first obtain a license from the department. License types are described in Table 020-1.

(1) Certificate of waiver.

Applicable if the medical test site performs only the tests classified as waived.

(2) Provider performed microscopic procedures (PPMP).

Applicable if the medical test site restricts its testing performance to one or more of the following moderate complexity tests performed by one of the licensed professionals listed, in conjunction with a patient's visit. In addition, the medical test site can perform tests classified as waived with this type of license.

(a) PPMP may be performed only by one of the following licensed professionals:

(i) Physician licensed under chapter 18.71 RCW, Physicians; chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery; or chapter 18.22 RCW, Podiatric medicine and surgery;

(ii) Advanced registered nurse practitioner, licensed under chapter 18.79 RCW, Nursing care;

(iii) Midwife licensed under chapter 18.50 RCW, Midwifery;

(iv) Physician assistant licensed under chapter 18.71A RCW, Physician assistants;

(v) Naturopath licensed under chapter 18.36A RCW, Naturopathy; or

(vi) Dentist licensed under chapter 18.32 RCW, Dentistry.

(b) Microscopic procedures authorized under a PPMP license are:

(i) All direct wet mount preparations for the presence or absence of bacteria, fungi, parasites, and human cellular elements;

(ii) All potassium hydroxide (KOH) preparations;

(iii) Pinworm examinations;

(iv) Fern tests;

(v) Postcoital direct, qualitative examinations of vaginal or cervical mucous;

(vi) Urine sediment examinations;

(vii) Nasal smears for granulocytes;

(viii) Fecal leukocyte examinations;

(ix) Qualitative semen analysis (limited to the presence or absence of sperm and detection of motility); and

(x) Any other tests subsequently categorized under CLIA as provider-performed microscopy procedures.

(3) Moderate/high complexity.

(a) **Low volume, Category A-J**, as described in Table 990-1.

Applicable if the medical test site performs any tests that are not classified as waived or qualified as PPMP under subsection (2) of this section. Under this type of license, the medical test site may also perform tests classified as waived.

(b) **Accredited: Low volume, Category A-J**, as described in Table 990-1.

Applicable if the medical test site performs any tests that are not classified as waived, and is accredited and inspected by an accreditation organization approved by the department under WAC 246-338-040. Under this type of license, the medical test site may also perform tests classified as waived.

020-1 Table of Requirements for Each License Type

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(1) Certificate of Waiver	<ul style="list-style-type: none"> Restrict testing to tests classified as waived. Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections. 	<ul style="list-style-type: none"> Complaint Technical assistance As required to assess compliance with WAC 246-338-026(7) 	<ul style="list-style-type: none"> When indicated

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(2) PPMP	<ul style="list-style-type: none"> Follow manufacturers' instructions for performing the test. Restrict testing to tests classified as PPMP or waived. Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. Follow manufacturers' instructions for performing the test. 	<ul style="list-style-type: none"> Complaint Technical assistance <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> When indicated
(3) Moderate/High Complexity			
(a) Low Volume, Category A-J	<ul style="list-style-type: none"> Perform tests classified as moderate or high complexity. Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. Follow manufacturers' instructions for performing test. 	<ul style="list-style-type: none"> Initial Routine Complaint On-site follow-up Technical assistance <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> First 6 months of license Every 2 years When indicated When indicated When indicated
(b) Accredited: Low Volume,	<ul style="list-style-type: none"> Perform tests classified as moderate or high complexity. 	<ul style="list-style-type: none"> Validation 	<ul style="list-style-type: none"> 2.5% of accredited sites annually

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
Category A-J	<ul style="list-style-type: none"> • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing the test. • Submit to the department upon request, or authorize the accreditation organization to submit: • Proof of accreditation; • On-site inspection results; • Statement of deficiencies; • Plan of correction for the deficiencies cited; • Any disciplinary action and results of any disciplinary action taken by the accreditation organization against the medical test site. 	<ul style="list-style-type: none"> • Complaint • On-site follow-up • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • When indicated • When indicated • When indicated

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

WAC 246-338-026 Notification requirements. (1)

The owner must notify the department in writing at least thirty days prior to the date of opening or closing the medical test site.

(2) The owner must notify the department in writing within thirty days of any changes in:

- (a) Name of site;
- (b) Director;
- (c) Location of site;
- (d) Tests, specialties, and subspecialties; and
- (e) Test methodologies.

(3) Proposed change of ownership. Transfer or reassignment of a license is prohibited without the department's approval, and must be initiated by the current owner sending a written notice to the department thirty days prior to transfer.

(a) The current owner of a medical test site must notify the department, in writing at least thirty days prior to the change and provide the following information:

- (i) Name, address, and federal tax ID number of the medical test site;
- (ii) Full name, address, and location of the current owner and prospective new owner; and
- (iii) The date of the proposed change of ownership.

(b) The prospective new owner must submit the following information at least thirty days prior to the change of ownership:

- (i) New name and federal tax ID number of the medical test site;
- (ii) Changes in technical personnel and supervisors;
- (iii) Any changes in tests, specialties, and subspecialties; and
- (iv) Other information as requested by the department.

(4) The medical test site must authorize an approved accreditation organization to notify the department of the test site's compliance with the standards of the accreditation organization.

(5) The owner of an accredited license must notify the department in writing within thirty days of the medical test site having its accreditation denied or terminated by the accreditation organization or voluntarily dropping its accreditation status.

(6) The owner must notify the department in writing within thirty days of any convictions of fraud and abuse, false billing, or kickbacks under state or federal law.

(7) During the public health emergency, as defined in 42 C.F.R. 400.200, each medical test site that performs a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19 must report SARS-CoV-2 test results to HHS in such form and manner, and at such timing

Kelly Susewind
Director

and frequency, as the department may prescribe. For the purposes of this subsection, "SARS-CoV-2 test" means any test that is intended to detect SARS-CoV-2 or diagnose a possible case of COVID-19.

**WSR 20-21-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-232—Filed October 15, 2020, 5:15 p.m., effective October 18, 2020]

Effective Date of Rule: October 18, 2020.

Purpose: The purpose of this emergency rule is to close commercial gillnet and purse seine fisheries in Salmon Management and Catch Reporting Areas 10 and 11 for opening previously scheduled between October 18 and 23, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-354-16000G and 220-354-12000X; and amending WAC 220-354-160 and 220-354-120.

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 adjust commercial gillnet and purse seine salmon fisheries in Puget Sound Salmon Management and Catch Reporting Areas 10, 11.

2020 preseason forecasts for chum salmon returning to Puget Sound are lower than in the recent past. The 2019 return of fall chum salmon was much lower than forecast and many places did not reach spawning escapement goals. Fishery openings planned in Areas 10 and 11 are contingent on a test fishery-based run-size update that predicts sufficient harvestable surplus, and in-season agreement from tribal comanagers as agreed to in the 2020-21 List of Agreed to Fisheries (LOAF). There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 15, 2020.

NEW SECTION

WAC 220-354-16000G Puget Sound salmon—Gillnet—Open periods. Effective October 18 through October 19 and October 22 through October 23, 2020 the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Salmon Management and Catch Reporting Areas 10, 11 shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date	Mesh Size
10, 11:	Closed	5 PM - 9 AM	Nightly 10/18, 10/22	

NEW SECTION

WAC 220-354-12000X Puget Sound salmon—Purse seine—Open periods. Effective the day of October 20, 2020 the following provisions of WAC 220-354-120 regarding commercial purse seine open periods for Salmon Management and Catch Reporting Areas 10, 11 shall be as described below. All other provisions of WAC 220-354-120 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date
10, 11	Closed	7 AM - 6 PM	10/20

REPEALER

The following section of the Washington Administrative Code is repealed effective October 24, 2020:

WAC 220-354-16000G Puget Sound salmon—Gillnet—Open periods.

The following section of the Washington Administrative Code is repealed effective October 21, 2020:

WAC 220-354-12000X Puget Sound salmon—Purse seine—Open periods.

**WSR 20-21-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-234—Filed October 19, 2020, 4:58 p.m., effective October 19, 2020, 4:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Puget Sound commercial sea urchin fishery.

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

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

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

Reasons for this Finding: This emergency rule closes harvest of green sea urchins in Marine Fish-Shellfish Management and Catch Reporting Areas 23B, 25A, 25B of District 2 because the quota for green sea urchin in these areas has been reached. This closure is needed to fulfill obligations of state and tribal comanager agreements. 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: October 19, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000Y Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, effective immediately, until further notice:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1; District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A; District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude; District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude; District 6; and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5

minutes north latitude, and thence projected true east to the shoreline of Fox Island.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000X Commercial sea urchin fisheries
(20-207)

WSR 20-21-086

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 20, 2020, 8:27 a.m., effective October 21, 2020]

Effective Date of Rule: October 21, 2020.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] 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.

(1) The federal rules related to quality assurance activities were amended to narrow the scope of the quality assurance program to reviewing and taking action on adverse events and infection control. Current state rules require the nursing facility to identify issues that may adversely affect residents, including resident input from grievances. The state amendment continues to require quality assurance activities, but mandatory review in quality assurance would be limited to adverse events and infection control.

(2) The federal rules suspended fire drills to reduce grouping of staff and residents that might increase the likelihood of transmitting COVID-19. Current state rules require periodic fire drills. The state amendment removes the requirement to have fire drills, but continues to require staff training on the fire plan.

(3) The federal rules requiring a window in each resident room were waived to permit use of space not normally used for resident care to be utilized as a resident room. Current state rules require each resident room have a transparent glass window located on an exterior wall, with additional size and location requirements for new construction. The state amendment removes the requirement to have a window in each resident room.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-21-034 on October 12, 2020, to begin the permanent rule-making process.

Citation of Rules Affected by this Order: Amending WAC 388-97-1740, 388-97-1760, and 388-97-2400.

Statutory Authority for Adoption: RCW 74.42.620, 18.51.070.

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

Reasons for this Finding: The 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.

Fire drills (WAC 388-97-1740): Recent federal waivers suspended the requirement for nursing facilities to conduct fire drills. The majority of the rules around fire drills are in the federal Life Safety Code, and under the jurisdiction of the office of the state fire marshal. Nursing home rules also contain language requiring periodic drills. Amendment of WAC 388-97-1740 will remove the requirement for conducting periodic fire drills, but does not remove the requirement to have an emergency plan that includes fire procedures and staff training on that plan.

Quality assessment and assurance (WAC 388-97-1760): Current nursing home rules require facilities to maintain a process for quality assurance that seeks out and incorporates input from resident and family groups, and individual residents. The rule also requires review of grievances and expressed concerns. The amended rule requires facilities to seek out and incorporate resident and resident representative input, but removes the reference to resident or family groups, as those groups are not currently permitted to meet. The amendment also sets a standard that, at a minimum, requires review of adverse events and infection control. These changes permit facilities to focus quality assurance efforts on issues that will assist them in managing COVID-19, and will align the state rule with federal waivers related to quality assurance.

Windows in resident rooms (WAC 388-97-2400): Current state nursing home rules require each resident room have a transparent glass window on an exterior wall. Federal rules also require a resident sleeping room to have a window. The federal rules were recently waived to accommodate facilities wanting to increase room capacity, and need to utilize spaces not normally used as a resident room as a resident room. Amendment of WAC 388-97-2400 removes the requirement to have a window in each resident room to align the state rule with the recently waived federal rule. This will provide nursing facilities with additional flexibility in redesigning their space to accommodate additional residents.

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 3, Repealed 0.

Date Adopted: October 13, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1740 Disaster and emergency preparedness. (1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, and periodically review emergency procedures with existing staff (~~and carry out unannounced staff drills using those procedures~~).

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1760 Quality assessment and assurance. (1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

- (a) Seeks out and incorporates input from the ~~((resident and family councils, if any, or individual))~~ residents and ~~((support groups))~~ resident representatives; and

(b) At a minimum, reviews ((expressed concerns and grievances)) adverse events and infection control.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2400 Resident rooms. (1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor; and

(b) ~~((Is located on an exterior wall with a transparent glass window; and~~

~~(c)))~~ Is located to prevent through traffic.

(2) In a new building or addition, unless otherwise necessary for infection control, each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least one-tenth of the bedroom usable floor area;

(ii) Located twenty-four feet or more from another building or the opposite wall of a court, or ten feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least ten feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

WSR 20-21-087

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 19-04—Filed October 20, 2020, 9:28 a.m., effective October 20, 2020, 9:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Ecology is adopting the fifth emergency rule, chapter 173-443 WAC, Hydrofluorocarbons (HFCs), to establish requirements to reduce greenhouse gases in Washington by moving to the phased use of less damaging HFCs or acceptable substitutes.

The emergency rule requires manufacturers, importers, and distributors to notify ecology about their products and equipment containing HFCs and other substitutes. The initial deadline was December 31, 2019. More notifications are due when new restrictions apply between 2020 and 2024.

We changed the restriction deadline for vending machines from January 1, 2020, to January 1, 2022, in the first emergency rule. We continue to adopt the 2022 date because we determined that the new date reduces the overall risk to human health or the environment. It also reflects the earliest date that a lower risk substitute is potentially available as allowed by RCW 70A.45.080 (3)(a).

The emergency rule will be in effect for up to one hundred twenty days starting October 20, 2020, replacing the one

adopted on June 25, 2020. The rule will expire when the permanent rule, chapter 173-443 WAC, becomes effective.

We updated the rule to reflect the new chapter number of the law as directed by legislation in 2020.

Ecology adopted the following emergency rules:

- First emergency rule: July 30, 2019 (WSR 19-16-059).
- Second emergency rule: November 21, 2019 (WSR 19-24-005).
- Third emergency rule: March 16, 2020 (WSR 20-07-076).
- Fourth emergency rule: June 25, 2020 (WSR 20-14-041).

Ecology began a rule-making process for the permanent adoption of the rule when we filed the first emergency rule. We will continue to adopt an emergency rule until the permanent rule takes effect.

Please visit our website for information and to participate in the rule-making process: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-443>.

Citation of Rules Affected by this Order: New chapter 173-443 WAC, Hydrofluorocarbons (HFCs).

Statutory Authority for Adoption: Chapter 284, Laws of 2019 (ESSHB [E2SHB] 1112); and chapter 70A.45 RCW, Limiting greenhouse gas emissions.

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: Chapter 284, Laws of 2019 (ESSHB [E2SHB] 1112) was signed into law on May 7, 2019. The law amends chapter 70A.45 RCW. It establishes a deadline of December 31, 2019, for manufacturers, importers, and distributors of products and equipment containing HFCs to submit an initial report to ecology. It also sets restriction deadlines for specific end-use categories. This rule establishes the method to notify ecology by the deadlines.

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 7, 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: October 20, 2020.

Laura Watson
Director

Chapter 173-443 WAC
HYDROFLUOROCARBONS (HFCs)

NEW SECTION

WAC 173-443-010 Policy and purpose. (1) It is the policy of the department of ecology (ecology) under the authority vested in it by chapter 43.21A RCW to provide for the systematic control of air pollution from air contaminant sources and for the proper development of the state's natural resources.

(2) As authorized by chapter 284, Laws of 2019 (E2SHB 1112, Hydrofluorocarbon greenhouse gas emissions), it is the purpose of this chapter to establish the requirements for the transition to the use of less damaging hydrofluorocarbons or suitable substitutes in various applications in Washington in a manner similar to regulations adopted by the Environmental Protection Agency, and that have been subsequently adopted or will be adopted in other states.

NEW SECTION

WAC 173-443-020 Definitions. "Manufacturer" means the same as defined in chapter 284, Laws of 2019: Any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces any product that contains or uses hydrofluorocarbons or is an importer or domestic distributor of such a product.

"Product class" means the same as end-use, as defined in Subpart G of 40 C.F.R. Part 82, as it read on January 3, 2017: Processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ozone-depleting substance.

NEW SECTION

WAC 173-443-030 Manufacturer notification. (1) The manufacturer of products that contain or use hydrofluorocarbons or other restricted substitutes under chapter 284, Laws of 2019, or a trade organization on behalf of its member manufacturers, must report to the department consistent with WAC 173-443-040 and 173-443-050.

(2) It is only necessary for one person or entity to report with respect to a particular product that contains or uses hydrofluorocarbons or other restricted substitutes under chapter 284, Laws of 2019.

(3) In the event of a failure by at least one person to provide a complete, accurate and timely report for a product within a product class, ecology will require information from manufacturers associated with a product in the following order of precedence:

(a) The person or entity that had the product manufactured, unless it has no presence in the United States.

(b) The person or entity that marketed the product under its name or trademark, unless it has no presence in the United States.

(c) The first person or entity, whether an importer or a distributor, that owned the product in the United States.

(d) This hierarchy in no way limits the liability of any manufacturer as defined in subsection (2) of this section asso-

ciated with a product from enforcement under chapter 284, Laws of 2019, or rules promulgated thereunder.

NEW SECTION

WAC 173-443-040 Initial notification. (1) By December 31, 2019, each manufacturer or its representative must provide ecology an initial status notification of the status of products within each product class using hydrofluorocarbons or other substitutes covered under chapter 284, Laws of 2019. This must include all covered products that the manufacturer offers for sale, leases, rents, or installs in Washington. All manufacturers must notify ecology by completing and submitting ecology's notification form. The current version of the form may be obtained at ecology's web site.

(2) Using a form provided by ecology, this initial status notification must include:

(a) Contact information on the manufacturer.

(b) The name of the party authorized to represent the manufacturer for purposes of providing initial status notifications and status updates.

(c) All product classes that are applicable to the manufacturer.

(d) Which hydrofluorocarbons or other substitutes are being used by products within each product class applicable to the manufacturer.

(e) Signature and certification by the authorized representative for the manufacturer.

NEW SECTION

WAC 173-443-050 Status update notification. Within one hundred twenty days after the date of a restriction put in place by chapter 284, Laws of 2019, each manufacturer affected by the restriction or its representative must provide ecology with an updated status notification using ecology's form. This notification must include:

(1) Whether the manufacturer has ceased the use of hydrofluorocarbons or substitutes restricted under chapter 284, Laws of 2019 within each product class.

(2) What, if any, hydrofluorocarbons or other restricted substitutes remain in use.

(3) Updated responses on all information requested in the initial status notification under WAC 173-443-040.

NEW SECTION

WAC 173-443-060 Restriction modification. The product class restriction for new and existing vending machines is modified to January 1, 2022, based on ecology's determination, in accordance with RCW 70A.45.080 (3)(a).

NEW SECTION

WAC 173-443-070 Severability. If any provision of the rule or its application to any covered party, person, or circumstance is held invalid, the remainder of the rule or application of the provision to other covered parties, persons, or circumstances is not affected.